



State of Tennessee
Department of State

Administrative Procedures Division
312 Rosa L. Parks Avenue
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

August 7, 2024

S and H Mining Inc.
c/o C T Corporation System, registered agent
300 Montvue Road
Knoxville, TN 37919

Grant Ruhl, Esq.
Tennessee Dept. of Environment and
Conservation
Davy Crockett Tower, 5th Floor
500 James Robertson Parkway
Nashville, TN 37243
Sent via email only to:
Grant.Ruhl@tn.gov

James Marr, Esq.
Tennessee Dept. of Environment and
Conservation
3711 Middlebrook Pike
Knoxville, TN 37921
Sent via email only to:
James.Marr@tn.gov

**RE: S AND H MINING INC. V. TENNESSEE DEPARTMENT OF ENVIRONMENT
AND CONSERVATION, APD Case No. 04.30-236510J**

Enclosed is a/an *IO OF DEFAULT AND DISMISSAL* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS

IN THE MATTER OF:

S AND H MINING INC.,
Petitioner,

v.

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

APD Case No. 04.30-236510J

INITIAL ORDER OF DEFAULT AND DISMISSAL

The issue to be determined is whether the MOTION FOR DEFAULT filed by Respondent, the Tennessee Department of Environment and Conservation (TDEC), should be granted. Based upon the following findings of fact and conclusion of law, the default motion is **GRANTED**, and the case is **DISMISSED**.

FINDINGS OF FACT

1. On September 18, 2023, Petitioner, S and H Mining Inc., by and through its counsel, Amanda L. Waesch, filed a permit appeal requesting a hearing before the Board of Water Quality, Oil, and Gas (the Board).
2. On February 13, 2024, Ms. Waesch advised TDEC's counsel that she no longer represented Petitioner in this matter.
3. On February 14, 2024, TDEC filed a NOTICE OF HEARING with the Administrative Procedures Division (APD) initiating a contested case proceeding on Petitioner's permit appeal.¹

¹ When all counsel were contacted by Judge Thomas via email on February 14, 2024, regarding an issue with the certificate of service on the NOTICE OF HEARING, Ms. Waesch confirmed she was no longer representing Petitioner and was removed from future filings in this matter.

4. A copy of the NOTICE OF HEARING was sent to Petitioner's registered agent, CT Corporation System, at 300 Montvue Rd., Knoxville, Tennessee 37919.

5. Administrative Judge Leigh Thomas is the administrative judge presiding over this matter with the Administrative Procedures Division (APD). Judge Thomas issued an ORDER SETTING PRE-HEARING CONFERENCE (PHC ORDER) on February 16, 2024, setting a pre-hearing conference for February 29, 2024.

6. The PHC ORDER advised the parties, "The parties are cautioned that any failure by either party to 'participate in a pre-hearing conference, hearing or other stage' of these proceedings, including compliance with the pre-hearing filing deadlines, may result in that party's being held in default pursuant to TENN. CODE ANN. § 4-5-309, and this matter being dismissed."

7. The PHC ORDER was sent via U.S. Mail both to CT Corporation System, as registered agent, and to the address provided for Petitioner: S&H Mining, Inc. P.O. Box 480, Rocky Top, Tennessee 37769. The PHC ORDER sent directly to Petitioner's address was returned to sender, having been marked by the United States Postal Service as "attempted – not known, unable to forward."

8. Pursuant to the PHC ORDER, a pre-hearing conference was convened by telephone at 1:00 PM CST on February 29, 2024. Counsel James Marr participated on behalf of TDEC. No one appeared or otherwise participated on behalf of Petitioner.

9. An ORDER SETTING HEARING issued on March 1, 2024. The ORDER set the hearing date (August 13, 2024) as well as a deadline for completion of discovery (May 1, 2024), a deadline for filing dispositive motions (May 17, 2024), and a deadline for responses to dispositive motions (June 18, 2024).

10. The ORDER again advised the parties that "failure to 'participate in a pre-hearing conference, hearing or other stage' of these proceedings, including compliance with the pre-

hearing filing deadlines, may result in that party's being held in default pursuant to TENN. CODE ANN. § 4-5-309, and this matter being dismissed.”

