

**TENNESSEE AIR POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**AGC FLAT GLASS NORTH AMERICA, INC.)**

**RESPONDENT**

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**DIVISION OF AIR POLLUTION**

**CASE NO.      APC19-0124**

**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.**

AGC Flat Glass North America, Inc. ("Respondent") is a foreign corporation formed in Delaware and authorized to do business in the State of Tennessee. Respondent's facility address is 600 AFG Road in Church Hill, Tennessee. 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 \$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 March 16, 2017, the Technical Secretary issued Title V operating permit number 570858 (“Permit 570858”), identified as emission source reference number 37-0026, to Respondent for a flat glass manufacturing operation. On February 27, 2018, the Technical Secretary issued Respondent Minor Modification #1 to Permit 570858. On March 15, 2019, the Technical Secretary issued Respondent Minor Modification #2 to Permit 570858.

**IX.**

Condition E7-5 of Permit 570858 states, in pertinent part:

Controlled Sulfur Dioxide (SO<sub>2</sub>) emitted from this source shall not exceed 32.5 pounds per hour on a daily average basis and 148.59 tons per 12-consecutive months. These

emission limitations are established pursuant to Tenn. Comp. R. & Regs. 1200-03-14-.01(3) and the information contained in the agreement letter dated May 2, 2012.

**X.**

On or about July 15, 2019, Respondent reported an SO<sub>2</sub> exceedance during a phone call to the Division. On July 16, 2019, the Division received via e-mail from Respondent a Continuous Emission Monitoring System (CEMS) report for an excess emissions event that occurred on July 12, 2019. The report indicated a daily SO<sub>2</sub> average of 32.77 pounds per hour for glass melting furnace G1. On July 17, 2019, the Division requested that the Respondent confirm the following events: an inexperienced operator did not detect the potential SO<sub>2</sub> exceedance and, after a shift change, a more experienced operator unsuccessfully attempted to avoid the exceedance. On July 19, 2019, Respondent confirmed via e-mail the Division's summary.

**XI.**

On August 13, 2019, the Division issued a Notice of Violation to Respondent for the violation discussed in paragraph X.

**VIOLATION**

**XII.**

By failing to comply with condition E7-5 of Permit 570858, Respondent 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**

**XIII.**

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

1. Respondent shall submit to the Division the invoice and cancelled check showing payment for the installation of additional programming to provide SO<sub>2</sub> daily lb/hr and NO<sub>x</sub> lb/ton

averages on the furnace operator HMI screen in the furnace control room within 90 days after receipt of this ORDER AND ASSESSMENT OF CIVIL PENALTY.

2. Respondent is assessed a CIVIL PENALTY in the amount of **\$2,250** for the violation of Division Rules, as discussed herein. This amount shall be paid as follows:

A. Respondent shall pay **\$1,150** due within 31 days of Respondent's receipt of this ORDER AND ASSESSMENT OF CIVIL PENALTY.

B. If Respondent complies with subsection 1, **\$1,100**, shall be waived. If Respondent fails to comply with subsection 1, Respondent shall pay **\$1,100**, within 31 days of noncompliance.

3. 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, **APC19-0124**, 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.

#### 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).

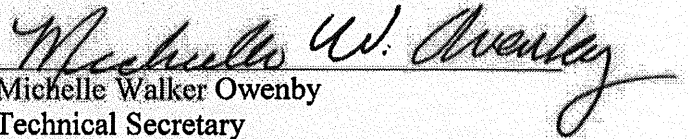
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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](mailto:air.pollution.control@tn.gov). Attorneys should contact the undersigned counsel of record. **The case number, APC19-0124, 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 16<sup>th</sup> day of October, 2019.

  
Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

  
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