

**TENNESSEE AIR POLLUTION CONTROL BOARD**

---

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF AIR POLLUTION</b>
	)	<b>CONTROL</b>
	)	
<b>KENTUCKY-TENNESSEE CLAY</b>	)	
<b>COMPANY,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. APC22-0165</b>

---

**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.**

Kentucky-Tennessee Clay Company (“Respondent”) is a foreign corporation formed in Delaware and authorized to do business in the State of Tennessee. Respondent's facility address is 5450 Old Highway 22, Gleason, Tennessee. Respondent’s registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

**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 September 10, 2019, the Technical Secretary issued Major Source operating permit (“Title V”) permit number 573982, (facility 92-0020), to the Respondent for the drying and milling processes of ball clay.

#### VIII.

Condition E10-1 of Title V permit number 573982 states:

Particulate matter (PM) emitted from Truck Tanks 1 through 6 shall not exceed 0.02 grains per dry standard cubic feet (1.32 pounds per hour). Tanks 3-6 are subject to 40 CFR 60 Subpart OOO. This limit is lower than the applicable limit of 0.022 grain per dry standard cubic feet specified at 40 CFR §60.672(a).

TAPCR 1200-03-07-.01(5) and the agreement letter from permittee dated July 10, 2019

**Compliance Method:** The permittee shall keep all baghouses maintained, in good operating condition, and inspected semiannually to ensure compliance with the applicable particulate matter limits. Documentation of the semiannual inspections and any maintenance performed will be kept on site for a period of not less than

five (5) years. A summary of these logs shall be kept and reported in accordance with Condition E2.

### IX.

Condition E12-1 of Title V permit number 573982 states, in pertinent part:

Particulate matter (PM) emissions from Silo 1 baghouse, Silo 2 baghouse, Silo 3 baghouse and the 66 truck tank baghouse shall not exceed 0.02 grains per dry standard cubic foot as specified in 40 CFR Part 60.672(a) (Subpart OOO). PM emissions from Silo 3 and 66 Truck Tank are subject to 40 CFR 60 Subpart OOO. This limit is lower than the applicable limit of 0.022 grain per dry standard cubic feet specified at 40 CFR §60.672(a).

TAPCR 1200-03-07-.01(5) and the agreement letter from the permittee dated July 10, 2019

**Compliance Method:** The permittee shall keep all baghouses maintained, in good operating condition, and inspected semiannually to ensure compliance with the applicable particulate matter limits. Documentation of the semiannual inspections and any maintenance performed will be kept on site for a period of not less than five (5) years. A summary of these logs shall be kept and reported in accordance with Condition E2.

### X.

On August 25, 2022, the Division received the Respondent's Title V Semiannual Report ("Report") for the period of January 1, through June 30, 2022. Based on the review of the Report, the following violations were discovered by the Division:

- The three baghouses associated with Source 07 (condition E10-1), require semiannual maintenance inspections; however, the three baghouses were not inspected during the semiannual reporting period of January 1, through June 30, 2022.
- The four baghouses associated with Source 09 (condition E12-1), require semiannual maintenance inspections, however, the four baghouses were not inspected during the semiannual reporting period of January 1, through June 30, 2022.

### XI.

On September 9, 2022, the Division issued a Notice of Violation ("NOV") to the Respondent for failing to comply with conditions E10-1 and E12-1 of Title V permit number 573982. The NOV required the Respondent to submit a Proposed Schedule of Correction Action

(APC 115) to the Division within 14 days of receipt of the NOV detailing what action would be taken to ensure that the baghouses are maintained in good operating condition, that semiannual maintenance inspections are completed, and documentation of the semiannual inspections and any maintenance performed will be retained as required by the permit conditions. As of the date of this Order and Assessment of Civil Penalty, the Respondent has not submitted an APC 115.

## **VIOLATIONS**

### **XII.**

By failing to comply with conditions E10-1 and E12-1 of Title V permit number 573982, the 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.**

1. The Respondent is assessed a civil penalty of \$4,500.00 for violation of the Act and Rules, to be paid to the Department at the following address:

Division of Fiscal Services - Consolidated Fees Section  
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 thirty-first day after receipt of this Order and Assessment of Civil Penalty. The case number, APC22-0165, should be clearly written on all correspondence.

2. The Respondent shall submit an APC 115 to the Division within 30 days of receipt of the Order and Assessment of Civil Penalty detailing what action would be taken to ensure that the baghouses are maintained in good operating condition, that semiannual maintenance inspections are completed, and documentation of the semiannual inspections and any maintenance performed will be retained as required by the permit conditions.

### **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 the 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  
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 Judge 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.

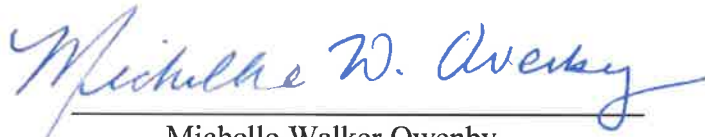
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has 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 Administrative Judge and a court reporter.

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

Kevin McLain, Division of Air Pollution Control  
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, APC22-0165, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on January 26, 2023.



---

Michelle Walker Owenby  
Technical Secretary  
Air Pollution Control Board

Reviewed by:

*Michael D. Lewis*

---

Michael D. Lewis  
BPR # 033408  
Associate Counsel  
Department of Environment & Conservation  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
Phone: (615) 308-2770  
Email: Michael.d.lewis@tn.gov