STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES CASE NUMBER DWS23-0190**
	)	
	)	
DEPARTMENT OF ENVIRONMENT AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	
	)	
TOWN OF TELLICO PLAINS TENNESSEE,	)	**DOCKET NUMBER 04.02-244954A JUDGE MICHAEL BEGLEY**
Respondent.	)	

DEPARTMENT OF ENVIRONMENT AND CONSEVATION'S APPEAL BRIEF

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 1 of 10 pages filed

The Department of Environment and Conservation ("Department"), by and through the undersigned counsel, in accordance with the Rules of the Tennessee Department of State Administrative Procedures Division (APD) and the Tennessee Rules of Civil Procedure, submits the following Appeal Brief.

SUMMARY OF POSITION ON APPEAL

This case involves the Town of Tellico Plains, Tennessee's ("Town")'s appeal of Director's Order No. DWS23-0190 ("Order"), which was issued by the Department pursuant to its authority to enforce against violations of the Safe Drinking Water Act, Tenn. Code Ann. §§ 68-221-701 to -721 ("SDWA"). (Not. of Hr'g, R. at 1-28.).[1] Administrative Judge Mark Garland was assigned to sit on behalf of the Board of Water Quality, Oil & Gas ("Board") at the initial stage. Tenn. Code Ann. § 68-221-714(a). Judge Garland granted the Department's motion for

[1] Citations to the Certified Technical Record are identified by the initial "R" followed by the blue Bates reference number located on the lower left corner of each page.

summary judgment, finding that there was no genuine issue as to any material fact concerning the existence of 12 of the violations alleged in the Order. (Order Granting Partial Summary Judgment, May 6, 2025, R. at 824-38.) After a contested case hearing solely on the question of civil penalties, Judge Garland entered an Initial Order finding that the Department had met its burden as petitioner and had proven by a preponderance of the evidence that the civil penalty calculation was appropriate, in compliance with applicable law and policy, and not otherwise arbitrary and capricious. (Initial Order, Sep. 30, 2025, R. at 1458-79.)

The Department agrees with the Initial Order's finding that "the Department met its burden of proof on the issue of liability and that the violations at issue [in the Director's Order] occurred." (Initial Order, R. at 1475.) The Department further agrees with the Initial Order's determination that the Department proved "by a preponderance of the evidence that its civil penalty calculation [in the Director's Order was] appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious." *Id.*

On appeal, the Department makes a narrow challenge to the Initial Order's holdings with respect to (1) what should happen to the deferred portions of the civil penalty, and (2) the validity of one of the corrective actions, Item 3.[2] Specifically, the Department appeals Conclusion of Law No. 5, which holds that "[b]ecause the Town has already taken remedial action and corrected the violations at issue, the contingent penalty of $18,264 cannot now be triggered, is not due, and *shall not be assessed*." (Initial Order, R. at 1476, ¶ 5 (emphasis added).) The Department also appeals Conclusion of Law No. 6, which holds that "the pre-determined civil penalties for future violations set forth in paragraph XVI, sections (3) through (7), of the [Order] are void and of no

[2] The Department does not concede that the Order's other compliance requirements, Items 4 through 7, violate due process. However, as a practical matter, the Department is willing to remove these requirements, as they are already required by rule.

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 2 of 10 pages filed

effect." (Initial Order, R. at 1476, ¶ 6.) For the reasons explained below, the Initial Order should be amended to reflect that (1) corrective action Item 3 is valid, and (2) because the total civil penalty was affirmed and the corrective actions were voided, the total civil penalty ($22,830) must now be due and owing, because the deferred portions that the Order tied to corrective actions are simply sub-parts of the correctly assessed civil penalty; in the alternative, the deferred portion of the civil penalty that was tied to Item 3 ($1,500) is not yet due and owing, because the Order is not yet final, but $21,330 should be due and owing.

ARGUMENT

I. Item 3 is an appropriate corrective action that does not offend due process and should be upheld, along with the deferred portion of the civil penalty associated with it.

The SDWA empowers the Commissioner to "issue orders as may be necessary to secure compliance with [the SDWA], as well as the rules and regulations adopted pursuant to [the SDWA]." Tenn. Code Ann. § 68-221-705(10). The Order contained compliance action requirements, which are enumerated in paragraph XVI, Items 3 through 7. The Initial Order found that the required compliance actions in the Order violated principles of due process because they made pre-determined monetary amounts due upon the existence of future violations. (Initial Order, R. at 1476.). Administrative Judge Garland reasoned that the Town is already obligated to comply with these requirements. (Initial Order, R. at 1469, 1474.). Essentially, the corrective actions in the Order amount to instructions to the Town to not violate the drinking water rules, which is already the legal requirement. The Initial Order also reasoned that the corrective actions as structured left the Town with "no avenue to challenge any factual issues or the calculation of the penalty." (Initial Order, R. at 1474.) The Initial Order goes on to note that "[i]n the event of future noncompliance, the Department's remedy is to issue a new enforcement order based on those future facts, that includes an appropriate civil penalty sufficient to deter that noncompliance."

