

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:
OAKCREST LUMBER, INC

)
)
) **DIVISION OF AIR POLLUTION**
) **CONTROL**
)
) **CASE NO. APC15-0094**
)

RESPONDENT

Oakcrest Lumber, Inc.
15-0139

**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.

Oakcrest Lumber, Inc. ("Respondent") is a foreign corporation authorized to do business in Tennessee. The Respondent's facility address is 1489 West Highway 25/70, Newport, Tennessee. The Respondent's registered agent for service of process is CT Corporation at 800 S Gay Street, STE 2021, Knoxville, Tennessee 37929-9710.

AUTHORITY

III.

Pursuant to Tenn. Code Ann. § 68-201-116, the Technical Secretary may assess a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per day for each day of violation of the Tennessee Air Quality Act (the "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.

The 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.

The Respondent constructed and/or operated an "air contaminant source" within the meaning of Tenn. Code. Ann. § 68-201-102.

FACTS

VIII.

On March 17, 2014, the Technical Secretary issued Construction Permit 968071F (“Permit”) to the Respondent for a 400 horsepower wood-fired boiler. Condition 9 of that Permit limited the visible emissions of the Respondent’s facility to not greater than twenty percent (20%) opacity except for one (1) six-minute period in any one (1) hour period. Visible emissions shall be determined using EPA method 9 (6-minute average). That Permit expired March 1, 2015.

On March 27, 2015, the Respondent submitted an application for an operating permit for this facility. On or about April 17, 2015, the Division conducted a Visible Emissions Evaluation (VEE) at the Respondent’s aforementioned facility. That VEE indicated three (3) six-minute periods of greater than twenty percent (20%) opacity. On May 4, 2015, the Division issued a Notice of Violation to the Respondent for the aforementioned violation.

On July 8, 2015, the Technical Secretary issued Operating Permit 069679F to the Respondent for this facility.

VIOLATIONS

IX.

By operating an air contaminant source above the opacity standards, as discussed herein, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-05-.01(1). Said rule states, in pertinent part, as follows:

No person shall cause, suffer, allow or permit discharge of a visible emission from any air contaminant source with an opacity in excess of twenty (20) percent for an aggregate of more than five (5) minutes in any one (1) hour or more than twenty (20) minutes in any twenty-four (24) hour period...

X.

By operating an air contaminant source above the opacity standards, as discussed herein, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-05-.03(6). Said rule states as follows:

On or after July 7, 1992, all new and/or modified sources subject to the provisions of this chapter 1200-03-05 shall utilize six-minute averaging. Roads and parking lots shall utilize two-minute averaging.

RELIEF

XI.

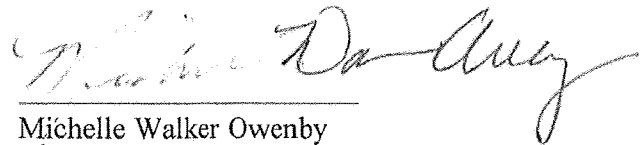
WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby ORDERS as follows:

1. The Respondent is assessed a CIVIL PENALTY in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** for the violations of Division Rules, as discussed herein.

2. The 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, "**APC15-0094**", should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made within thirty (30) days of receipt of this ORDER AND ASSESSMENT OF CIVIL PENALTY.

The Secretary does not expressly or implicitly waive her authority pursuant to any provision of the Tennessee Air Quality Act or Division Rules promulgated thereunder by issuing this ORDER AND ASSESSMENT OF CIVIL PENALTY.

Issued the 6 day of January, 2016, in the Office of the Technical Secretary of the Tennessee Air Pollution Control Board.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

NOTICE OF RIGHTS

Pursuant to Tenn. Code Ann. § 68-201-108(a) and 68-201-116(b), the Respondent may 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 the 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 T.C.A. § 68-201-108(a), T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 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 the 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 E. Joseph Sanders, 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 Tammy Gambill, State of Tennessee, Division of Air Pollution Control, William R Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243. The case numbers, **APC15-0094**", should be written on all correspondence regarding this matter.