

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
IMPACT PLASTICS,)	
INCORPORATED,)	
)	
RESPONDENT.)	CASE NO. APC21-0063

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.

Impact Plastics, Incorporated ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. Respondent's facility address is 1070 S. Industrial Dr., STE A, Erwin, Tennessee 37650-3656. Respondent's registered agent for service of process is Gerald M. O'Connor, Jr. at the same address.

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 October 14, 2014, the Technical Secretary issued operating permit number 069165P, (“Permit 069165P”) (facility 86-0049), to Respondent for a spray coating operation.

VIII.

Condition 1 of Permit 069165P states, in pertinent part:

The application that was utilized in the preparation of this permit is dated August 26, 2014 and signed by Ms. Anita Hensley, Production Manager for the permitted facility. If this person terminates employment or is reassigned different duties and is no longer the responsible person to represent and bind the facility in environmental permitting affairs, the owner or operator of this air contaminant source shall notify the Technical Secretary of the change. Said notification shall be in writing and submitted within thirty (30) days of the change.

IX.

Condition 5 of Permit 069165P states:

The as-supplied [volatile organic compound] [(VOC)] content of all VOC-containing materials to be used by this source shall be determined as follows:

All Coatings, Inks, Adhesives, Thinners, and Solvents – from Material Safety Data Sheets (MSDS) or manufacturer or vendor formulation data which explicitly list the VOC content by weight.

The results of these determinations shall be compiled in the following tabular format or an alternative format which readily provides the same required information. This table, along with MSDS or other supporting documentation for each material to be used, shall be maintained at this source location and made available for inspection by the Technical Secretary or his representative. If new materials are used, or if material formulation is changed, the table shall be updated within 90 days from the initial date of usage of the new or altered material.

Process Material Description	Material Density (lb/gal)	VOC Content (lb/gal)
Material #1		
Material #1		
Etc.		

X.

Condition 7 of Permit 069165P states, in pertinent part:

The permittee shall calculate the actual quantities of VOC and [hazardous air pollutants] emitted from this facility during each calendar month and maintain records of these emissions in a form that readily shows compliance with Condition 3 and 4 of this permit. (See example below) This log must be maintained at the source location and kept available for inspection by the Technical Secretary or his representative. This log must be retained for any contiguous two (2) years period until expiration of this permit. All data, including all required calculations, must be entered in the log no later than 30 days from the end of the month for which the data is required.

XI.

On January 15, 2021, the Division received a letter dated January 8, 2021, from Respondent, as notification of the change in the responsible person of environmental permitting affairs. The letter indicated that the previous responsible person had left employment on April 10, 2020. Therefore, Respondent violated condition 1 of Permit 069165P.

XII.

On March 11, 2021, Division personnel conducted an inspection of Respondent's facility and discovered that a log containing all of the information required by condition 5 of Permit 069165P was not available. The monthly emissions logs provided by Respondent contained VOC

content. However, MSDS spot checks indicated the log did not contain the currently used materials. Respondent indicated the vendors were switched prior to 2019 and are currently using water-based paints with lower VOC content. Respondent indicated they continued to track usage under the old product ID numbers. Respondent was requested to conduct an inventory and create a log that listed the material density and the VOC content in pounds per gallon (lb/gal) as indicated in condition 5 of Permit 069165P. Additionally, Respondent was requested to provide updated emissions records based on the updated materials information for the period of January 2019 to January 2021.

XIII.

On March 25, 2021, Respondent submitted an updated monthly emissions log to the Division but did not provide the requested updated information for the condition 5 log. The updated monthly emissions log contained data errors within the VOC and HAP content of the materials. In an e-mail dated April 5, 2021, the Division requested that Respondent provide the log required by condition 5 and verify the accuracy of the VOC and HAP content of the materials due to the errors in the previous submission.

XIV.

On April 9, 2021, Respondent provided the updated records required by condition 5 of Permit 069165P and updated emissions records for the period January 2019 through February 2021. However, the Division deemed the updated records inadequate because material density was not entered into the log required by condition 5 for all materials. Additionally, this log was required to be updated within 90 days of the initial use of any new or altered material. Based on the most recent emissions records submitted to the Division on April 9, 2021, the monthly emissions were incorrectly calculated. Additionally, the emissions log did not track Thinner #2 6872 usage. Thinner #2 6872 contained HAP and VOC components that must be tracked for emissions calculations when used.

XV.

On May 4, 2021, the Division issued a Notice of Violation (NOV) to Respondent for failing to comply with conditions 1, 5, and 7 of Permit 069165P. The NOV required Respondent to perform the following corrective actions:

- Establish contact with Small Business Environmental Assistance Program (SBEAP) at BGSBEAP@tn.gov or 1800-734-3619 within 7 days of receipt of the NOV.
- Submit corrected logs that contain the required information and corrected calculations for conditions 5 and 7 of Permit 069165P for the period of January 2019 to January 2021 within 45 days of receipt of the NOV.

Respondent has completed both of these requirements.

VIOLATIONS

XVI.

By failing to comply with conditions 1, 5, and 7 of Permit 069165P, 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

XVII.

Respondent is assessed a civil penalty of \$1,750 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, APC21-0063, 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

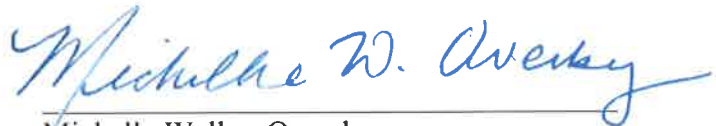
expenses associated with the setting of the matter for a hearing, and the hourly fees incurred due to the presence of the ALJ and a court reporter.

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, APC21-0063, 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 8th day of September, 2021.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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