

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
TOWN OF GREENEVILLE,)	
)	
)	
RESPONDENT.)	CASE NO. APC21-0082

**TECHNICAL SECRETARY’S ORDER AND
ASSESSMENT OF CIVIL PENALTY**

Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, states:

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.

The Town of Greeneville (“Respondent”) is a municipality that operates an air curtain destructor (“ACD”) located at 1555 Old Stage Road, Greeneville, Tennessee. Respondent’s responsible official for service of process is Todd Smith, City Administrator, 200 North College Street, Greeneville, Tennessee 37745-5091.

AUTHORITY

III.

The Technical Secretary may assess a civil penalty of up to \$25,000.00 per day for each day of violation of the Tennessee Air Quality Act, Tenn. Code Ann. §§ 68-201-101 to -121 (“Act”), or Tennessee Air Pollution Control Regulations, Tenn. Comp. R. & Regs. 1200-03-01 to -36; 0400-30-01 to -39, (“Rules”). Tenn. Code Ann. § 68-201-116. The Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Rules are violated, and such person may be liable for resulting damages to the State. *Id.*

IV.

Respondent is a “person,” Tenn. Code Ann. § 68-201-102(7), and has violated the Act and Rules.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof. Tenn. Code Ann. § 68-201-102(1).

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Tenn. Code Ann. § 68-201-102(2). Respondent operates an air contaminant source.

FACTS

VII.

On May 28, 2019, the Technical Secretary issued construction permit number 976453, (“Permit 976453”), (facility 30-0303), to Respondent for an air curtain destructor (“ACD”)

VIII.

On February 19, 2020, the Technical Secretary issued operating permit number 075992, (“Permit 075992”), (facility 30-0303), to Respondent for an ACD.

IX.

Condition S1-5A and -5B of Permit 075992 states:

- A. Except as noted in Condition S1-5B, visible emissions from this source shall not exhibit greater than ten (10) percent opacity as determined by EPA Method 9, as published in 40 CFR 60, Appendix A (sixminute average). This limitation is established pursuant to 40 CFR §60.1445(a)(1) and 1200-03-09-.03(8) of TAPCR[.]
- B. Visible emissions from this source during startup shall not exhibit greater than thirty-five (35) percent opacity as determined by EPA Method 9, as published in 40 CFR 60, Appendix A (six-minute average). For the purposes of this permit, “startup” is defined as the first thirty (30) minutes of operation of this source. This limitation is established pursuant to 40 CFR §60.1445(a)(2) and 1200-03-09-.03(8) of TAPCR[.]

X.

Condition S1-8 of Permit 976453 and Permit 075992 states, in pertinent part:

The permittee has requested in a letter dated April 27, 2018, that the 85 Hp diesel-fire engine used for this source, be classified as a nonroad engine. Under the provisions of 40 CFR 89 (see the definition of a “nonroad engine” below), diesel engines that meet the definition of “nonroad engines” may not necessarily be required to be permitted. In order to verify that this diesel engine meets the definition of a “nonroad engine”, the permittee shall record the date and location that the unit is moved onsite. Subsequently, the permittee shall also record the dates and locations that the unit is moved to new locales onsite. The permittee must also verify that this diesel engine meets the definition of “portable or transportable” as defined below. Records shall be maintained as required by Permit **Condition G5**.

XI.

On or about January 28, 2021, the Division received Respondent’s results from the visible emissions evaluation (“VEE”) for the ACD conducted on January 21, 2021, to comply with Permit 075992 and the Settlement Agreement and Order, Case No. APC19-0015, effective December 10, 2019. The VEE indicated that the opacity observed during the first 30-minute period (startup period) was 63 percent. Also, the VEE indicated that the opacity observed during the remaining 150 minutes was 67 percent. Therefore, Respondent violated condition S1-5A and -5B of Permit 075992.

XII.

On or about April 22, 2021, the Division received Respondent’s results from the VEE for the ACD conducted on April 20, 2021, to comply with Permit 075992 and the Settlement Agreement and Order, Case No. APC19-0015, effective December 10, 2019. The VEE indicated that the opacity observed during the first 30-minute period (startup period) was 36 percent. Therefore, Respondent violated condition S1-5B of Permit 075992.

XIII.

On April 30, 2021, the Division issued a Notice of Violation (“NOV”) to Respondent for the violations discussed in Paragraphs **XI** and **XII**. The NOV required Respondent to schedule a VEE within 45 days of receipt of the NOV and to submit the results of the VEE to the Division within 30 days of conducting the VEE. On July 13, 2021,

Respondent conducted a VEE in response to the April 30, 2020, NOV. In a letter dated July 20, 2021, the Division's Compliance Validation Program acknowledged that the VEE was technically correct and acceptable for a compliance determination. Therefore, no further corrective action is required.

XIV.

On June 2, 2021, Division personnel conducted an inspection at Respondent's facility. The Division's inspection covered the time period of June 1, 2019, to June 2, 2021. During the inspection, Division personnel discovered Respondent was not maintaining the record required by condition S1-8 of Permit 976453 and Permit 075992.

XV.

On September 29, 2021, Division personnel contacted Respondent by telephone as a follow-up to the June 2, 2021, inspection. During this conversation Respondent was unaware if personnel at the facility recorded the dates and locations that the air curtain destructor and the associated engine were moved onsite.

XVI.

In an e-mail dated October 7, 2021, Respondent informed the Division that the records were not available.

XVII.

On October 11, 2021, the Division issued an NOV to Respondent for the violation discussed in Paragraphs **XIV**, **XV**, and **XVI**. The NOV required Respondent to keep the records described above beginning with the next time the engine is moved within the facility. Also, the NOV required that Respondent provide an example log of how this information will be recorded within ten days of receiving this NOV. On or about October 20, 2021, the Division received Respondent's example log. Therefore, no further corrective action is required.

VIOLATIONS

XVIII.

By failing to comply with the conditions of the operating permit as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 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.

ORDER AND ASSESSMENT OF CIVIL PENALTY

XIX.

Respondent is assessed a civil penalty of \$3,750.00 for violation of the Act and Rules, to be paid to the Department at the following address:

Division of Fiscal Services - Consolidated Fees Section
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the 31st day after receipt of this Order and Assessment of Civil Penalty. The case number, APC21-0082, should be clearly written on all correspondence.

RESERVATION OF RIGHTS

In issuing this Order and Assessment of Civil Penalty, the Department does not implicitly or expressly waive any provision of the Act or Rules promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). 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

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b). To do so, a written petition setting forth the 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. Any petition for review must be directed to:

Commissioner of the Department of Environment and Conservation
c/o Jenny L. Howard, General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -325; Tenn. Comp. R. & Regs. 1360-04-01. 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 (*e.g.*, 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.

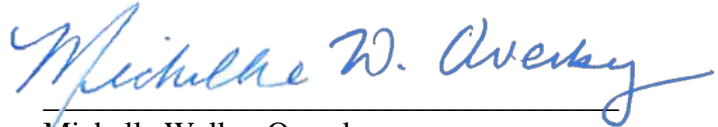
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The ALJ, on behalf of the Board, has the authority to assess additional 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.

Technical questions and other correspondence involving compliance issues should be sent to:

Kevin McLain, Division of Air Pollution Control
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 15th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC21-0082, 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 February 10, 2023.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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