

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

SHERWOOD MINING COMPANY, LLC

RESPONDENT

CASE NO. APC18-0205

SETTLEMENT AGREEMENT AND AMENDED ORDER

The Respondent and the Technical Secretary of the Tennessee Air Pollution Control Board as the Petitioner (hereinafter the "Parties") desire to settle and finally resolve a contested case resulting from the Respondent's petition for review challenging the assessment of a civil penalty. By mutual consent the Parties agree to resolve the contested case by amendment of the original Order to decrease the amount of assessment of civil penalty and avoid a hearing in this matter. Amendment is allowed by uniform administrative rules 1360-04-01.01(3) and 1360-04-01-.05 (7) through guidance of Rule 15.01 of the Tennessee Rules of Civil Procedure by mutual consent. And settlements are encouraged by the Uniform Administrative Procedures Act (UAPA), Tenn. Code Ann. §4-5-105. This SETTLEMENT AGREEMENT AND AMENDED ORDER ("Amended Order") reflects the agreement of the Parties and will replace and supersede the previous Order and Assessment of Civil Penalty that was appealed.

On December 18, 2018, the Secretary issued a Technical Secretary's Order and Assessment of Civil Penalty Case No. APC18-0205 to Respondent (the "Prior Order"). The Prior Order was received by the Respondent on December 20, 2018 and was appealed by letter dated January 15, 2020. The date stamp for the actual receipt of the appeal letter was January 22, 2019. This date would make the appeal untimely as it would have become final within 30 days

from when received. But in the interests of fairness, the issue of timeliness is not being asserted, provided the settlement is accepted.

The Parties agree without dispute Sections I. through XII. as to Parties, Authority, Facts and Violations as were alleged in the Prior Order and set forth herein without modification.

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"), Tennessee Department of Environment and Conservation ("Department").

II.

Sherwood Mining Company LLC ("Respondent") is a foreign limited liability company formed in Delaware and authorized to do business in the State of Tennessee. Respondent's facility address is 9881 Sherwood Road, Sherwood, Tennessee 37376. Respondent's registered agent for service of process is Monty Adams at the same address.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 68201116, the Technical Secretary may assess a civil penalty of up to TWENTYFIVE THOUSAND DOLLARS (\$25,000) per day for each day of violation of the Tennessee Air Quality Act ("Act") or any rules or regulations promulgated thereunder ("Division Rules") against any person who violates said Act or Division Rules, and/or the Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Division Rules are violated. In addition, such person may also be liable for any damages to the State resulting therefrom.

IV.

Respondent is a "person" within the meaning of Tenn. Code Ann. § 68201102 and has violated the Division Rules as hereinafter stated.

V.

"Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof, as stated in Tenn. Code Ann. § 68201102.

VI.

"Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, as stated in Tenn. Code Ann. § 68201102.

VII.

Respondent operates an "air contaminant source" within the meaning of Tenn. Code Ann. § 68201102.

FACTS

VIII.

On or about July 20, 2018, the Division received a construction permit application from Respondent dated July 9, 2018, for a rock crushing (fine grinding) operation including transportation, drying, and screening operations at Respondent's facility. The application indicated that construction of this air contaminant source began in May 2018.

IX.

On August 22, 2018, Division personnel conducted a site visit to verify if construction of the above air contaminant source had begun as indicated on Respondent's construction permit application. During this visit, Division personnel discovered Respondent had begun construction prior to receiving a construction permit.

X.

On October 2, 2018, the Division issued a Notice of Violation to Respondent for the above described violation. On October 30, 2018, the Technical Secretary issued Respondent construction permit number 974476.

VIOLATIONS

XI.

By constructing an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first 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 or, if applicable, submitted a notice of intent and obtained a notice of coverage or authorization, for the construction or modification of such air contaminant source.

XII.

Sherwood Mining Company, LLC has sought review of the assessment of civil penalty based on its good faith misunderstanding that its actions taken prior to August 22, 2018 did not constitute a violation since equipment being installed was not operable and the construction was commenced but not completed. The Division relies on the statement of the Respondent in its permit application that construction began in May 2018 and in its photographic evidence of August 2018 showing installation completed for some components of a new rock crushing operation. But the Division also recognizes that Respondent had been working with a consultant on its application and had submitted its application at the time of the site visit. So, there is a basis to view this violation differently from other situations in which there is no application made until discovery of a new source or new process or operation at an existing source.

RELIEF

XIII.

As a settlement the Parties agree to the following Amended Relief:

1. Respondent is assessed a Civil Penalty in the amount of **\$750** for the violation of Division Rules, as discussed herein, which represents a 50% reduction of the assessment made in the Prior Order in light of the stated good faith intent by Respondent to file an application.

2. Respondent shall pay the assessed Civil Penalty in full as follows: Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC18-0205**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the 31st day after receipt of this Order and Assessment.

DEPARTMENT'S RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations 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(s).

NOTICE AND WAIVER OF RIGHTS

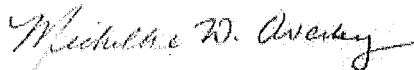
The Respondent acknowledges and knowingly and voluntarily waives its rights as provided by Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), for review of this Order and Assessment by entering into the settlement. This waiver involves waiver of a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-

01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies).

The individual signing below on behalf of the Respondent represents that he is a duly authorized agent, capable of entering an AMENDED ORDER on behalf of the Consenting Party.

ISSUED the ____ day of _____, 2021, in the Office of the Technical Secretary of the Tennessee Air Pollution Control Board; **AGREED AND ORDERED** by the Secretary; and **AGREED AND CONSENTED** to by the Respondent. The effective date of this Settlement Agreement and Consent Order is the date of signature of the Technical Secretary.

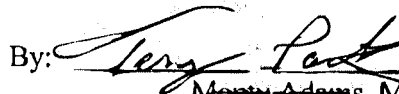
By:



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution
Control Board

Date: 3-11-2021

By:



Monty Adams, Mine Administrator Superintendent
Sherwood Mining Company, LLC

Terry Pack

Date: _____

Reviewed by:

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ACCEPTED BY

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