

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

KOKOMO GRAIN CO., INC.

RESPONDENT

)
)
) **DIVISION OF AIR POLLUTION**
) **CONTROL**
)
) **CASE NO. APC18-0011**
)

**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.

Kokomo Grain Co., Inc. ("Respondent") is foreign corporation formed in Indiana and authorized to do business in the State of Tennessee. Respondent's facility address is 185 Interstate Drive, Manchester, Tennessee 37355-3107. Respondent's registered agent for service of process is Stephen M. Worsham at 105 NW Atlantic Street, Tullahoma, Tennessee 37388-3513.

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 July 30, 2001, the Technical Secretary issued operating permit number 054362P (“Permit 054362P) to Respondent for a grain handling operation (Emission Source Reference No. 16-0106-01). This permit expired on March 1, 2012.

Condition 8 of Permit 054362P states:

The permittee shall apply for renewal of this permit not less than sixty (60) days prior to the permit's expiration date pursuant to Division Rule 1200-3-9-.02(3).

IX.

On or about November 30, 2017, the Division received Respondent's operating permit renewal application for the grain handling operation (Emission Source Reference No. 16-0106-01). Condition 8 required Respondent to apply for a permit renewal no later than January 1, 2012. Therefore, Respondent has been operating without a permit since March 1, 2012 although it was paying fees and receiving correspondence pertaining to fees after its permit had expired.

X.

The Division issued a Notice of Violation to Respondent on January 3, 2018, for the violation identified above.

VIOLATIONS

XI.

By operating an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first applying for and receiving the necessary operating permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.02(2), which states, in pertinent part:

No person shall operate an air contaminant source in Tennessee without first obtaining from the Technical Secretary an operating permit or, if applicable, submitting a notice of intent and obtaining a notice of coverage or authorization, except as specifically exempted in Rule 1200-03-09-.04.

RELIEF

XII.

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. The CIVIL PENALTY shall be waived if Respondent complies with item three (3) of this paragraph.
3. Respondent shall adhere to the conditions stipulated in the expired permit 054362P discussed herein. Provided that Respondent adheres to these conditions, compliance with the terms of the expired permit through this Order shall serve as an alternative to a temporary operating permit until such time as Respondent receives an operating permit.
4. If Respondent fails to adhere to item three (3) of this paragraph, then the CIVIL PENALTY shall be due and 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, **APC18-0011**, 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 Division notification that Respondent has failed to maintain compliance with the operating permit.

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).

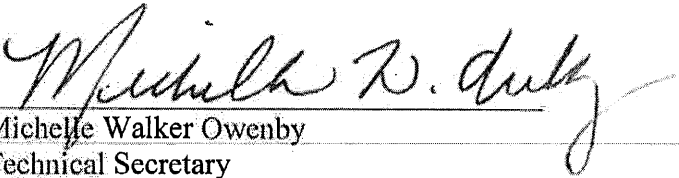
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of

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, APC18-0011, 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 May, 2018.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


Steven R. Stout
BPR #:014174
Senior Counsel
Office of General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615)- 532-0138
Email: steven.stout@tn.gov