

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	DIVISION OF AIR POLLUTION
MAGPRO, LLC)	
)	CASE NO. APC19-0090
)	APC19-0148
RESPONDENT)	APC19-0157

**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.

MagPro, LLC ("Respondent") is a domestic limited liability company authorized to do business in the State of Tennessee. Respondent's facility address is 245 Foundry Lane, Camden, Tennessee 38320-1884. Respondent's registered agent for service of process is John Haack at the same address.

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 May 4, 2011, the Technical Secretary issued operating permit number 062800P ("Permit 062800P"), identified as emission source reference number 03-0055-01, to Respondent for a secondary magnesium smelting operation. On August 2, 2011, Permit 062800P was amended.

IX.

Condition 11 of Permit 062800P states, in pertinent part:

Visible emissions from the scrubber exhaust stack shall not exhibit greater than ten percent (10%) opacity, except for one (1) six-minute period in any one (1) hour period, and for no more than four (4) six-minute periods in any twenty-four

(24) hour period. Visible emissions from this source shall be determined by EPA Method 9, as published in the current 40 CFR 60, Appendix A (six-minute average). TAPCR 1200-03-05-.03(6) and TAPCR 1200-03-05-.01(1). Based on a letter of conditional approval of an alternative monitoring plan from EPA Region IV to TN APC dated September 14, 2009 and the mutual agreement letter from the permittee dated November 3, 2009.

X.

On May 13, 2019, the Division conducted an inspection at Respondent's facility in response to a complaint. During the inspection, the Division conducted a Method 9 Visible Emission Evaluation (VEE) on the wet scrubber stack. Based on the VEE, the second-highest six-minute average was 35%. Therefore, Respondent violated Condition 11 of Permit 062800P.

XI.

On May 29, 2019, the Division issued a Notice of Violation (NOV) to Respondent for the above violation. The NOV required Respondent to submit a Schedule of Corrective Action to the Division. On June 18, 2019, the Division received Respondent's Schedule of Corrective Action via e-mail.

XII.

On August 22, 2019, the Division conducted a complaint investigation at Respondent's facility. During this inspection, the Division performed a Method 9 Visible Emission Evaluation (VEE) on the wet scrubber stack. Based on the VEE, the second-highest six-minute average was 38.13% which is an exceedance of the 10% permitted opacity limitation as required by Condition 11 of Permit 062800P.

XIII.

On September 17, 2019, the Division issued an NOV to Respondent for the above violation. The NOV required Respondent to submit updates by September 23, 2019, for the Action Items listed in the June 18, 2019 Schedule of Corrective Action.

XIV.

On September 19, 2019, the Division conducted a complaint investigation at Respondent's facility. During this inspection, the Division performed a Method 9 VEE on the wet scrubber stack. Based on the VEE, the second-highest six-minute average was 69.17% which is an exceedance of the 10% permitted opacity limitation as required by Condition 11 of Permit 062800P.

XV.

On October 7, 2019, the Division issued an NOV to Respondent for the above violation.

VIOLATION

XVI.

By failing to comply with Condition 11 of Permit 062800P, 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

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 **\$8,000** 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, **APC19-0090, APC19-0148, and APC19-0157** 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 Technical Secretary 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 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).

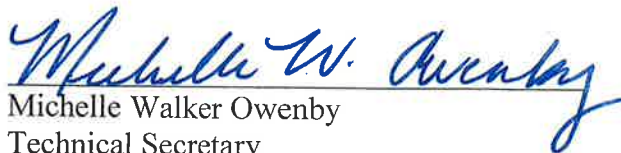
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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 numbers, APC19-0090, APC19-0148, and APC19-0157, 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 8th day of January, 2020.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Grant LeMaster Ruhl

BPR # 036182

Assistant General Counsel

Department of Environment & Conservation

312 Rosa L. Parks Avenue, 2nd Floor

Nashville, Tennessee 37243

(615) 313-5682

Grant.Ruhl@tn.gov