

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

**O'NEIL COLOR AND
COMPOUNDING CORP.**

RESPONDENT

)
)
)
) **DIVISION OF AIR POLLUTION
CONTROL**
)
) **CASE NO. APC16-0040**
)

**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.

O'Neil Color and Compounding Corp. ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. The Respondent's facility address is 193 Commerce Place, Jasper, Tennessee 37347-5312. The Respondent's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

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

FACTS

VIII.

On June 5, 2015, the Technical Secretary issued construction permit number 969908P (Facility Id. 58-0084) to the Respondent for their plastic blending and extrusion operation.

Condition 2 of construction permit number 969908P states:

Total solids input to the process shall not exceed 2900 pounds per hour on a daily average basis.

On December 3, 2015, Division personnel conducted an annual inspection at the Respondent's facility and discovered the input limit had been exceeded as follows:

Date	Material Input (lbs/hr)
August 1, 2015	3063
August 24, 2015	2919
September 30, 2015	3100
October 15, 2015	3050
October 21, 2015	3438
November 12, 2015	3349
November 13, 2015	3531
November 17, 2015	3450
November 18, 2015	3438
November 19, 2015	3238
December 4, 2015	3058
December 5, 2015	2996
December 9, 2015	3129
December 29, 2015	2938

On February 3, 2016, the Division issued a Notice of Violation to the Respondent for the above violation.

VIOLATIONS

IX.

By failing to comply with the condition of a construction permit, as discussed herein, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d), which states, in pertinent part:

Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application, the provisions and stipulations set forth in the construction permit, all provisions of the regulations of this Division 1200-03, any applicable measures of the control strategy, and all provisions of the Tennessee Air Quality Act.

RELIEF

X.

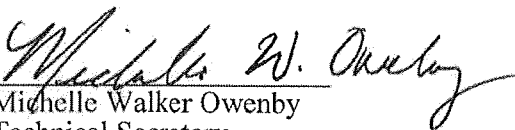
WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby ORDER as follows:

1. The Respondent is assessed a CIVIL PENALTY in the amount of **FIVE HUNDRED DOLLARS (\$500)** for the violation 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, "**APC16-0040**", 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 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.

Issued the 11 day of May, 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 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 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 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@in.gov. The case number, **APC16-0040**, should be written on all correspondence regarding this matter.