

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:
STATE INDUSTRIES, LLC
RESPONDENT

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DIVISION OF AIR POLLUTION
CASE NO. APC19-0178

**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.

State Industries, LLC ("Respondent") is a domestic limited liability company authorized to do business in the State of Tennessee. Respondent's facility address is 500 Tennessee Waltz Parkway, Ashland City, Tennessee 37015-1234. Respondent's registered agent for service of process is The Prentice-Hall Corporation System, Inc., 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 August 30, 2013, the Technical Secretary issued Title V operating permit number 562496 (“Permit 562496”), emission source reference number 11-0023, to Respondent for the manufacturing of water heaters. On December 29, 2017, the Technical Secretary issued Significant Modification #1 to Permit 562496.

IX.

On August 30, 2019, the Technical Secretary issued Title V operating permit number 573881 (“Permit 573881”), emission source reference number 11-0023, to Respondent for the manufacturing of water heaters.

X.

Condition E3-5(SM1) of Permit 562496 states, in pertinent part:

A. Work Practice Standard Requirements (See Attachment 5): [§ 63.7500]

- b. Process heaters fueled with gas1 (natural gas or propane) and having a heat input capacity greater than 5 million BTU per hour and less than 10 million BTU per hour must complete a tune-up every two (2) years as specified in § 63.7540.

XI.

Condition E19-6 of Permit 573881 states, in pertinent part:

- (a) The permittee must meet the applicable work practice standards in Table 3 to subpart DDDD for each affected unit designed to burn gas 1 type fuel in accordance with 40 CFR §63.7500:

If the unit is . . .	The permittee must. . .
A process heater with heat input capacity of less than 10 million Btu per hour, but greater than 5 million Btu per hour.	Conduct a tune-up of the process heater biennially in accordance with § 63.7540

XII.

On October 23, 2019, Division personnel conducted an inspection of Respondent’s facility for the time period from October 9, 2018, through October 23, 2019. Permit 562496 and Permit 573881 were in affect during the inspection period. As a result of the inspection, additional information was requested concerning biennial tune-ups for the six 5.3 MMBtu boilers, formerly listed as Source 19 of Permit 562496 and currently listed as Source 27 of Permit #573881. This information was received on November 4, 2019, indicating that the last tune-up for the six boilers was conducted on December 15, 2016.

XIII.

On November 18, 2019, the Division issued a Notice of Violation (“NOV”) to Respondent for failing to conduct biennial tune-ups for the six 5.3 MMBtu boilers. As a means of corrective action, the NOV required Respondent to conduct tune-ups for all six of the 5.3 MMBtu boilers no later than December 15, 2019. On November 5-6, 2019, Respondent conducted tune-ups.

VIOLATIONS

XIV.

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

RELIEF

XV.

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 **\$2,250** for the violation of Division Rules, as discussed herein.
2. 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, **APC19-0178**, 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.

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).

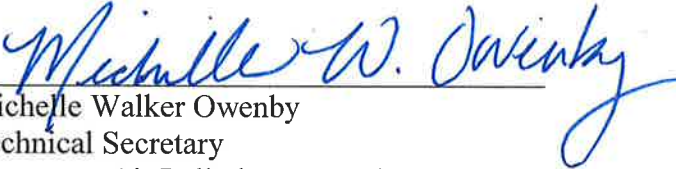
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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, APC19-0178, 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 March, 2020.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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