

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
SHERWOOD MINING COMPANY)	
LLC)	
)	
)	
RESPONDENT.)	CASE NO. APC24-0080

**TECHNICAL SECRETARY’S ORDER AND
ASSESSMENT OF CIVIL PENALTY**

Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, states:

PARTIES

I.

Michelle Walker Owenby is the Technical Secretary of the Air Pollution Control Board (“Board”) and Director of the Division of Air Pollution Control (“Division”), Department of Environment and Conservation (“Department”).

II.

Sherwood Mining Company LLC (“Respondent”) is a foreign company authorized to do business in the State of Tennessee. The Respondent’s facility address is 9881 Sherwood Road, Sherwood, Tennessee 37376-2022. The Respondent’s registered agent for service of process is Dana Guess at the same address.

AUTHORITY

III.

The Technical Secretary may assess a civil penalty of up to \$25,000.00 per day for each day of violation of the Tennessee Air Quality Act, Tenn. Code Ann. §§ 68-201-101 to -121 (“Act”), or Tennessee Air Pollution Control Regulations, Tenn. Comp. R. & Regs. 1200-03-01 to -36; 0400-30-01 to -39, (“Rules”). Tenn. Code Ann. § 68-201-116. The Technical Secretary may issue an order

for correction to the responsible person when provisions of the Act or Rules are violated, and such person may be liable for resulting damages to the State. *Id.*

IV.

The Respondent is a “person,” Tenn. Code Ann. § 68-201-102(7) and has violated the Act and Rules.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof. Tenn. Code Ann. § 68-201-102(1).

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Tenn. Code Ann. § 68-201-102(2). The Respondent operates an air contaminant source.

FACTS

VII.

On August 15, 2013, the Division issued True Minor construction permit 067502P, amended on May 30, 2014, (“Permit 067502P”). (Facility ID 26-0106), to the Respondent for a rock crushing and sizing operation, Source 02.

VIII.

On December 16, 2020, the Technical Secretary issued construction permit 978555 (“Permit 978555”) (“Facility 26-0106”) to the Respondent for a rock crushing and sizing operation, Source 04. The Respondent notified the Division to rescind the startup certification for Permit 978555. Permit 978555 was amended on December 8, 2022, to extend the expiration date to December 15, 2023. The permit expired and Respondent did not apply for an extension on the expiration date.

IX.

On March 27, 2024, the Respondent notified the Division, by email, of the occasional use of a 2008 JCIFT5162 Track Mounted Mobile Screen with a startup date of August 3, 2022. The source had been constructed and operated prior without a permit.

X.

Condition 11G of Permit 978555 states, in pertinent part:

“If construction of the source cannot be completed and an operating permit application cannot be filed with the Technical Secretary by the expiration date of this permit, a permit extension request must be submitted in writing at least thirty (30) days prior to the permit expiration date unless a different time frame is approved by the Technical Secretary.”

XI.

On March 29, 2024, the Respondent notified the Division that Source 04 has not started up. Based on Condition 11G of Permit 978555, the Respondent was required to submit an application for a permit extension to the Division no later than December 1, 2023. The Respondent did not submit a request for a permit extension to the Division. Therefore, the Respondent violated Condition 11G of Permit 978555.

XII.

On April 19, 2024, the Division issued a Notice of Violation to the Respondent for the violations discussed in paragraph VII, VIII, IX, X, and XI.

VIOLATIONS

XIII.

By constructing an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first applying for in a timely manner and receiving the necessary construction permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(a), which states:

Except as specifically exempted in Rule 1200-03-09-.04, no person shall begin the construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants without first having applied for and received from the Technical Secretary a construction permit for the construction or modification of such air contaminant source.

XIV.

By operating an air contaminant source not specifically exempted by Division Rule 1200-03-09-.04 without first applying for and receiving the necessary operating permit, as discussed herein, the Respondent has violated Division Rule. 1200-03-09-.02(2), which states, in pertinent part:

No person shall operate an air contaminant source in Tennessee without first obtaining an operating permit from the Technical Secretary except as specifically exempted in rule 1200-03-09-.04 of this chapter.

XV.

By failing to comply with the Condition G11 of Permit 978555, the Respondent has violated Division Rule 1200-03-09-.01(1)(d), which states, in pertinent part:

Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application, the provisions and stipulations set forth in the construction permit, all provisions of the regulations of this Division 1200-03, any applicable measures of the control strategy, and all provisions of the Tennessee Air Quality Act.

ORDER AND ASSESSMENT OF CIVIL PENALTY

XVI.

The Respondent is assessed a civil penalty of \$3,000 for violation of the Act and Rules, to be paid to the Department at the following address:

Treasurer, State of Tennessee
Division of Fiscal Services - Consolidated Fees Section
Department of Environment and Conservation
Davy Crocket Tower

500 James Robertson Parkway, 6th Floor
Nashville, Tennessee 37243-1204

The civil penalty shall be delivered to the Department on or before the thirty-first day after receipt of this Order and Assessment of Civil Penalty. The case number, APC24-0080, should be clearly written on all correspondence.

RESERVATION OF RIGHTS

In issuing this Order and Assessment of Civil Penalty, the Department does not implicitly or expressly waive any provision of the Act or Rules promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action.

NOTICE OF RIGHTS

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b). To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Technical Secretary within 30 days of the date the Respondent received this Order and Assessment, or this Order and Assessment becomes final. Any petition for review must be directed to:

Commissioner of the Department of Environment and Conservation
c/o Jenny L. Howard, General Counsel
Department of Environment and Conservation
Davy Crocket Tower
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243-1204

The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Judge as a contested case hearing. Tenn. Code Ann. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -326; Tenn. Comp. R. & Regs. 1360-04-01. Such hearings are legal proceedings in the nature of a trial. Individual respondents may represent themselves or be represented by an attorney licensed

to practice law in Tennessee. Artificial respondents (*e.g.*, 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.

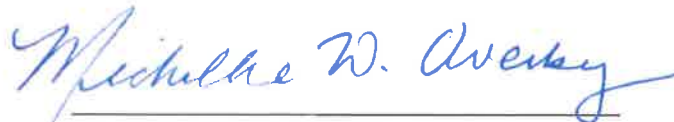
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has 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 Administrative Judge and a court reporter.

Technical questions and other correspondence involving compliance issues should be sent to:

Kevin McLain, Division of Air Pollution Control
Department of Environment and Conservation
Davy Crocket Tower
500 James Robertson Parkway, 7th Floor
Nashville, Tennessee 37243-1204

Attorneys should contact the undersigned counsel of record. The case number, APC24-0080, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on [Month] [Day], [Year].



Michelle Walker Owenby
Technical Secretary
Air Pollution Control Board

Reviewed by:



William Freeman Miller
BPR #028826
Senior Associate Counsel
Department of Environment & Conservation
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243
(615) 532-0136
William.F.Miller@tn.gov