

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
D&T SAWMILL LLC)	DIVISION OF AIR POLLUTION CONTROL
)	
RESPONDENT)	CASE NO. APC20-0014

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.

D&T Sawmill LLC (“Respondent”) is a domestic limited liability company authorized to do business in the State of Tennessee. Respondent’s facility address is 25400 Highway 57 E, Grand Junction, Tennessee 38039. Respondent is the registered agent for service of process.

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 27, 2016, the Technical Secretary issued construction permit number 970149 (“Permit 970149”), identified as emission source reference number 24-0112, to Respondent for a sawmill operation.

IX.

Condition 11 of Permit 970149 states, in pertinent part:

The permittee shall apply for an operating permit within thirty (30) days of initial start-up of screen unit for chipper.

X.

Condition 12 of Permit 970149 states:

This permit shall serve as a temporary operating permit from the date of issuance to the receipt of a standard operating permit, provided that the conditions of this permit and any applicable emission standards are met.

XI.

Condition 13 of Permit 970149 states, in pertinent part:

The permittee shall certify the start-up date of the modified air contaminant source (screen unit for chipper) regulated by this permit[.] . . . The completed certification shall be delivered to the West Tennessee Permit Program, and the Compliance Validation Program, at the addresses listed below, no later than thirty (30) days after the modified air contaminant source is started-up.

XII.

Condition 27 of Permit 970149 states, in pertinent part:

If you own or operate an existing stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing stationary RICE located at an area source of HAP emissions you are subject to the requirements of this section.

- (a) You must conduct an initial performance test or other initial compliance demonstration according to Tables 4 and 5 to this subpart that apply to you within 180 days after the compliance date that is specified for your stationary RICE in §63.6595 and according to the provisions in §63.7(a)(2).

The compliance date in condition 27 is the date of start-up.

XIII.

In a letter dated February 10, 2017, the Division notified Respondent that Permit 970149 was due to expire on May 27, 2017, and that, “If this source has begun operations, please submit a complete operating permit application and include a start-up certification if required.”

XIV.

On April 7, 2017, the Division received Respondent's operating permit application ("Application") dated April 4, 2017. Receipt of this Application is indication that Respondent is operating the sawmill.

XV.

On January 28, 2020, the Division issued a Notice of Violation to Respondent for failure to submit the start-up certification and for failure to submit the initial performance test or other initial compliance demonstration. To date, the Division has not received a start-up certification and the initial performance test or other initial compliance demonstration.

In a letter dated January 29, 2020, the Division requested Respondent submit the following information within 30 days of receipt of this letter:

1. A facility identification form (APC 100);
2. An APC 101 and APC 102 for each sawmill and associated diesel engine.
3. An initial compliance demonstration and/or testing as identified in Table 4 and 5 of 40 C.F.R. part 63 subpart ZZZZ.

To date, the Division has not received this information.

XVI.

By failing to submit the Division-requested information in the time period required by conditions 13 and 27 of Permit 970149, Respondent rendered condition 12 ineffective. Without the temporary operating permit provided by condition 12, Respondent has been operating without a permit since the start-up.

VIOLATIONS

XVII.

By failing to comply with conditions 13 and 27 of Permit 970149, Respondent violated Division Rule 1200-03-09-.01(1)(d), which states, in pertinent part:

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[.]

XVIII.

By operating an air contaminant source not specifically exempted by Division Rule 1200-03-09-.04 without first applying for and receiving the necessary operating permit, Respondent violated Division Rule 1200-03-09-.02(2), which states, in pertinent part:

No person shall operate an air contaminant source in Tennessee without first obtaining from the Technical Secretary an operating permit or, if applicable, submitting a notice of intent and obtaining a notice of coverage or authorization, except as specifically exempted in Rule 1200-03-09-.04.

XIX.

By failing to provide the additional information as requested by the Division, Respondent violated Tenn. Code Ann. § 68-201-105(b)(2), which gives the Department authority to:

Require that any person furnish the department information required by it in discharge of its duties under this part, if the department has reason to believe such person is, or may be about to, causing or contributing to air pollution[.]

RELIEF

XX.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby order as follows:

1. Respondent shall submit to the Division the start-up certification within 30 days after receipt of this Order and Assessment of Civil Penalty. The start-up certification shall be either e-mailed to Air.Pollution.Control@tn.gov or mailed to the address in the letterhead.
2. Respondent shall submit to the Division the initial performance test or other initial compliance demonstration within 90 days after receipt of this Order and Assessment of Civil Penalty. The initial performance test or other initial compliance demonstration shall be either e-mailed to Air.Pollution.Control@tn.gov or mailed to the address in the letterhead.

3. Respondent shall submit the information requested in the Division's January 29, 2020 letter within 30 days after receipt of this Order and Assessment of Civil Penalty to the Division via e-mail to Air.Pollution.Control@tn.gov or mailed to the address in the letterhead.

4. Respondent shall adhere to all conditions in Permit 970149, except conditions 13 and 27. Provided that Respondent adheres to all conditions except conditions 13 and 27, compliance with the terms of this permit through this Order and Assessment shall serve as an alternative to a temporary operating permit until such time as Respondent receives an operating permit.

5. Respondent is assessed a Civil Penalty in the amount of **\$4,500** for the violation of Division Rules, as discussed herein. This amount shall be paid as follows:

A. Respondent shall pay **\$3,000** within 31 days of Respondent's receipt of this Order and Assessment of Civil Penalty.

B. Provided that Respondent complies with subsections 1, 2, 3, and 4 above, the remaining **\$1,500** shall be waived and not become due and payable. But if Respondent fails to comply with subsections 1, 2, 3, and 4 above, then Respondent shall also pay a Civil Penalty in the amount of **\$1,500**, payable within 31 days of noncompliance.

6. 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, **APC20-0014**, should be clearly shown on the check or money order to ensure that the payment is properly credited.

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).

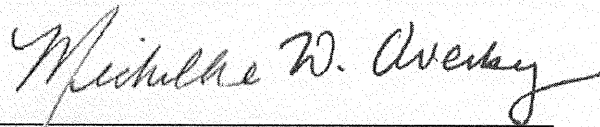
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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, APC20-0014, 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 17th day of June, 2020.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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