

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

CLARK CONTAINER, INCORPORATED

RESPONDENT

)
)
) **DIVISION OF AIR POLLUTION**
) **CONTROL**
)
) **CASE NO. APC18-0082**
)

**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.

Clark Container, Incorporated ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. Respondent's facility address is 6895 Industrial Road, Lyles, Tennessee. The Respondent's registered agent for service of process is Chris Chilton, 2526 Chilton Lane, Dickson, Tennessee 37055-4635.

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, as stated in 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 July 30, 2015, the Technical Secretary issued Conditional Major operating permit Number 469859P to Respondent for a printing operation consisting of three (3) flexographic printing presses with natural gas dryers controlled by a catalytic oxidizer.

IX.

Condition 14 of Permit 469859P states:

The operations controlled by the catalytic oxidizer shall not operate unless the catalytic oxidizer is in operation. In the event a malfunction/failure of this control device occurs, the operation of the processes controlled by the catalytic oxidizer

shall be regulated by Chapter 1200-03-20 of the Tennessee Air Pollution Control Regulations.

X.

On or about March 30, 2018, the Division received Respondent's annual compliance report ("Report") for 2017. The Report indicated that the catalytic oxidizer malfunctioned as follows:

- The malfunction occurred from 7:00 am on February 27, 2017, through 12:00 pm on March 8, 2017 (221 hours, approximately 9 days). The catalytic oxidizer would not start-up. Corrective Action – The flame-pak relay and ignitor transformer were changed and a technician was brought in to diagnose the problem.
- The malfunction occurred from 7:30 am on March 14, 2017, through 1:00 pm on March 20, 2017 (149.5 hours, approx. 6 days). Corrective Action – The blower fan motor was replaced.
- The malfunction occurred from 8:00 am on May 15, 2017, through 9:30 am on May 17, 2017 (49.5 hours). Corrective Action – The bearings and couplers were replaced on the drive motor.
- The malfunction occurred from 5:00 pm on July 5, 2017, through 8:00 am on July 11, 2017 (135 hours, approx. 5 days). Corrective Action – The relay switches were replaced.
- The malfunction occurred from 8:30 am on August 14, 2017, through 8:30 am on August 15, 2017 (24 hours). Corrective Action – A new circuit board was installed for the ignition control.
- The malfunction occurred from 10:00 am on October 9, 2017, through 12:15 pm on October 11, 2017 (50.25 hours). Corrective Action – A faulty wire to the combustion blower motor was replaced.
- The malfunction occurred from 10:30 am on October 23, 2017, through 12:45 pm on December 7, 2017 (1,082.75 hours, approx. 45 days). Corrective Action – Ignitor rods and flame rods were made.

The Report indicated that during these periods of malfunction, the process continued to operate without catalytic oxidizer control and emissions were calculated at 100%.

XI.

On April 19, 2018, the Division issued a Notice of Violation to Respondent for operating the presses without operating the catalytic oxidizer.

VIOLATIONS

XII.

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

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 the 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, **APC18-0082**, 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 OF CIVIL PENALTY.

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

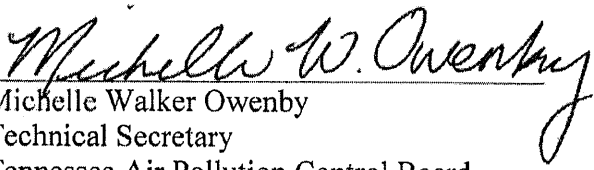
Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Technical Secretary within THIRTY (30) DAYS of the date Respondent received this 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: Tammy Gambill, 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, APC18-0082, 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 28th day of August, 2018.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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