

**TENNESSEE AIR POLLUTION CONTROL BOARD**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF AIR POLLUTION</b>
	)	<b>CONTROL</b>
	)	
<b>OBION GRAIN CO., INC.,</b>	)	
	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. APC21-0181</b>

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**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.**

Obion Grain Co., Inc. ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. Respondent's facility address is 4898 Mason Hall Grain Road, Kenton, Tennessee. Respondent's registered agent for service of process is Leslie R. McDonald, 328 E. Main Ave., Obion, Tennessee 38240-3917.

**AUTHORITY**

**III.**

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, 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 March 26, 2013, the Technical Secretary issued operating permit number 067017P, (“Permit 067017P”), (facility 66-0118), to Respondent, for grain processing and handling operations.

**VIII.**

Condition 3 of Permit 067017P states, in pertinent part:

The maximum amount of all grains processed during a calendar year shall not exceed 5,400,000 bushels nor 150,000 tons/year. The permittee shall record the amount of grain received during each calendar month and maintain these records in a form that readily shows compliance with this condition (see example below). All data must be entered in the log no later than thirty (30) days from the end of the month for which the data is required and shall be maintained at the source location. This log shall be made available for inspection by the Technical Secretary or his representative for a period of not less than two (2) years.

**IX.**

Condition 4 of Permit 067017P states:

The following emission limitation has been established based on a maximum of 5,400,000 bushels or 150,000 tons/year of grain and is established pursuant to Rule 1200-03-07-.03(1) of the Tennessee Air Pollution Control Regulations.

Basis	Pollutant	Emissions (tons/year)
*	PM	18.24

\* Maximum of 5.4 million bushels of grain processed in one year, AP-42 emission factors for Grain Elevators and Processes, AP-42, 5/98

**X.**

On October 13, 2021, Division personnel conducted an inspection at Respondent's facility in response to complaints received by the Division. During the inspection, Division personnel conducted a records review of grain processed for 2019 and 2020 and discovered that Respondent processed 9,138,376.94 bushels in 2019 and 6,869,150.74 bushels in 2020. Also, by exceeding the 5,400,000 bushels per calendar year limitation in condition 3 of Permit 067017P, Respondent exceeded the particulate matter (PM) emission limitation of 18.24 tons/year. Therefore, Respondent violated conditions 3 and 4 of Permit 067017P. Additionally, during the inspection, Division personnel also observed that grain handling and storage processes were constructed without proper permit applications being submitted to the Division.

**XI.**

On November 8, 2021, the Division issued a Notice of Violation (NOV) to Respondent for the violations identified in paragraph X. The NOV requested that Respondent submit the following application forms: APC 100, 101, 102, and 113 (where applicable) within 60 days of receipt of the NOV to document construction that has taken place since the March 26, 2013, issuance of Permit 067017P and to request an increase in Respondent's grain processing limitation. On December 29, 2021, Respondent submitted applications via e-mail to the Division.

**VIOLATIONS**

**XII.**

By failing to comply with conditions 3 and 4 of Permit 067017, 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.

**ORDER AND ASSESSMENT OF CIVIL PENALTY**

**XIII.**

Respondent is assessed a civil penalty of \$1,500.00 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, 10<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the 31<sup>st</sup> day after receipt of this Order and Assessment of Civil Penalty. The case number, **APC21-0181**, 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, 2<sup>nd</sup> 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.

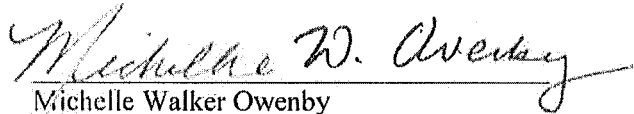
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The ALJ, on behalf of the Board, has the authority to assess additional 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, 15<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

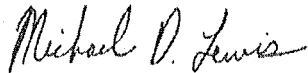
Attorneys should contact the undersigned counsel of record. The case number, **APC21-0181**, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 15th day of June, 2022.



Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:



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Michael D. Lewis  
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