

IN THE MATTER OF:

THE EVERGREEN GROUP, INC.  
DBA EVERGREEN AES  
ENVIRONMENTAL SERVICES

RESPONDENT

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DIVISION OF AIR POLLUTION  
CONTROL

CASE NO.      APC18-0110

**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.**

The Evergreen Group Inc. d/b/a Evergreen AES Environmental Services ("Respondent") is a foreign corporation, formed in Kentucky, and authorized to do business in Tennessee. Respondent's registered agent for service of process is CT Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919-5546.

**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

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 Act or 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.**

Asbestos is an “air contaminant” within the meaning of Tenn. Code Ann. § 68-201-102 and is designated as a hazardous air contaminant by Tenn. Comp. R. & Regs. 1200-03-11-.01(a).

**VIII.**

“Facility,” as defined by Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(p), means any institutional, commercial, public, industrial, or residential structure, installation, or building (. . . excluding any residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. The property located at 727 Kathleen Drive in Pulaski, Tennessee is a facility.

**IX.**

“Demolition,” as defined by Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(m), means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

“Renovation,” as defined by Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(kk), means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos containing material (“RACM”) from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions as stated in Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(m).

**XI.**

“Owner or operator of a demolition or renovation activity,” as defined by Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(ee), means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. Respondent conducted asbestos removal activities at 727 Kathleen Drive (the Facility) and is therefore an owner or operator of a demolition or renovation activity.

**XII.**

Demolition or renovation activity may emit asbestos into the air and is a potential “air contaminant source” within the meaning of Tenn. Code Ann. § 68-201-102.

**FACTS**

**XIII.**

On or about May 2, 2018, the Division received from Respondent a Notification of Demolition and/or Asbestos Renovation (“Notice”). The Notice indicated that asbestos removal would start and end on May 18, 2018.

**XIV.**

On or about May 18, 2018, at approximately 8:39 a.m., a Division inspector conducted a site inspection at the Facility. At this time, the inspector observed that all asbestos containing material had been removed. The inspector then entered the Facility and contacted Respondent’s

evening of May 17, 2018.

**XV.**

The inspector and Respondent's contractor then proceeded to the exterior to inspect the asbestos containing waste material ("ACWM") loaded into the waste transport container ("WTC"). While walking to the WTC, the inspector observed two polyethylene bags used for the work area. The two bags contained ACWM and were open and, therefore, not properly sealed. Upon arrival at the WTC the inspector observed approximately thirty-five (35) bags of ACWM. The inspector requested that two bags be opened. The ACWM in these two bags was dry and not adequately wet. Respondent's contractor acknowledged that the ACWM was not adequately wet. The 35 bags of ACWM were not properly labeled.

**XVI.**

On or about May 30, 2018, the Division issued a Notice of Violation to Respondent for these violations.

**VIOLATIONS**

**XVII.**

By failing to notify the Technical Secretary of a change in start date, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-11-.02(2)(d)2.(iii)(IV)(II) which states: Each owner or operator of a demolition or renovation activity . . . shall:

When the asbestos stripping or removal operation or demolition operation covered by this subparagraph will begin on a date earlier than the original start date,

- A. Provide the Technical Secretary a written notice of the new start date at least ten (10) working days before asbestos stripping or removal work begins.
- B. For demolitions covered by subpart 1(ii) of this subparagraph, provide the Technical Secretary with written notice of a new start date at least ten (10) working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

By failing to keep ACWM adequately wet, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-11-02(2)(d)3. (vi)(I), which states: Each owner or operator of a demolition or renovation activity . . . shall comply with the following procedures:

Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 1200-03-11-.02(2)(j);

**RELIEF**

**XIX.**

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 **THREE THOUSAND DOLLARS (\$3,000)** for the violation of Division Rules, as discussed herein.

2. Respondent shall pay the assessed **CIVIL PENALTY** in full to the “Treasurer, State of Tennessee” as detailed in the Notice of Rights. The case number, **APC18-0110**, 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.

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 OF CIVIL PENALTY (“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).

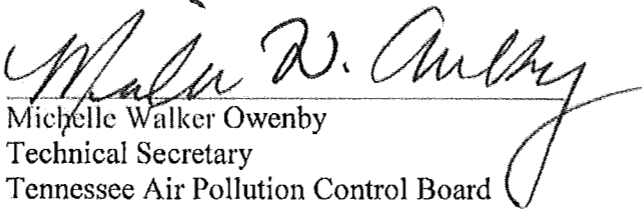
Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure 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

regarding this matter.

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 24<sup>th</sup> day of OCTOBER, 2018.

  
Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

  
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