

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

BLOCKWORKS, LLC

RESPONDENT

)
)
)
) **DIVISION OF AIR POLLUTION**
) **CONTROL**
)
) **CASE NO. APC17-0183**
)

**TECHNICAL SECRETARY'S ORDER AND ASSESSMENT OF
CIVIL PENALTY**

Comes now, Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, and states that:

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.

BlockWorks, LLC ("Respondent") is a domestic limited liability company authorized to do business in the State of Tennessee. Respondent's facility address is 240 Lower Station Camp Creek Road, Gallatin, Tennessee 37066. Respondent's registered agent for service of process is Kellie Mires at 150 Public Square Lebanon, Tennessee 37087-2736.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 68-201-116, the Technical Secretary may assess a civil penalty of up to TWENTY-FIVE 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. § 68-201-102 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. § 68-201-102.

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, within the meaning of Tenn. Code Ann. § 68-201-102.

VII.

Respondent operates an “air contaminant source” within the meaning of Tenn. Code Ann. § 68-201-102.

FACTS

VIII.

On October 28, 2016, the Technical Secretary issued operating permit number 070196P to Respondent for a cement silo with baghouse control (Emission Source Reference No. 83-0109-03).

Condition 4 of operating permit number 070196P states:

Routine maintenance, as required to maintain specified emission limits, shall be performed on the air pollution control device(s). Maintenance records shall be recorded in a suitable permanent form and kept available

for inspection by the Division. These records must be retained for a period of not less than two years.

IX.

On November 6, 2017, Division personnel conducted an annual compliance inspection at Respondent's facility as a follow-up to a citizen's complaint received on November 2, 2017. The complaint alleged that dust was being emitted from the top of the silos when they were being filled with cement. The silos were not being filled during the annual compliance inspection so no visible emissions were observed from the silos.

X.

During the course of the annual compliance inspection, Division personnel observed that Respondent failed to maintain the maintenance records as required by Condition 4 of operating permit number 070196P.

XI.

A Notice of Violation ("NOV") was issued to Respondent on November 14, 2017, for the violation identified above. As corrective action for the violation identified above, the NOV required that Respondent begin maintaining maintenance records. The records for the month of November and December of 2017 were required to be submitted to the Division by February 1, 2018, demonstrating compliance with the record keeping requirements of Condition 4. Respondent submitted the required records on or about January 25, 2018, to the Nashville Environmental Field Office. A review of the records by the Division deemed the records satisfactory, and the company is now back in compliance with the permit.

VIOLATIONS

XII.

By failing to comply with the conditions of an operating permit as discussed herein, Respondent violated Tenn. Comp. R. & Regs. 1200-03-09-.02(6), which states:

Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act.

RELIEF

XIII.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby ORDER as follows:

1. Respondent is assessed a CIVIL PENALTY in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** for the violation of Division Rules, as discussed herein.
2. Respondent shall pay the assessed **CIVIL PENALTY** in full to the “Treasurer, State of Tennessee” as detailed in the Notice of Rights. The case number, **APC17-0183**, 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 thirty-first (31st) day after receipt of this ORDER and ASSESSMENT.

The Technical Secretary does not expressly or implicitly waive her authority pursuant to any provision of the Act or Division Rules by issuing this ORDER AND ASSESSMENT OF CIVIL PENALTY. Failure to comply with any of the requirements of this ORDER could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

NOTICE OF RIGHTS

Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Technical Secretary within THIRTY (30) DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

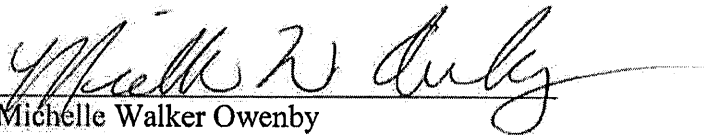
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. **Artificial respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee.** Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny this Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing, and the hourly fees incurred due to the presence of the ALJ and a court reporter.


Any petition for review (appeal) must be directed to the Technical Secretary, Tennessee Division of Air Pollution Control, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. 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. Technical questions and other correspondence involving compliance issues should be sent to Attn: Kevin McLain, Division of Air Pollution Control, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243 or via e-mail to air.pollution.control@tn.gov. Attorneys should contact the undersigned counsel of

record. The case number, APC17-0183, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 24th day of February, 2018.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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