



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

January 10, 2023

James Marr, Esq.
Tennessee Dept. of Environment and Conservation
William R. Snodgrass TN Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, TN 37243

Premium Coal Co., Inc.
Baldwin Plant
7563 New River Highway 116
Moore's Camp, TN 37769

Patrick Parker, Esq.
Tennessee Dept. of Environment and Conservation
William R. Snodgrass TN Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, TN 37243

Premium Coal Co., Inc.
C.T. Corporation System
300 Montvue Road
Knoxville, TN 37919-5546

**RE: TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION V.
PREMIUM COAL CO., INC., APD Case No. 04.30-223214J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL & GAS

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
ENVIRONMENT AND
CONSERVATION,
*Petitioner,***

v.

**PREMIUM COAL CO., INC.,
*Respondent.***

APD Case No. 04.30-223214J

ORDER GRANTING MOTION for SUMMARY JUDGMENT

This matter has been assigned for hearing to Administrative Law Judge Kim Summers. The Department is represented by Patrick Parker, Esq. and James Marr, Esq. in the Department's Office of General Counsel.

A Director's Order was issued by the Department against the Respondent on September 29, 2021. A Petition of Appeal was mailed to the Department on behalf of the Respondent on November 4, 2021, by a Bill Johnson, identified only as an Engineer. His authority for filing an appeal on behalf of the Corporate Respondent was not provided.

A Notice of Hearing was filed on August 8, 2022. During a pre-hearing conference held with the Petitioner and Mr. Johnson on August 29, 2022, Mr. Johnson was informed that legal counsel would need to be obtained for the Corporation in order to file a proper appeal of the Director's Order and to represent the Corporation in the proceedings. As of the date of this Order, no notice of any such representation has been provided.

On January 4, 2023, the Petitioner filed a Motion for Summary Judgment (Motion) detailing the deficiencies in the Respondent's Petition for Appeal due to the absence of legal representation. For the reasons specified above and in the Motion, the Director's Order has not

been properly appealed as required by law. Accordingly, the Notice of Hearing and all related proceedings are **DISMISSED**, and the Director's Order is now subject to enforcement.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **10th day of January, 2023**.



D. KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **10th day of January, 2023**.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL & GAS (the Board)**, called an Initial Order, was entered on **January 10, 2023**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **January 25, 2023**. A new 30 day period for the filing of an appeal to the Board (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of the document.¹

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied you may file an appeal, which must be **received** by APD no later than 30 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order and/or Other Earlier Orders:** You may appeal the decision, together with any earlier order issued by the Administrative Judge you specifically choose to appeal, to the Board, by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the Board, specifying any earlier order(s) issued by the Administrative Judge that you also want to appeal, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 30 days after the entry of the Initial Order, which is no later than **February 9, 2023**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Board Decides to Review the Initial Order:** In addition, the Board may give written notice of its intent to review the Initial Order within the longer of 30 days or 7 days after the first board meeting to occur after entry of the Initial Order. No later than 7 days after the entry of an Initial Order, TDEC shall file, and serve, a Notice of Filing containing the date of the next Board meeting. No later than 7 days after the next Board Meeting, TDEC shall file, and serve, a Notice of Filing setting forth what action, if any, the Board took with respect to the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Board renders a Final Order affirming, modifying, remanding, or vacating the administrative judge's Initial Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

¹ See TENN. CODE ANN. §§ 68-201-108 (Air Pollution Control Board); 68-211-113, 68-212-113, 68-212-215, 68-215-115, 68-215-119 (Underground Storage Tanks and Solid Waste Disposal Control Board); TENN. CODE ANN. §§ 60-1-401, 69-3-110, 68-221-714 (Board of Water Quality, Oil & Gas).

NOTICE OF APPEAL PROCEDURES

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **January 17, 2023**. See TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date the Initial Order becomes a Final Order. See TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102