

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Richard E. Pierson Materials Corp. : Re: Installation without a Plan Approval or
P.O. Box 704 : Operating Permit
Bridgeport, NJ 08014-0704 :

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 4 day of September 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“DEP”), and Richard E. Pierson Materials Corp. (“RE Pierson”).

DEP has found and determined the following:

A. DEP is the agency with the duty and authority to administer and enforce the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. §§ 4001 et seq. (“Air Pollution Control Act”), Section 1917-A of the Administrative Code 1929, The Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Administrative Code”), and the regulations promulgated thereunder.

B. RE Pierson is a New Jersey corporation that owns and operates a non-metallic mineral processing plant located at 2055 North Rockhill Road in East Rockhill Township, Bucks County, Pennsylvania (“facility”).

C. RE Pierson is currently permitted to operate a 1,000 ton per hour non-metallic mineral processing plant under Air Quality Plan Approval 09-0241 (“PA 09-0241”), issued on December 5, 2018 with an expiration date of May 30, 2020.

D. Pursuant to 25 Pa. Code § 127.11, “[a] person may not cause or permit the construction or modification of an air contamination source or the installation of an air cleaning device or an air contamination source unless the construction, modification, or installation has been approved by the Department.”

E. Pursuant to 25 Pa Code § 121.1 the term construction is defined as “[t]o physically initiate assemblage, installation, erection or fabrication of an air contamination source or an air pollution control device, including building supports and foundations and other support functions.”

F. On May 23, 2018, a DEP representative inspected the facility and found that RE Pierson had begun construction of the 1,000 ton per hour non-metallic mineral processing plant. RE Pierson poured foundations for the primary crusher, installed structural steel for the primary crusher feed hopper and brought associated structures such as conveyors and screen components on site.

G. DEP received a Plan Approval application from RE Pierson for the 1,000 ton per hour non-metallic mineral processing plant on May 23, 2018. On December 15, 2018, DEP issued Plan Approval 09-0241 to RE Pierson for the 1,000 ton per hour non-metallic mineral processing plant.

H. RE Pierson began construction of the 1,000 ton per hour non-metallic mineral processing plant at the facility prior to receiving DEP approval.

I. The facts described in Paragraphs F and H are violations of 25 Pa. Code § 127.11.

J. The violation described in Paragraph I constitutes unlawful conduct under Section 8 of the Air Pollution Control Act, 35 P.S. § 4008, and subjects RE Pierson to a claim for civil penalties under Section 9.1 of the Air Pollution Control Act, 35 P.S. § 4009.1.

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby **ASSESSED** by DEP and **AGREED** to by RE Pierson as follows:

1. **Assessment.** In resolution of DEP's claim for civil penalties, which DEP is authorized to pursue under Section 9.1 of the Air Pollution Control Act, 35 P.S. § 4009.1, DEP hereby assesses a civil penalty of **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)**, which RE Pierson hereby agrees to pay.
2. **Civil Penalty Settlement.** Within 15 days of receipt of a signed copy of this CACP, RE Pierson shall pay the civil penalty assessed in Paragraph 1. This payment is in settlement of DEP's claim for civil penalties for the violations set forth in Paragraph I, for the dates set forth in Paragraph F and H. The payment shall be by corporate check or the like, made payable to the "COMMONWEALTH OF PENNSYLVANIA, CLEAN AIR FUND" and sent to the Air Quality Compliance Specialist, Pennsylvania Department of Environmental Protection, Air Quality, 2 East Main Street, Norristown, PA 19401. Payment shall be accompanied by a Transmittal of Penalty Payment Form (form No. ER-AQ-3), a copy of which is enclosed.
3. **Findings.**
 - a. RE Pierson agrees that the findings in Paragraphs A through H are true and correct and, in any matter or proceeding involving RE Pierson and DEP, RE Pierson shall not challenge the accuracy or validity of these findings
 - b. The parties do not authorize any other persons to use the findings in this CACP in any matter or proceeding.
4. **Reservation of Rights.** DEP reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. RE Pierson reserves the right to challenge any action which DEP may take, but waives the right to challenge the content or validity of this CACP.

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of RE Pierson certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of RE Pierson; that RE Pierson consents to the entry of this CACP as an ASSESSMENT of DEP; that RE Pierson hereby knowingly waives any right to a hearing under the statutes referenced in this CACP, which right may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. (Signature by RE Pierson's attorney certifies only that the agreement has been signed after consulting with counsel.)

FOR RICHARD E. PIERSON
MATERIALS CORP.

FOR THE COMMONWEALTH OF
PENNSYLVANIA

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

* *Richard E. Pierson*
Name RICHARD E. PIERSON
Title PRESIDENT

8-29-19
Date

James D. Rebarchak 9/4/19
Name James D. Rebarchak Date
Title Regional Manager
Air Quality

Slavic Mokienko
Name Slavic Mokienko
Title Vice President

8-29-19
Date

Name _____ Date _____
Attorney for Richard E. Pierson Materials
Corp.

Douglas G. White 9/4/19
Name Douglas G. White Date
Title Supervisory Counsel

COMMENT: If the Operator is a corporation, this document must be signed by both (1) the President or Vice President and (2) the Secretary or Treasurer, unless a resolution from the Board of Directors is attached that authorizes the signatory to sign on behalf of the corporation.