

**TENNESSEE AIR POLLUTION CONTROL BOARD**

**IN THE MATTER OF:  
BERETTA U.S.A. CORP.  
RESPONDENT**

)  
)  
) **DIVISION OF AIR POLLUTION**  
)  
) **CASE NO. APC18-0166**  
)

**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.**

Beretta U.S.A. Corp. ("Respondent") is a foreign corporation formed in Maryland and authorized to do business in the State of Tennessee. Respondent's facility address is 1399 Gateway Drive, Gallatin, Tennessee 37066. Respondent's registered agent for service of process is C. Dale Allen, 424 Church Street, Suite 2700, Nashville, Tennessee 37219-2380.

**AUTHORITY**

**III.**

Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 68-201-116, the Technical Secretary may assess a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$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 March 21, 2017, the Technical Secretary issued construction permit number 972388 (“Permit 972388”), identified as emission source reference number 83-0500-01, to Respondent for a chromium electroplating operation.

**IX.**

Condition 9 of Permit 972388 states, in pertinent part:

Pursuant to 40 CFR §63.342(c)(1)(iv), during tank operation the permittee shall control chromium emissions discharged to the atmosphere by not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.006 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air ( $2.6 \times 10^{-6}$  grain per dry standard cubic foot) of

exhaust gas for all open surface hard chromium electroplating tanks that are new affected sources.

#### X.

Condition 11 of Permit 972388 states:

Pursuant to 40 CFR §63.343(b), **Methods to demonstrate initial compliance.**

(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the permittee of an affected source subject to the requirements of this subpart is required to conduct an initial performance test as required under §63.7, using procedures and test methods listed in §§63.7 and 63.344.

#### XI.

Condition 35 of Permit 972388 states:

This permit shall serve as a temporary operating permit from the date of issuance to the receipt of a standard operating permit, provided that the conditions of this permit and any applicable emission standards are met.

#### XII.

On or about June 26, 2018, the Division received Respondent's total chromium emissions test report ("Report") as required by condition 11 of Permit 972388. The Report indicated that during the testing period, the concentration of total chromium in the exhaust gas stream averaged  $5.98 \times 10^{-6}$  grain per dry standard cubic foot which exceeded the  $2.6 \times 10^{-6}$  grain per dry standard cubic foot limit as set in condition 9 of Permit 972388. By failing to meet the concentration of total chromium as set in condition 9, condition 35 was made ineffective. Without the temporary operating permit provided by condition 35, Respondent was operating the chromium electroplating operation without a permit.

#### XIII.

On August 8, 2018, the Division issued a Notice of Violation ("NOV") to Respondent for the above described violations. The NOV required Respondent to submit a Proposed Schedule of Corrective Action (APC 115) to the Division no later than September 28, 2018. On or about August 21, 2018, the Division received Respondent's Proposed Schedule of Corrective Action (APC 115).

#### **XIV.**

On March 2, 2018, the Technical Secretary issued operating permit number 073600 (“Permit 073600”) to Respondent for a sulfuric acid anodizing line and a manganese phosphate line, identified as emission source reference numbers 83-0500-02 and 83-0500-03, respectively.

#### **XV.**

Conditions 19 and 31 of Permit 073600 state, in pertinent part:

Pursuant to 40 CFR §63.11509(b), the permittee must submit a Notification of Compliance Status in accordance with paragraphs (1) through (3) of this condition. . . .

- (1) The Notification of Compliance Status must be submitted before the close of business on the day of initial startup of the affected source.

#### **XVI.**

On August 22, 2018, Division personnel conducted an inspection at Respondent’s facility. During this inspection, the Division discovered that Respondent had not submitted the Notification of Compliance Status (NOCS) reports for the sulfuric acid anodizing line and the manganese phosphate line as required by conditions 19 and 31 of Permit 073600. According to the start-up certifications received by the Division via e-mail on December 1, 2017, these sources began operating on November 27, 2017; therefore, NOCS reports for both sources should have been submitted to the Division by the close of business on November 27, 2017.

#### **XVII.**

On August 30, 2018, the Division issued an NOV to Respondent for the above described violations. The NOV required Respondent to submit the NOCS reports to the Division no later than September 28, 2018.

## VIOLATION

### **XVIII.**

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

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; this Division 1200-03; Division 0400-30; any applicable measures of the control strategy; and the Tennessee Air Quality Act.

### **XIX.**

By operating an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first applying for and receiving the necessary operating permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.02(2), which states, in pertinent part:

No person shall operate an air contaminant source in Tennessee without first obtaining from the Technical Secretary an operating permit or, if applicable, submitting a notice of intent and obtaining a notice of coverage or authorization, except as specifically exempted in Rule 1200-03-09-.04.

### **XX.**

By failing to comply with the conditions of an operating permit as discussed herein, the 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.

**RELIEF**

**XXI.**

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 **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500)** for the violation of Division Rules, as discussed herein.

2. Respondent shall pay **ELEVEN THOUSAND DOLLARS (\$11,000)** of the assessed **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500)** CIVIL PENALTY to the "Treasurer, State of Tennessee" as detailed in the Notice of Rights. The case number, "**APC18-0166**", 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 thirty-first (31st) day after receipt of this ORDER AND ASSESSMENT.

3. **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** of the assessed **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500)** CIVIL PENALTY shall be waived if Respondent complies with item four (4) of this paragraph. If Respondent fails to comply with item four (4) of this paragraph, then the remaining **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** shall be made on or before the thirtieth (30<sup>th</sup>) day following the non-compliance.

4. Respondent shall comply with all conditions in Permit 972388, discussed herein. Provided that Respondent complies with all conditions in Permit 972388, compliance with the terms of Permit 972388 through this Order shall serve as an alternative to a temporary operating permit until such time as Respondent receives an operating permit.

5. Respondent shall submit the NOCS reports for the sulfuric acid anodizing line and the manganese phosphate line to the Technical Secretary on or before the thirtieth (30<sup>th</sup>) day after receipt of this ORDER AND ASSESSMENT.

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. Failure to comply with any of the requirements of this ORDER could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

### 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 THIRTY (30) DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

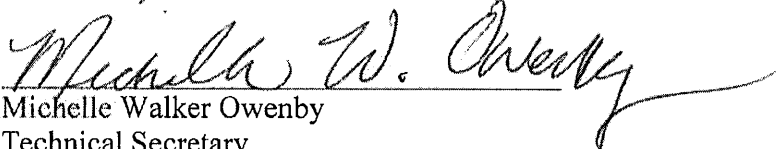
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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](mailto:air.pollution.control@tn.gov). Attorneys should contact the undersigned counsel of record. **The case number, APC18-0166, 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 26<sup>th</sup> day of September, 2018.

  
Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

 by SAS  
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