

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

PSC METALS, LLC

RESPONDENT

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DIVISION OF AIR POLLUTION

CASE NO. APC19-0139

**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.

PSC Metals, LLC (“Respondent”) is a foreign limited liability company authorized to do business in the State of Tennessee. Respondent’s facility address is 2408 South Roane Street, Harriman, 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 February 19, 2019, the Technical Secretary issued Conditional Major construction permit number 975043 (“Permit 975043”), emission source reference number 73-0149-01, to Respondent for a scrap metal recycling operation.

IX.

Condition 12 of Permit 975043 states, in pertinent part:

. . . [T]he permittee shall monitor and record in a log the inlet temperature of each engine catalytic converter on a daily basis. The log may be in either manual or electronic form, and the log shall indicate the date and time of each temperature reading. One (1) temperature reading per operating day for each engine shall be collected and recorded in the log. Days when the engines are not operated shall be noted in the log. All temperature data must be entered in the log no later than

seven (7) days from the end of the day for which the data is required. The permittee shall retain this record at the source location for a period of not less than five (5) years and keep this record available for inspection by the Technical Secretary or Division representative.

X.

Condition 28 of Permit 975043 states, in pertinent part:

A. Record keeping requirements for this source, including all data and calculations, must be updated and maintained based on the following schedule:

<u>Record Keeping Type</u>	<u>Update Requirement</u>
Monthly Log	Recorded within 30 days after the end of the month
Weekly Log	Recorded within 7 days after the end of the week
Daily Log	Recorded within 7 days after the end of the day

B. Logs and records specified in this permit shall be kept readily available/accessible and made available upon request by the Technical Secretary or a Division representative and shall be retained for a period of not less than five (5) years unless otherwise noted. Logs and records contained in this permit are based on a recommended format. Any logs that have an alternative format may be utilized provided such logs contain the same or equivalent information that is required. Computer-generated logs are also acceptable.

XI.

On or about August 14, 2019, the Division conducted an inspection at Respondent's facility. During the inspection, the Division reviewed logs and discovered that the inlet temperature reading of each engine catalytic converter, with a date and time for each reading, was not recorded on a daily basis. During the inspection, Respondent began recording the inlet temperature reading for the two engines.

XII.

On August 28, 2019, Respondent submitted to the Division via e-mail the daily production logs covering February 19, 2019, to August 13, 2019. A review of these logs indicated Respondent

operated the two engines for 109 days; therefore, a total of 218 inlet temperatures were not recorded. Per the requirements of condition 12 of Permit 975043, an inlet temperature reading of both engine catalytic converters, with a date and time for each reading, should have been recorded every day of operation beginning February 19, 2019, and the log should have been updated based on the record-keeping requirements of condition 28 of Permit 975043.

XIII.

On August 30, 2019, the Division issued a Notice of Violation to Respondent for the violations described in paragraphs **XI** and **XII**.

XIV.

By failing to comply with conditions 12 and 28 of Permit 975043, 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;; any applicable measures of the control strategy' and all provisions of the Tennessee Air Quality Act.

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 **\$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, **APC19-0139** 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).

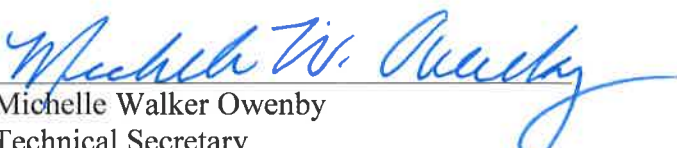
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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, APC19-0139, 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:



Grant LeMaster Ruhl

BPR # 036182

Assistant General Counsel

Department of Environment & Conservation

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