



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

DEC 4 2019

Corporation Service Company
2908 Poston Avenue
Nashville, Tennessee 37203-1312

Certified Article Number

9414 7266 9704 2131 7312 30

SENDER'S RECORD

RE: Nissan North America, Inc.
Facility Id. 26-0091
Case No. APC19-0119

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 Order, please contact Steven R. Stout at (615) 532-0138 or via e-mail to steven.stout@tn.gov. For all other questions, please contact the Division at (615) 532-0554 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:

NISSAN NORTH AMERICA, INC.

RESPONDENT

)
) **DIVISION OF AIR POLLUTION**
) **CASE NO. APC19-0119**
)

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.

Nissan North America, Inc. ("Respondent") is a foreign corporation formed in California and authorized to do business in the State of Tennessee. Respondent's facility address is 520 Nissan Powertrain Drive in Decherd, Tennessee. Respondent's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 68-201-116, 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 ("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 December 1, 2016, the Technical Secretary issued Conditional Major construction permit number 972081 ("Permit 972081"), identified as emission source reference number 26-0091-08, to Respondent for an engine machining operation. On May 2, 2018, Permit 972081 was amended to extend the expiration date of Permit 972081 to December 31, 2018.

IX.

Condition 19 of Permit 972081 states:

This permit shall serve as a temporary operating permit from the date of modified start-up to the receipt of a revised Conditional Major operating permit, provided the operating permit is applied for within the time period specified in Condition 20.

X.

Condition 20 of Permit 972081 states:

The permittee shall apply for a revised Conditional Major operating permit within thirty (30) days of modified start-up of this emission source. If modification of the source cannot be completed and an operating permit application filed with the Technical Secretary by the expiration date of this permit, a permit extension request must be submitted in writing at least thirty (30) days prior to the permit expiration date.

XI.

Condition 21 of Permit 972081 states, in pertinent part:

The permittee shall certify the start-up date of the modified air contaminant source regulated by this permit by submitting [...] . . . The completed certification shall be delivered to the West Tennessee Permit Program at the address listed below, no later than thirty (30) days after the modified air contaminant source is started-up.

XII.

On or about October 15, 2018, the Division received a start-up certification from Respondent which indicated that the engine machining operation began start-up on June 16, 2018. Respondent was approximately 92 days late in submitting the start-up certification and therefore, violated condition 21 of Permit 972081.

XIII.

On or about October 25, 2018, the Division received an application from Respondent for an operating permit for the engine machining operation. Respondent was approximately 102 days late in submitting the operating permit application and therefore, violated condition 20 of Permit 972081.

XIV.

On July 30, 2019, the Division issued a Notice of Violation to Respondent for the violations identified in paragraph **XII** and **XIII**. By failing to submit the operating permit application in the time period required by condition 20, Respondent rendered condition 19 ineffective. Without the temporary operating permit provided by condition 19, Respondent has been operating without a permit since the

June 16, 2018 start-up. Respondent responded to the NOV in a letter dated August 16, 2019, and acknowledged the violations, attributing the failure to earlier provide the startup certification and operating permit application as a result of poor internal communications related to transfer of responsibilities following separation of an employee. Respondent also provided assurance in this letter that the prior construction permit terms were being followed and no excess emissions had occurred.

VIOLATION

XV.

By failing to comply with conditions 20 and 21 of Permit 972081, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d), which states, in pertinent part:

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 [.]

XVI.

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, 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.

RELIEF

XVII.

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 **\$3,000** for the violation of Division Rules, as discussed herein.

2. Respondent shall adhere to all conditions in Permit 972081, except conditions 19, 20, and 21. Provided that Respondent adheres to all conditions except conditions 19, 20, and 21, compliance with the terms of this permit through this Order shall serve as an alternative to a temporary operating permit until such time as Respondent receives an operating permit.

3. Respondent shall pay the assessed **CIVIL PENALTY** in full as follows: 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. The case number, **APC19-0119**, 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 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.

DEPARTMENT'S RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. 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

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

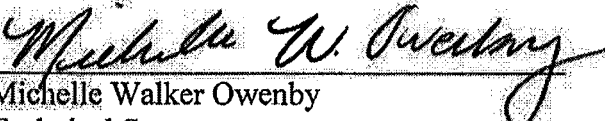
must be RECEIVED by the Technical Secretary within 30 DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

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. Attorneys should contact the undersigned counsel of record. **The case number, APC19-0119, 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 4th day of December, 2019.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


Steven R. Stout
BPR # 014174
Senior Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
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(615) 532-0138
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