

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION CONTROL
)	
)	
CLEAR DEVELOPMENT, LLC)	
)	
)	
RESPONDENT.)	CASE NO. APC25-0023

**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.

Clear Development, LLC ("Respondent") is a domestic limited liability company authorized to do business in the State of Tennessee. The Respondent's facility address is 911 Tennessee Highway 131, Thorn Hill in Grainger County, Tennessee. The Respondent's registered agent for service of process is Justin Clear, 2980 General Carl W Stiner Highway, La Follette, Tennessee 37766-7201.

AUTHORITY

III.

The Technical Secretary may assess a civil penalty of up to \$25,000 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 September 14, 2021, the Technical Secretary issued true minor combined construction-operating permit number 079088 (Permit 079088), (facility 29-0089), to the Respondent for a rock crushing and sizing operation.

VIII.

Condition G7 of Permit 079088 states:

The startup certification provided in Appendix 4 shall be submitted to the Permitting Program once an air contaminant source has started up. Startup of the air contaminant source shall be the date the new or modified air contaminant source began operation for the production of product for sale, use as raw materials, or steam or heat production under the terms of this permit.

Compliance Method: The startup certification provided in Appendix 4 shall be submitted no later than 30 days after each air contaminant source has begun startup.

TAPCR 1200-03-09-.03(8)

IX.

Condition G9 of Permit 079088 states:

A. All recordkeeping requirements for all data required shall follow the following schedules:

For Daily Recordkeeping	For Weekly Recordkeeping	For Monthly Recordkeeping
No later than seven days from the end of the day which the data is required.	No later than seven days from the end of the week for which the data is required.	No later than 30 days from the end of the month for which the data is required.

B. The information contained in logs, records, and submittals required by this permit shall be kept at the facility's address, unless otherwise noted, and provided to the Technical Secretary or a Division representative upon request. Computer-generated logs are acceptable. Compliance is assured by retaining the logs, records, and submittals specified in this permit for a period of not less than five years at the facility's address.

TAPCR 1200-03-10-.02(2)(a)

X.

Condition S1-5 of Permit 079088 states:

This source shall not operate unless the wet suppression system is in operation. Wet suppression must be applied at every transition (crushers, all other equipment items) and on storage piles, roads, and parking areas as needed to comply with all applicable standards. The wet suppression system shall be maintained in good working condition in order to provide sufficient water pressure and water flow to effectively control fugitive emissions. The permittee shall perform and record monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system. The permittee shall initiate, as well as record, corrective action within 24 hours and complete, as well as record, corrective action as expeditiously as practical if the permittee finds that water is not flowing properly during an inspection of the water spray nozzles. If an affected facility that routinely uses wet suppression water sprays ceases operation of the water sprays or is using a control mechanism to reduce fugitive emissions other than water sprays during the monthly inspection (for example, water from recent rainfall), the logbook entry must specify the control mechanism being used instead of the water sprays. Inspection records shall include the initials of the person performing the inspection(s) and corrective action(s), along with the date, time, and any relevant comments. Days that the source is not in operation shall be noted. These records shall be retained in accordance with **Condition G9**

TAPCR 1200-03-09-.03(8) and 1200-03-10-.02(2)(a)

XI.

On June 26, 2024, Division personnel conducted a comprehensive inspection at the Respondent's facility. During a review of the Respondent's production records, Division personnel discovered that the Respondent had not submitted the facility's startup certification. The facility started production on October 21, 2021. However, based on Condition 7 of Permit 079088, startup certification should have been submitted by November 20, 2021. The startup certification was submitted on January 9, 2025, which was 1,145 days late.

XII.

On June 26, 2024, Division personnel conducted a comprehensive inspection at the Respondent's facility and reviewed the facility's production records. During the review, the inspector discovered that the Respondent did not have production records for the period of October 21, 2021, through November 2, 2023. However, production records for November 3, 2023, through June 25, 2024, were available. Therefore, no further corrective action is required.

XIII.

On January 7, 2025, the Division issued a Notice of Violation (NOV) to the Respondent for the violations discussed in paragraphs **XI** and **XII**.

VIOLATIONS

XIV.

By failing to comply with Conditions G7, G9, and S1-5 of Permit 079088 as discussed herein, the Respondent violated TAPCR 1200-03-09-.02(6) states, in pertinent part, that:

Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act

XV.

By failing to comply with Conditions G7, G9, and S1-5 of Permit 079088 as discussed herein, the Respondent violated TAPCR 1200-03-09-.01(1)(d), which states, in pertinent part, that:

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 or notice of intent; the provisions and stipulations set forth in the construction permit, notice of coverage, or notice of authorization; this Division 1200-03; Division 0400-30; any applicable measures of the control strategy; and 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
Davey Crockett 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, **APC25-0023**, 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
Davey Crockett 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

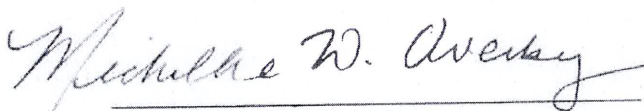
hearing, and the hourly fees incurred due to the presence of the Administrative Judge and a court reporter.

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

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

Attorneys should contact the undersigned counsel of record. The case number, APC25-0023, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on February 28, 2025.



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