



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

FEB 10 2017

Certified Article Number

9414 7266 9904 2002 6259 34

SENDERS RECORD

C T Corporation System
800 South Gay Street, Suite 2021
Knoxville, Tennessee 37929-9710

RE: Jack Daniel Distillery, Lem Motlow, Prop., Inc.
Facility Id. 64-0001
Case No. APC16-0154

Dear Sir or Madam:

Enclosed please find an Order issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Tennessee Department of Environment and Conservation, in the above referenced matter. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

If you have any questions regarding this matter, please contact Tammy Gambill at (615) 532-0531 or via e-mail to air.pollution.control@tn.gov.

Sincerely,

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

vom

Enclosure

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

**JACK DANIEL DISTILLERY,
LEM MOTLOW, PROP., INC.**

RESPONDENT

)
)
)
) **DIVISION OF AIR POLLUTION**
) **CONTROL**
)
) **CASE NO. APC16-0154**
)

**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.

Jack Daniel Distillery, Lem Motlow, Prop., Inc. ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. The Respondent's facility address is 280 Lynchburg Highway, Lynchburg, Tennessee 37352-5271. The Respondent's registered agent for service of process is C T Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

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.

The 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.

The Respondent operates an "air contaminant source" within the meaning of Tenn. Code Ann. § 68-201-102.

FACTS

VIII.

On May 5, 2010, the Technical Secretary issued Major Source operating permit (Title V) number 558912 (Facility Id. 64-0001) to the Respondent for the production of distilled spirits.

The Compliance Method for Condition E6-3 of this permit states in pertinent part:

- b. The minimum secondary power (in Kilowatts) the ESPs serving Boiler #6 and Boiler #7 shall not be less than 12 and 3 Kilowatts, respectively. . . . The permittee shall . . . calculate the total energy in kilowatts as indicated in Log 9. These values shall be recorded in Log 9. . . .

On or about September 2, 2016, the Respondent submitted their semiannual report ("SAR") for the period of January 1, 2016, through June 30, 2016, to the Division. The SAR records (Log 9) for Boiler #6 indicated a total of 96 instances out of 524 (inadvertently cited as 514 in the Notice of Violation) measurements and recordings, where the minimum secondary power for the electrostatic precipitator serving Boiler #6 was less than 12 Kilowatts.

On September 28, 2016, the Division issued a Notice of Violation to the Respondent for the above violations.

VIOLATIONS

IX.

By failing to comply with 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

X.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby ORDER as follows:

1. The Respondent is assessed a CIVIL PENALTY in the amount of **FIVE HUNDRED DOLLARS (\$500)** for the violation of Division Rules, as discussed herein.

2. The 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, "**APC16-0154**", 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 the 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 the 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. Attorneys should contact the undersigned counsel of record. **The case number, APC16-0154, 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 10th day of February, 2017.

Quinn M. Styler III
for Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:

Steven R. Stout
Steven R. Stout
BPR # 014174
Assistant General Counsel
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