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 3 of 10 pages filed

One of the corrective actions required by the Order differs in structure from all the other corrective actions. Item 3 required the Town to "submit standard operating procedures (SOP) for the water treatment plant" within 60 days. (Not. of Hr'g, Ex. A, R. at 16-17.) While the Department does not concede that the Order's other compliance requirements (Items 4 through 7) violate due process, Item 3 certainly does not. Item 3, unlike the other corrective actions, does not impose a requirement to not commit a future violation of the drinking water rules. Unlike the other corrective actions, which are structured in the negative ("don't commit a violation"), this corrective action imposes an affirmative action (submit SOPs) that must be taken within a definite timeframe (60 days). This type of corrective action is precisely the kind that is contemplated by the SDWA, because it is geared toward securing compliance with the SDWA and its implementing rules, and it should be upheld by the Board.

II. **Because the Initial Order affirmed the total civil penalty and eliminated the corrective actions that would have allowed portions of the civil penalty to be avoided, the full, properly assessed civil penalty of $22,830 should now be due and owing. In the alternative, if Item 3 is retained, then $21,330 should now be due and owing, and the Town can have the opportunity to avoid the sub-portion of the civil penalty that is tied to Item 3 ($1,500).**

The Order at issue in this case assessed a total civil penalty amount, which is equal to the upfront amount and the remaining amount. The upfront amount had to be paid by the Town. The remaining amount was split into deferred portions, payment of which could be avoided by the Town if they complied with certain corrective actions. The Initial Order affirmed the assessment of the full civil penalty amount. Because the deferred portions are simply sub-parts of the total civil penalty, the Administrative Judge below erred in also finding that the deferred portions of the civil penalty were "void" and "shall not be assessed."

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 4 of 10 pages filed

a. The Initial Order affirmed the total civil penalty calculation.

The Initial Order found that the Department proved "by a preponderance of the evidence that its civil penalty calculation [in the Order was] appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious." (Initial Order, Sep. 30, 2025, R. at 1475.) The "civil penalty calculation" refers to the *total* civil penalty calculation. The total civil penalty ($22,830) is equal to the sum of the upfront amount ($4,566) and the remaining amount ($18,264), which the Initial Order refers to as the "contingent" penalty." (Initial Order, R. at 1476 ¶ 5.)

Notably, the term "contingent penalty" is not a fully accurate description of the remaining amount, as a true contingent penalty is only assessed upon the occurrence of a future event. By contrast, the remaining (or "non-upfront") portion of the civil penalty in the Order had already been assessed—this is clear from the text of paragraph XVI, Item 2, which reads "[t]he Respondent is assessed a total civil penalty of [$22,830]."[3] (Not. of Hr'g, Ex. A, R. at 16.) Of that total, an upfront portion of $4,566 was due within 30 days. (*Id.*) The "remaining [$18,264]" was *due* "only if" the Respondent failed to complete certain corrective actions. (Not. of Hr'g, Ex. A, R. at 16-17.) Unlike a true contingent penalty, the remaining portion of the civil penalty had already been assessed; it was simply not yet due. The import of this distinction is simple: if the total civil penalty was correctly assessed, the total civil penalty should stand.

b. If the total civil penalty is correct and the corrective actions are void, then the total civil penalty should be due and owing.

The Department does not challenge the Initial Order's legal findings regarding the corrective actions assessed in the Order, except with respect to Item 3 as explained in Section I,

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 5 of 10 pages filed

[3] This figure differs from the total civil penalty in the Order because the Department has declined to pursue three of the violations originally assessed in the Order. The civil penalty for these three violations was $2,700 ($25,530 - $2,700 = $22,830). This also means that the upfront amount (20% of the total) was likewise reduced by the Initial Order, from $5,106 to $4,566.

above. However, the Department *does* contest the effect that the voiding of the corrective actions should have on the deferred portions of the civil penalty. Specifically, the Initial Order holds that "the pre-determined civil penalties for future violations set forth in paragraph XVI, sections (3) through (7), of the [Order] are void and of no effect." (Initial Order, R. at 1476.). But this holding cannot be reconciled with the Initial Order's earlier affirmation of the total civil penalty. If the total civil penalty is correct, but the corrective actions violate due process, the appropriate outcome should be for those problematic corrective actions to fall away. However, the *civil penalty* should remain standing. Voiding the deferred portions of the civil penalty along with the corrective actions demolishes the civil penalty—in effect, it reduces the total civil penalty to $4,566. This reduction is inconsistent with the Initial Order's holding that "the total civil penalty calculation is reduced to $22,830." The deferred portions of the civil penalty should not be voided as a result of the corrective actions being voided and should instead be due up front.

