

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

BUNGE NORTH AMERICA, INC.

RESPONDENT

)
)
)
) **DIVISION OF AIR POLLUTION**
) **CONTROL**
)
) **CASE NO. APC17-0021**
)

**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.

Bunge North America, Inc. ("Respondent") is a foreign corporation authorized to do business in in the State of Tennessee. Respondent's facility address is 4344 Everett Lake Road, Finley, Tennessee 38030. Respondent's registered agent for service of process is Corporation Service Company at 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 TWENTY-FIVE THOUSAND DOLLARS (\$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 within the meaning of 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 January 7, 2008, the Technical Secretary issued operating permit number 061526P, (Facility Id 23-0048), to Respondent for a grain elevator consisting of storage silos, receiving pits, and barge load-out.

Condition 2 of operating permit number 061526P, states in pertinent part:

The maximum material input (of all grain) to this source shall not exceed 345,500 tons per calendar year. Any increase in this limit will require a construction permit.

Condition 5 of operating permit number 061526P, states:

Particulate matter (PM) emitted from this source shall not exceed 50.5 pounds per hour and 29.2 tons per year. Compliance with these limits shall be indicated by compliance with Conditions 2 and 6.

IX.

On or about January 17, 2017, Division personnel conducted an inspection at Respondent's facility. During the course of the inspection, it was discovered that Respondent had exceeded the maximum material input limit in Condition 2 of operating permit number 061526P for calendar years 2015 and 2016, as follows:

Year	Input (in tons)	Exceedance over 345,500 tons
2015	387,919.14	42,419.14
2016	509,757.18	164,257.18

X.

By exceeding the maximum material input limit in Condition 2 of operating permit number 061526P, Respondent subsequently exceeded the PM limit set forth in Condition 5 by 6.17 tons.

XI.

On or about August 9, 2016, Respondent submitted a construction permit application to the Division for an increase in grain throughput capacity.

XII.

On February 8, 2017, the Division issued a Notice of Violation to Respondent for the violations described herein.

XIII.

On March 14, 2017, the Technical Secretary issued Respondent construction permit number 971957 to increase the maximum material input to 750,000 tons (based on 60 lbs./bushel) or 25 million bushel per calendar year.

VIOLATIONS

XIV.

By failing to comply with the conditions of an operating permit as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.02(6), which states:

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

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 **TWO THOUSAND DOLLARS (\$2,000)** for the violation of Division Rules, as discussed herein.
2. Respondent shall pay the assessed **CIVIL PENALTY** in full to the “Treasurer, State of Tennessee” as detailed in the Notice of Rights. The case number, **APC17-0021**, 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 thirty-first (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.

NOTICE OF RIGHTS

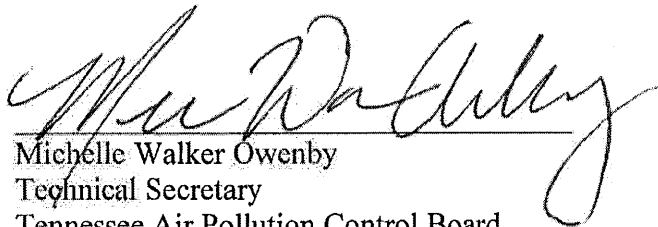
Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Technical Secretary within THIRTY (30) DAYS of the date Respondent received this 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.

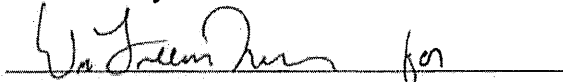
At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny this Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, 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, APC17-0021, 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 23 day of June, 2017.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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