

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

**LHOIST NORTH AMERICA
OF TENNESSEE, INC.**

RESPONDENT

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DIVISION OF AIR POLLUTION

CASE NO. APC19-0132

**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.

Lhoist North America of Tennessee, Inc. ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. Respondent's facility address is 2024 Crownover Road, Sherwood, Tennessee. 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 \$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 25, 2017, the Technical Secretary issued Conditional Major construction permit number 972483 (“Permit 972483”), emission source reference number 26-0026-12, to Respondent for a granular system. On April 5, 2018, the Technical Secretary amended Permit 972483.

IX.

Condition 29 of Permit 972483 states, in pertinent part:

Particulate matter emitted from each baghouse for the granular system serving NSPS equipment (BH-3, BH-4, BH-2, BH-11, BH-12, AND BH-1) shall not exceed a limit of 0.01 grains per dry standard cubic foot of exhaust gas (10.96 lbs/hour).

Compliance Method: Compliance with the particulate emission limit shall be assured by maintaining the required minimum pressure drop of 1.5 inches of

Water Column for all baghouses requiring pressure drop data. The pressure drop for each baghouse shall be recorded once daily when the source is in operation. Days when the source is not operating shall be noted in the operating log. A record of the daily pressure drop readings in a form that readily show compliance with the pressure drop minimum must be maintained at the source location and kept available for inspection by the Technical Secretary or a Division representative.

X.

On July 25, 2019, the Division conducted an inspection at Respondent's facility. During the inspection, the Division reviewed the daily pressure drop readings log and discovered 81 days where the individual readings for baghouse number 3 (BH-3) were either not available for review or the readings deviated below the minimum pressure drop set in condition 29 of Permit 972483. These deviations are provided in the table, below:

Date	Pressure Drop (inches of water)
August 31, 2018	No reading
September 1, 2018	No reading
September 4, 2018	No reading
September 5, 2018	No reading
September 11, 2018	0.0
September 12, 2018	0.0
September 13, 2018	0.0
December 20, 2018	0.0
December 21, 2018	0.0
December 24, 2018	0.0
December 26, 2018	0.0
January 17, 2019	0.35
January 22, 2019	0.72
January 23, 2019	0.48
January 24, 2019	0.71
January 25, 2019	0.28
January 31, 2019	0.0
February 4, 2019	0.71
February 6, 2019	0.73

February 8, 2019	0.34
February 11, 2019	0.42
February 12, 2019	0.36
February 13, 2019	0.41
February 18, 2019	0.72
February 19, 2019	0.67
February 20, 2019	0.74
February 21, 2019	0.56
February 22, 2019	0.83
February 25, 2019	0.83
February 27, 2019	0.43
February 28, 2019	0.6
March 5, 2019	0.35
March 6, 2019	0.22
March 7, 2019	0.34
March 8, 2019	0.43
March 11, 2019	0.45
March 12, 2019	0.45
March 13, 2019	0.53
March 15, 2019	0.45
March 18, 2019	0.5
March 19, 2019	0.41
March 20, 2019	0.9
March 21, 2019	0.4
March 25, 2019	1.0
March 26, 2019	0.45
March 27, 2019	0.29
March 28, 2019	0.28
April 1, 2019	0.51
April 3, 2019	0.49
April 4, 2019	0.57
April 5, 2019	1.01
April 9, 2019	0.73
April 10, 2019	0.53
April 11, 2019	1.07
April 15, 2019	0.9

April 16, 2019	1.01
April 17, 2019	1.08
April 18, 2019	1.0
April 19, 2019	1.0
April 23, 2019	0.3
April 24, 2019	0.74
April 25, 2019	0.96
April 26, 2019	1.0
April 29, 2019	0.76
April 30, 2019	1.4
May 1, 2019	1.26
May 2, 2019	0.4
May 3, 2019	1.0
May 6, 2019	0.67
May 7, 2019	0.71
May 8, 2019	0.82
May 9, 2019	0.89
May 10, 2019	0.96
May 13, 2019	0.63
May 14, 2019	0.88
May 15, 2019	1.2
May 16, 2019	0.73
May 17, 2019	0.83
May 18, 2019	0.53
May 20, 2019	0.55
May 21, 2019	1.2

XI.

On August 26, 2019, the Division issued a Notice of Violation to Respondent for the violations described in paragraph X.

XII.

By failing to comply with condition 29 of Permit 972483, Respondent violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d), which states:

Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application or notice of intent; the provisions and stipulations set forth in the construction permit, notice of coverage, or notice of authorization; this Division 1200-03; Division 0400-30; any applicable measures of the control strategy; and 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 is assessed a CIVIL PENALTY in the amount of **\$4,000** 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, **APC19-0132** 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.

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).

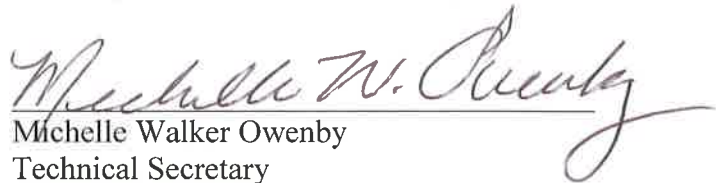
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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, APC19-0132, 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 24th day of October, 2019.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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