To understand what should happen to the civil penalty if the corrective actions are eliminated from the Order, consider what the corrective actions did with respect to the total civil penalty calculation. The corrective actions offered the Town a mechanism by which to *reduce* the civil penalty they were required to pay under the terms of the Order: essentially, the Order's corrective actions are structured to tell a respondent "You are assessed a total civil penalty of X. If you do Y, you do not have to pay this smaller Z portion of the total assessed civil penalty; if you do not do Y, you must pay Z." Without the corrective actions, then, it follows that the Town cannot reduce the total civil penalty it owes. If the corrective actions are unlawful and therefore voided, the deferred portions of the civil penalty that were associated with those corrective actions should not disappear, as the Initial Order would have them do. As it currently stands, the Initial Order gives an unjust windfall to the Town—the Town violated the SDWA, was appropriately assessed

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 6 of 10 pages filed

a civil penalty under the SDWA for those violations, and yet would avoid having to pay a majority of that civil penalty *without doing anything to merit that reduction*. Recall that the total civil penalty must always equal the sum of the upfront and the remaining amount. But if the corrective actions are voided, then there is no "upfront" and "remaining" civil penalty. There is just a total civil penalty, without any corrective actions. In other words, there is no means by which to reduce the amount the Town owes. If the Board agrees with Adminstrative Judge Garland that all of the corrective actions should be excised from the Order, then the only logical remedy is that the full civil penalty of $22,830 should be due and owing.

c. <u>In the alternative, $21,330 of the total civil penalty should be immediately due and owing, and the deferred portion of the civil penalty that was tied to Item 3 ($1,500) should stand, with the opportunity for the Town to avoid that deferred amount if Item 3 is satisfied.</u>

As written in the Order, Item 3 states in full:

> Within 60 days of the receipt of this Order, the [Town] shall submit standard operating procedures (SOP) for the water treatment plant, which shall include grab sampling as required with breakdown of equipment, including the maximum allowable timeframe grab sampling is allowed. The [Town] shall pay a penalty of $1,500.00 for the failure to timely submit the SOP, payable within 30 days of the Division's demand for payment.

(Not. of Hr'g, Ex. A, R. at 17.) If the Board agrees with the Department that Item 3 is a valid corrective action and wishes to retain Item 3 as it is written in the Order, there is a deferred amount—$1,500—that is not yet due and owing. Recall that the deferred amount is simply a sub-portion of the total civil penalty ($22,830). While the appeal is pending, the Order is not final and therefore its requirements are suspended. However, if the Board votes to affirm or modify the Order, the Board's decision will become a "final order" under the SDWA and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to -326. As Item 3 has not yet been completed by the Town, the associated deferred portion of the total civil penalty ($1,500) could be triggered upon entry of a final order in this case, if the Town fails to submit standard operating

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 7 of 10 pages filed

procedures within 60 days of the Board's order becoming final. As such, if the Board elects to retain Item 3 as written, then the upfront portion of the total civil penalty that the Town must pay would be $21,330 (which is $22,830 minus $1,500). The remaining $1,500 would be deferred unless the Town fails to submit standard operating procedures within 60 days of the Board's order becoming final.

PRAYER FOR RELIEF

The Department respectfully requests that the Board review and amend the Initial Order to remedy the following narrow issues:

(1) Amend the Conclusions of Law to clarify that paragraph XVI, Item 3 of Director's Order DWS23-0190 is a valid corrective action that does not offend due process principles.

(2) Amend the Conclusions of Law clarify that the Department has proven by a preponderance of the evidence that its civil penalty calculation in DWS23-0190 is appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious, *see* Tenn. Code Ann. §§ 68-221-713(a)(1), (d)(1), and the Uniform Policy, and that because the Department is no longer pursuing three of the violations and is not seeking to collect the $12.40 in damages, the total civil penalty calculation is reduced to $22,830.

(3) Amend the Conclusions of Law to clarify that the Town is responsible for payment of the total civil penalty of $22,830—which was properly assessed for its violations of the SWDA—within 30 days of the Board's order becoming final; or, in the alternative, amend the Conclusions of Law to clarify that the Town is responsible for payment of $21,330 of the total civil penalty within 30 days of the Board's order

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 8 of 10 pages filed

becoming final, but does not have to pay the remaining $1,500 if the Town submits standard operating procedures within 60 days of the Board's order becoming final.

Respectfully submitted on January 9, 2026.

Samantha Buller-Young

Samantha Buller-Young (BPR# 040466)
Assistant Counsel
Department of Environment and Conservation
3711 Middlebrook Pike, Suite 101
Knoxville, Tennessee 37919
Telephone: (865) 440-8303
Samantha.Buller-Young@tn.gov

Attorney for the Department of Environment and Conservation

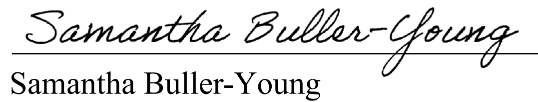
TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 9 of 10 pages filed

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been sent to the following by electronic mail on January 9, 2026.

Brian C. Quist
Peter Amoruso
Quist, Fitzpatrick & Jarrard, PLLC 800
South Gay Street
Suite 2121
Knoxville, TN 37929
bcquist@QFJlaw.com
p. 865 524.1873 ext. 207
f. 865 525.2440

Attorneys for the Respondent.



Samantha Buller-Young

TN SOS-APD Fri, Jan 09, 2026 12:50 PM : 10 of 10 pages filed