



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

Office of University Counsel
East Tennessee State University
PO Box 70285
309 Burgin Dossett Hall
Johnson City, Tennessee 37614

Certified Article Number

9414 7266 9904 2212 9424 87

SENDER'S RECORD

RE: East Tennessee State University
Facility Id. 90-0029
Case No. APC23-0097

Dear Sir or Madam:

Enclosed, please find an Order and Assessment of Civil Penalty issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Department of Environment and Conservation. Please read it carefully and pay special attention to the Notice of Rights section.

If you have any questions regarding this Order and Assessment of Civil Penalty, please contact Kevin McLain at air.pollution.control@tn.gov. For all other questions, please contact the Division of Air Pollution Control at (615) 532-0554 or air.pollution.control@tn.gov.

Sincerely,

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

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Enclosure

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION CONTROL
)	
)	
EAST TENNESSEE STATE UNIVERSITY,)	
)	
)	
RESPONDENT.)	CASE NO. APC23-0097

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"), Department of Environment and Conservation ("Department").

II.

East Tennessee State University ("Respondent") is a public university and is authorized to do business in the State of Tennessee. The Respondent's facility address is 1380 Jack Vest Drive, Johnson City, Tennessee 37614. The Respondent's registered agent for service of process is Office of University Counsel, East Tennessee State University, PO Box 70285, 309 Burgin Dossett Hall, Johnson City, Tennessee 37614.

AUTHORITY

III.

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, 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.

The 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). The Respondent operates an air contaminant source.

FACTS

VII.

On October 2, 2019, the Technical Secretary issued Conditional Major Operating Permit 474001 (“Permit 474001”), (facility 90-0029, Sources 01, 02, 14, 15) (“Facility”), to the Respondent for university boilers and emergency engines.

VIII.

Condition G8.B. of Permit 474001 states, in pertinent part:

. . . . B. *NSPS Reporting*. Semi-annual reports shall be submitted to the Division for any recordkeeping requirements required by 40 CFR 60: Subpart Dc (sources 01, 02, 14, & 15) **if** combustion of fuel oil occurs. If applicable, these reports shall cover each six (6) month period (January 1 – June 30 and July 1 – December 31), and include the records required by **Condition S1-6.E.** of this permit. The reports must be postmarked by the 30th day following the end of each reporting period, and shall be submitted to the Division. . . .

IX.

On March 31, 2023, the Division received the required NSPS semiannual report for the period of July 1, 2022, to December 31, 2022 (“Report”).

X.

On April 28, 2023, the Division received revisions made to the Report. Upon review of the Report, the Division discovered that the Report was due January 30, 2023; therefore, the Report was submitted 60 days late.

XI.

On May 4, 2023, the Division sent a Notice of Violation to the Respondent for the violation discussed in paragraph X.

VIOLATIONS

XII.

By failing to comply with Condition G8.B. of Permit 474001, 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.

The Respondent is assessed a civil penalty of \$1,500 for violation of the Act and Rules, to be paid to the Department at the following address:

Treasurer, State of Tennessee
Division of Fiscal Services - Consolidated Fees Section
Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 10th 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, APC23-0097, 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 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, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. 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.

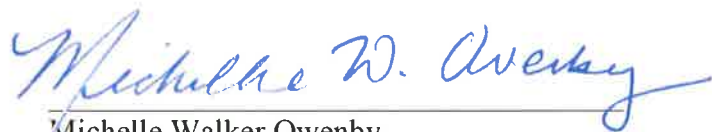
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has 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, 15th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC23-0097, 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 5, 2024.



Michelle Walker Owenby
Technical Secretary
Air Pollution Control Board

Reviewed by:

Michael D. Lewis

Michael D. Lewis
BPR # 033408
Senior Associate Counsel
Department of Environment & Conservation
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Nashville, Tennessee 37243
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