

**TENNESSEE AIR POLLUTION CONTROL BOARD**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF AIR POLLUTION</b>
	)	<b>CONTROL</b>
	)	
<b>COOPER'S STEEL</b>	)	
<b>FABBRICATORS, INC.,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. APC22-0042</b>

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**TECHNICAL SECRETARY'S ORDER AND**  
**ASSESSMENT OF CIVIL PENALTY**

Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, states:

**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.**

Cooper's Steel Fabricator's, Inc. ("Respondent") is a domestic corporation authorized to do business in the State of Tennessee. Respondent's facility address is 503 N Hillcrest Drive, Shelbyville, Tennessee 37160-3617. Service of process may be made upon Respondent's registered agent, Jordan K. Cooper, at this address.

**AUTHORITY**

**III.**

The Technical Secretary may assess a civil penalty of up to \$25,000.00 per day for each day of violation of the Tennessee Air Quality Act, Tenn. Code Ann. §§ 68-201-101 to -121 ("Act"), or Tennessee Air Pollution Control Regulations, Tenn. Comp. R. & Regs. 1200-03-01 to -36; 0400-30-01 to -39, ("Rules"). Tenn. Code Ann. § 68-201-116. The Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Rules are violated, and such person may be liable for resulting damages to the State. *Id.*

**IV.**

Respondent is a “person,” Tenn. Code Ann. § 68-201-102(7), and has violated the Act and Rules.

**V.**

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof. Tenn. Code Ann. § 68-201-102(1).

**VI.**

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Tenn. Code Ann. § 68-201-102(2). Respondent operates an air contaminant source.

**FACTS**

**VII.**

On March 12, 2020, the Technical Secretary issued a True Minor operating permit, permit number 077134, (facility 02-0112), to Respondent for a shot blasting and surface coating operation.

**VIII.**

Condition S3-3. of Permit 077134 states, in pertinent part:

The permittee must prepare and submit annual certifications and compliance reports for this source as follows: Each annual certification and compliance report must be prepared and submitted no later than January 31 of each year, and will cover the preceding annual reporting period from January 1 through December 31. The annual certification and compliance report must be kept in a readily-accessible location for inspection by the Technical Secretary or a Division representative. If an exceedance has occurred during the year, each annual certification and compliance report must be submitted along with the exceedance reports, and postmarked or delivered no later than January 31 of the year following the exceedance.

**IX.**

The Respondent failed to submit its annual National Emissions Standards for Hazardous Air Pollutants 40 CFR Part 63, subpart XXXXXX report (“Report”) for 2021 to the Division by January 31, 2022. Therefore, Respondent violated condition S3-3. of Permit 077134.

**X.**

On March 10, 2022, the Division issued a Notice of Violation to Respondent for the violation discussed in paragraph IX.

**XI.**

On March 14, 2022, the Division received the Respondent's Report.

**VIOLATIONS**

**XII.**

By failing to comply with condition S3-3. of Permit 077134, Respondent violated Division Rule 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.

**ORDER AND ASSESSMENT OF CIVIL PENALTY**

**XIII.**

Respondent is assessed a civil penalty of \$1,500.00 for violation of the Act and Rules, to be paid to the Department at the following address:

Division of Fiscal Services - Consolidated Fees Section  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower, 10<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the 31st day after receipt of this Order and Assessment of Civil Penalty. The case number, APC22-0042, should be clearly written on all correspondence.

**RESERVATION OF RIGHTS**

In issuing this Order and Assessment of Civil Penalty, the Department does not implicitly or expressly waive any provision of the Act or Rules 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.

### **NOTICE OF RIGHTS**

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b). To do so, a written petition setting forth the 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. Any petition for review must be directed to:

Commissioner of the Department of Environment and Conservation  
c/o Jenny L. Howard, General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower, 2<sup>nd</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -325; Tenn. Comp. R. & Regs. 1360-04-01. 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 (*e.g.*, 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 of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. 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.

Technical questions and other correspondence involving compliance issues should be sent to:

Kevin McLain, Division of Air Pollution Control  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower, 15<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC22-0042, 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 \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.



Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:



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Grant LeMaster Ruhl  
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