



State of Tennessee
Department of State
Administrative Procedures Division
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October 26, 2020

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**RE: MIKE WALLER V. TENNESSEE DEPARTMENT OF ENVIRONMENT AND
CONSERVATION, APD Case No. 04.30-201682J**

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:

MIKE WALLER,
Petitioner,

v.

**TENNESSEE DEPARTMENT OF
ENVIRONMENT AND
CONSERVATION,**
Respondent.

APD Case No. 04.30-201682J

INITIAL ORDER GRANTING MOTION TO DISMISS

On September 8, 2020, the Department of Environment and Conservation (“Department”) filed a Motion to Dismiss the above-referenced matter. Petitioner filed a Response in Opposition to the Motion on September 25, 2020, and the Department filed a reply on September 30, 2020. The parties gave oral arguments before the undersigned Administrative Judge on October 2, 2020. Attorney K. Gregory Tucker represented Respondent, and attorney Katherine Barnes represented the Department.

In its motion, the Department argued that the petition to appeal in this matter must be dismissed for failure to state a claim upon which relief can be granted because the appeal did not allege a violation of the Tennessee Water Quality Control Act or its regulations.

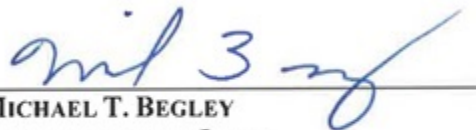
The rules governing appeals of Aquatic Resource Alteration Permits, specifically Tenn. Comp. R. & Regs. 0400-40-07-.04(9)(e), provide:

All petitions for permit appeals shall be filed with the Board of Water Quality, Oil and Gas within 30 days after the date that public notice of the permit issuance, denial, or modification is given by way of posting the notice on the Division’s website. *All petitioners shall specify the basis for their appeal, and state a claim for relief based on an alleged violation of the Act or the rules promulgated thereunder.* Aggrieved persons shall specify facts sufficient to establish that they have satisfied the criteria of subparagraphs (9)(c) and (9)(d) of this rule and otherwise have standing to appeal. (emphasis added)

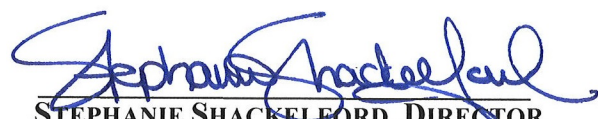
In his appeal, Petitioner does not allege a violation of the Tennessee Water Quality Control Act or the rules promulgated thereunder. Rather, the appeal addresses what Petitioner believes will be damage to a historical structure. Unfortunately, the Water Quality Control Act does not address historical structures or potential consequences to historical structures. Therefore, the appeal fails to state a claim upon which relief can be granted in this forum. The Department's Motion to Dismiss is therefore **GRANTED** and this matter is hereby **DISMISSED** with prejudice.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **26th day of October, 2020**.


MICHAEL T. BEGLEY
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 **26th day of October, 2020**.


STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

NOTICE OF FILING PROCEDURES

Due to the COVID-19 pandemic, APD has changed its filing procedures. Until further notice, filings should be made by **email** to APD.Filings@tn.gov or by **facsimile** to 615-741-4472. Paper filings should only be made by mail if a litigant has no access to either email or facsimile. If you are filing by email, documents should be saved in PDF format prior to filing. Each document to be filed must be a separate PDF. Only one filing method should be used. Please name PDFs for filing in the following format:

“APD CASE NUMBER YOUR NAME ABBREVIATED NAME OF DOCUMENT BEING FILED AGENCY NAME”

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 **October 26, 2020**. 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. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **November 10, 2020**. 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 disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

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. Such an Appeal must be **received** by the 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. Mail to the APD a document that includes your name and the above APD case number, and states 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. The APD must **receive** your written Appeal no later than 30 days after the entry of the Initial Order¹, which is no later than **November 25, 2020**. 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 15 days after entry of 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 the APD within 7 days of the date of entry of the Initial Order, which is no later than **November 2, 2020**. See TENN. CODE ANN. § 4-5-316.

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Board deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Board rendered a Final Order, the Board will consider the Petition. The APD must receive your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Board; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. See TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the 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 (a) the date of entry of a Final Order; or (b) 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. 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.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Board deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Board rendered a Final Order, the Board will consider the Petition. A Petition for a stay of a Final Order must be received by the APD within 7 days after the Initial Order becomes a Final Order. See Tenn. Code Ann. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

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