11. On May 3, 2024, a NOTICE OF APPEARANCE for counsel, Grant Ruhl, was filed by TDEC.

12. On June 17, 2024, TDEC filed a MOTION FOR CONTINUANCE. The basis of the motion was the active military deployment of Mr. Marr.

13. Judge Thomas issued an ORDER CONTINUING HEARING AND RESETTING TRIAL (CONTINUANCE ORDER) on June 18, 2024. The CONTINUANCE ORDER reset the hearing for November 8, 2024, and provided the following revised deadlines: filing of dispositive motions (July 5, 2024) and filing of responses to dispositive motions (August 6, 2024).

14. On June 27, 2024, TDEC filed a MOTION FOR DEFAULT.

15. Petitioner chose not to file a response to TDEC's default motion.

16. Petitioner has not participated in discovery, the pre-hearing conference, or responded to any motion filed in this case.

17. Petitioner, a corporate entity, has not retained counsel to represent its interests in this appeal.

18. No NOTICE OF APPEARANCE has been filed by any counsel on behalf of Petitioner.

19. TDEC has properly served the NOTICE OF HEARING, as well as all filed motions, on Petitioner.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 4-5-309(a) provides:

- (a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone, or agency, sitting with the administrative judge or hearing officer, may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

2. RULE 1360-04-01-.14(1)(a) of the Uniform Rules of Procedure for Hearing provides:

(a) The failure of a party to attend or participate in a pre-hearing conference, hearing, or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the administrative judge or agency, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding a party in default.

(b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and either to adjourn the proceedings or continue on an uncontested basis.

(c) The administrative judge, when sitting with an agency, advises the agency whether the service of notice is sufficient as a matter of law, according to Rule 1360-04-01-06.

(d) If the notice is held to be adequate, the agency, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in Rule 1360-04-01-.06, subsections (2)(a) through (2)(d), when appropriate. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.

(e) The agency or administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party may file a motion for reconsideration under T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The agency or administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. § 4-5-317.

3. RULE 1360-04-01-.02 states, in pertinent part:

(3) Burden of Proof - The “burden of proof” refers to the duty of a party to show by a preponderance of the evidence, except when other law or rule has created a different standard, that an allegation is true or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue, except when other laws or rules have created an exception to this

general rule. The administrative judge makes all decisions regarding which party has the burden of proof on any issue.

(5) Petitioner - The “petitioner” in a contested case proceeding is the “moving” party, i.e., the party who initiated the proceedings. The petitioner usually bears the ultimate burden of proof and will therefore present his or her proof first at a contested case hearing. In some cases, however, the party who initiated the proceedings will not be the party with the burden of proof on all issues. In such cases, the administrative judge will determine the order of proceedings, considering the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.

DETERMINATION


TDEC served the NOTICE OF HEARING packet as well as all other motions on Petitioner by service to Petitioner’s registered agent for service of process at the address required to be kept on file at the Secretary of State’s website. None of the mailings to Petitioner’s registered agent of service were returned, including mailing from APD. It is therefore determined that TDEC’s service of process on Petitioner is deemed effective.

Petitioner did not participate in the pre-hearing conference, the discovery process, or file a response to any motion, including the MOTION FOR DEFAULT. Therefore, Petitioner did not carry the required burden of proof to maintain the permit appeal. It is hereby **ORDERED** that Petitioner is held in **DEFAULT** pursuant to TENN. CODE ANN. § 4-5-309(2); this matter is **DISMISSED**.

The policy reasons for this decision are to uphold the laws of the State of Tennessee.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **7th day of August, 2024.**



LEIGH THOMAS
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
7th day of August, 2024.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS (the Board)**, called an Initial Order, was entered on **August 7, 2024**. 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 **August 22, 2024**. 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 **September 6, 2024**. 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 **August 14, 2024**. 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@tnsos.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, 6th Floor
Nashville, TN 37243-1102