

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

**YAHAMA JET BOAT MANUFACTURING
U.S.A., INC.**

RESPONDENT

)
) **DIVISION OF AIR POLLUTION**
)
) **CASE NO. APC18-0135**
)
)

**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.

Yamaha Jet Boat Manufacturing U.S.A., Inc. ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. Respondent's facility address is 2000 Cobia Drive, Vonore, Tennessee 37885-2351. 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 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.

The United States Environmental Protection Agency (“USEPA”) promulgated the Air Emissions Reporting Rule (“AERR”) in December 2008. The AERR requires state, local and tribal agencies to collect and submit emissions data to the USEPA. The USEPA uses these submittals, along with other data sources (primarily for air toxics), to build the National Emissions Inventory (“NEI”). The NEI is a comprehensive and detailed estimate of air emissions of both Criteria and Hazardous air pollutants from all air emissions sources. The NEI is prepared every three years by USEPA based primarily upon emission estimates and emission model inputs provided by State, Local, and Tribal air agencies for sources in their jurisdictions, and supplemented by data developed by the USEPA. The NEI is used by the USEPA in support of the National Ambient Air Quality Standards (“NAAQS”), Air Toxics, and other programs as well as uses by other federal and regional agencies and international support. In addition to this

list, the NEI is used to respond to Congressional inquiries, provide data that supports university research, and allow environmental groups to understand sources of air pollution.

40 CFR §51.30(b)(1) states:

All states are required to report for every third inventory year the annual (12-month) emissions data as described in § 51.15. The first triennial inventory will be for the 2011 inventory and must be submitted to the EPA within 12 months, *i.e.*, by December 31, 2012. Subsequent triennial inventories (2014, 2017, etc.) will be due 12 months after the end of the inventory year, *i.e.*, by December 31 of the following year.

IX.

On February 12, 2018, Tenn. Comp. R. & Regs. 1200-03-10-.05 became effective. Tenn. Comp. R. & Regs. 1200-03-10-.05 (1)(b) states, in pertinent part:

All other stationary sources shall submit emissions inventories no later than June 1 of each calendar year, in accordance with § 51.30 and Table 1 to Appendix A of 40 C.F.R. 51 Subpart A.

X.

The Division sent Respondent a certified letter dated March 1, 2018, requesting Respondent to submit a completed Calendar Year 2017 air emissions inventory by June 1, 2018. Based on the certified mail receipt, Respondent received this request from the Division on March 7, 2018.

XI.

On or about June 19, 2018, the Division received Respondent's 2017 Air Emission Inventory, approximately eighteen (18) days late.

XII.

On July 10, 2018, the Division issued a Notice of Violation to Respondent for failing to submit the Air Emission Inventory for the 2017 calendar year by June 1, 2018.

VIOLATIONS

XIII.

By failing to submit the air emissions inventory by June 1, 2018, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-10-.05 (1)(b) as stated in Paragraph IX.

XIV.

By failing to submit the requested information as discussed herein, Respondent has violated Tenn. Code Ann. § 68-201-105(b)(2), which states:

Require that any person furnish the department information required by it in discharge of its duties under this part, if the department has reason to believe such person is, or may be about to, causing or contributing to air pollution; provided, that no such person shall be required to disclose any secret formulae, processes or methods used in any manufacturing operation carried on by such person or under such person's direction. The composition of air contaminants shall not be considered secret unless so declared by the department, and the department shall have the power to issue protection orders to prevent public dissemination.

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 **FIVE HUNDRED DOLLARS (\$500)** for the violation of Division Rules, as discussed herein.
2. 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, **APC18-0135**, 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.

Payment of the civil penalty 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 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).

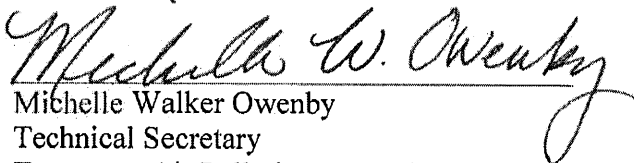
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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. Attorneys should contact the undersigned counsel of record. **The case number, APC18-0135, 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 11th day of September, 2018.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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