



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

January 26, 2021

Brian Eftink
553 Wacker Blvd.
Charleston, TN 37310-2500

RE: Wacker Chemical Corporation
File ID. 06-0282
Case No. APC20-0116

Dear Mr. Eftink:

Enclosed please find an Order issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Tennessee Department of Environment and Conservation, in the above-referenced matter. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

If you have any questions regarding this Order, please contact attorney Grant Ruhl at (615) 313-5682 or via e-mail at Grant.Ruhl@tn.gov. For all other questions, please contact the Division at (615) 532-0554 or via e-mail to air.pollution.control@tn.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kevin McLain".

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

vom

Enclosure

Certified Article Number

9414 7266 9904 2154 5160 05

SENDER'S RECORD

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

WACKER CHEMICAL CORPORATION

RESPONDENT

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DIVISION OF AIR POLLUTION CONTROL

CASE NO. APC20-0116

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.

Wacker Chemical Corporation ("Respondent") is a foreign corporation formed in Delaware and authorized to do business in the State of Tennessee. Respondent's facility address is 553 Wacker Blvd., Charleston, Tennessee 37310-2500. Respondent's registered agent for service of process is Brian Eftink at the same address.

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 May 19, 2017, the Technical Secretary issued construction permit number 972475 (“Permit 972475”), emission source reference number 06-0282-23, to Respondent for an amorphous fumed silica production operation. On November 13, 2018, and January 31, 2020, the Technical Secretary amended Permit 972475.

IX.

Condition 10 of Permit 972475 states, in pertinent part:

Carbon monoxide (CO) emissions from this source shall not exceed 0.69 lbs/hr (3.04 tons/yr) on a daily average basis. . . . Initial compliance shall be determined by stack test as required by Condition 12.

X.

From May 12 - 14, 2020, Respondent performed testing of the amorphous fumed silica production operation to comply with the performance test requirements set forth in condition 12 of Permit 972475.

XI.

On June 22, 2020, the Division received Respondent's performance test report for the May 12-14, 2020 test periods. During the performance test, CO emissions averaged 1.49 pounds per hour, violating condition 10 of Permit 972475.

XII.

On September 8, 2020 the Division issued a Notice of Violation to Respondent for violating condition 10 of Permit 972475. On October 8, 2020, the Division received a construction permit application via e-mail from Respondent to increase the CO emission limit.

VIOLATIONS

XIII.

By failing to comply with condition 10 of Permit 972475, as discussed herein, Respondent violated Division Rule 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 or notice of intent; the provisions and stipulations set forth in the construction permit, notice of coverage, or notice of authorization[.]

RELIEF

XIV.

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 **\$1,500** for the violation of Division Rules, as discussed herein.

2. 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, **APC20-0116**, 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, APC20-0116, 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 26th day of January, 2021.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Grant LeMaster Ruhl
BPR # 036182
Assistant General Counsel
Department of Environment & Conservation
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