

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
)	DIVISION OF AIR POLLUTION CONTROL
INSTITUTIONAL CASEWORK, INCORPORATED)	
)	CASE NO. APC20-0016
)	
RESPONDENT)	

**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.

Institutional Casework, Incorporated (“Respondent”) is a domestic corporation authorized to do business in the State of Tennessee. Respondent’s facility address is 1865 North Market Street, Paris, Tennessee 38242. Respondent’s registered agent for service of process is Donna O. Milam, 1865 Highway 641 North, Paris, Tennessee 38242-8814.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated (“Tenn. Code Ann.”) § 68-201-116, the Technical Secretary may assess a civil penalty of up to \$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 June 1, 2015, the Technical Secretary issued Title V operating permit number 567882 (“Permit 567882”) to Respondent for a Wood Furniture Manufacturing Operation. The expiration date of Permit 567882 is May 31, 2020.

IX.

Condition A12 of Permit 567882 states:

Permit renewal and expiration.

(a) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted at least 180 days, but no more than 270 days prior to the expiration of this permit.

(b) Provided that the permittee submits a timely and complete application for permit renewal the source will not be considered in violation of paragraph 1200-03-09-.02(11) until the Technical Secretary takes final action on the permit application, except as otherwise noted in paragraph 1200-03-09-.02(11).

(c) This permit, its shield provided in Condition A11, and its conditions will be extended and effective after its expiration date provided that the source has submitted a timely, complete renewal application to the Technical Secretary.

X.

On December 4, 2019, the Division received Respondent's Title V permit renewal application via e-mail. Based on the expiration date and condition A12 of Permit 567882, Respondent's Title V permit renewal application was required to be submitted to the Division between September 24, 2019, and December 3, 2019.

XI.

On February 4, 2020, the Division issued a Notice of Violation to Respondent for failing to submit a timely and complete Title V permit renewal application at least 180 days, but no more than 270 days prior to the permit's expiration date.

VIOLATION

XII.

By failing to comply with condition A12 of Permit 567882, Respondent violated Division Rule 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 shall adhere to all conditions in Permit 567882, except condition A12. Provided that Respondent adheres to all conditions except condition A12, compliance with the

terms of this permit through this Order and Assessment shall serve as an alternative to a temporary Title V operating permit until such time as Respondent receives a Title V operating permit.

2. Respondent is assessed a Civil Penalty in the amount of **\$1,500** for the violation of Division Rules, as discussed herein. Provided that Respondent complies with subsection 1 above, the Civil Penalty shall be waived and not become due and payable. But if Respondent fails to comply with subsection 1 above, then Respondent shall pay the Civil Penalty of **\$1,500** within 31 days of noncompliance. Respondent shall pay the assessed Civil Penalty in full as follows: 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. The case number, **APC20-0016**, 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 31st day after receipt of this Order and Assessment.

DEPARTMENT’S RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

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 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, APC20-0016, 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 May, 2020.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Grant LeMaster Ruhl
BPR # 036182
Assistant General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
615-313-5682
Grant.Ruhl@tn.gov