

**TENNESSEE AIR POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**US NITROGEN LLC**

**RESPONDENT**

)  
)  
) **DIVISION OF AIR POLLUTION**  
) **CONTROL**  
)  
) **CASE NO. APC18-0122**  
)

**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.**

US Nitrogen LLC ("Respondent") is a foreign corporation formed in Delaware and authorized to do business in the State of Tennessee. Respondent's facility address is 471 Pottertown Road, Midway, Tennessee 37809-3229. Respondent's registered agent for service of process is C T 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

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 or about July 14, 2011, the Division received a Prevention of Significant Deterioration (“PSD”) permit application dated June 15, 2011, from Respondent. The PSD permit application was for the construction of Respondent’s facility to manufacture nitric acid, ammonia, and liquid ammonium nitrate solution. The PSD permit application included a flare for the control of emissions during ammonia unit startup and for combustion of the vent gas during safety relief.

## **IX.**

Respondent submitted a revised PSD permit application dated August 24, 2011. The revision included a flare for the control of emissions during ammonia unit startup and to combust vent gas during safety relief.

## **X.**

On January 4, 2012, the Technical Secretary issued construction permit number 964711P (“Permit 964711P”) for an open flare to control emissions during the ammonia plant startup and to combust vent gas during safety relief.

## **XI.**

Respondent submitted a revised PSD permit application (“Revision”) dated November 13, 2013. The Revision reflected design changes that occurred as construction began and progressed. The Revision included changing the number of flares from one to three. One of the three flares is the Outside the Battery Limit (“OSBL”) flare. The Revision noted that the OSBL flare would control emissions from the nitric acid plant, ANSOL plant, and purge and relief valves from OSBL during plant upsets or unexpected power outages. The Revision indicated that during normal operations, the emissions from the OSBL flare would consist of only natural gas combustion in the pilot burners. The Revision listed several storage tanks including a 5,000 gallon sulfuric acid tank, a 6,000 gallon sodium hypochlorite tank, and a 17,000 methyl diethanolamine tank, but did not indicate any emissions from these tanks and did not include any ammonia storage vessels.

## **XII.**

On June 3, 2014, the Technical Secretary amended Permit 964711P for the open flares and to change the OSBL flare to be used as an emergency flare for Respondent’s entire facility.

## **XIII.**

On July 7, 2015, the Technical Secretary amended Permit 964711P to change the status of the Respondent’s facility from PSD/Title V to Conditional Major.

**XIV.**

On or about December 4, 2017, Respondent submitted a request to the Division to amend Permit 964711P for Respondent's Open Flares which included the OSBL flare. The request included changing the description of the OSBL flare to the following:

In addition to the emergency operations, the OSBL flare controls emissions from both routine and non-routine plant operations. These emissions include routine ammonia emissions from system venting and vessel blowdowns and clearing of vessels and systems maintenance activities.

**XV.**

On or about February 21, 2018, Division personnel visited Respondent's facility. During this visit, Respondent indicated that the OSBL flare also controlled emissions from the ammonia storage and loading operations from operations such as vessel blowdown. In addition, both Parties discussed the possibility that the storage tanks discussed in Paragraph XI. may not have been properly permitted.

**XVI.**

On or about March 15, 2018, the Division sent a letter to Respondent regarding the conditional major permit application dated June 9, 2017. The Division's letter required Respondent to submit applications and calculations for the storage tanks discussed in Paragraph XI.

**XVII.**

On or about May 14, 2018, Respondent submitted a revised permit application ("Revision") for the Anhydrous Ammonia Production Plant, identified as emission source reference number 30-0248-03, in response to the Division's March 15, 2018, letter. The Revision indicated a total of 23.3 tons per year of potential ammonia emissions from the Ammonia Storage and Loading Operations from routine blowdowns of the ammonia storage tanks clearing and purging of ammonia storage vessels and ammonia storage and loading equipment during maintenance activities. The Revision indicated that the ammonia storage tanks were constructed in June of 2016.

### **XVIII.**

Based on the information discussed in the paragraphs above, the Division determined that the Ammonia Storage and Loading Operations had been constructed and had been operating prior to applying for and receiving the required permits.

### **XIX.**

On or about June 29, 2018, the Division issued a Notice of Violation to Respondent for the above violations.

### **VIOLATIONS**

#### **XX.**

By constructing an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first receiving the necessary construction permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(a), which states:

Except as specifically exempted in Rule 1200-03-09-.04, no person shall begin the construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants without first having applied for and received from the Technical Secretary a construction permit or, if applicable, submitted a notice of intent and obtained a notice of coverage or authorization, for the construction or modification of such air contaminant source.

#### **XXI.**

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, as discussed herein, 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**

**XXII.**

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 **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** 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, **APC18-0122**, 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. 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).

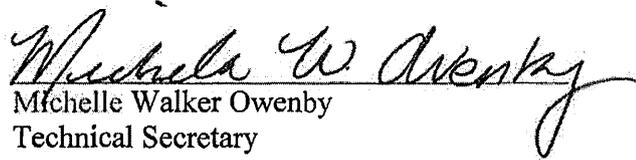
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform

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.

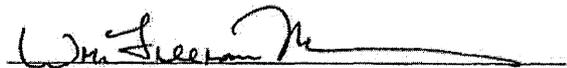
At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny this Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, 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](mailto:air.pollution.control@tn.gov). Attorneys should contact the undersigned counsel of record. **The case number, APC18-0122, 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 8<sup>th</sup> day of January, 2019.

  
Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

  
William Freeman Miller  
BPR # 028826  
Assistant General Counsel  
Department of Environment & Conservation  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0136  
william.f.miller@tn.gov