

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION CONTROL
)	
)	
JACK DANIEL DISTILLERY, LEM MOTLOW, PROP., INC.,)	
)	
)	
RESPONDENT.)	CASE NO. APC24-0018

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.

Jack Daniel Distillery, Lem Motlow, Prop., Inc. ("Respondent"), is a domestic corporation authorized to do business in Tennessee. The Respondent's facility address is 280 Lynchburg Highway, Lynchburg, Tennessee 37352. The Respondent's registered agent for service of process is C T Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919-5546.

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 May 18, 2017, the Technical Secretary issued Major Source operating permit (“Title V”) permit (Permit 569520), (facility 64-0001), to the Respondent for a beverage alcohol manufacturing operation. The Technical Secretary amended and modified Title V permit number 569520 as follows:

Type	Issued Date
Administrative Amendment	August 25, 2017
Administrative Amendment	February 14, 2019
Minor Modification	July 22, 2019
Administrative Amendment	February 9, 2020
Minor Modification	October 20, 2021

VIII.

Condition E2. of Title V permit (Permit 569520) states, in pertinent part:

- (a) Semiannual reports.

These semiannual reports for this facility (64-0001) shall include:

- (3) Identification of all instances of deviations from ALL PERMIT REQUIREMENTS.

(b) Annual compliance certification.

The permittee shall submit annually compliance certifications with terms and conditions contained in Sections A, B, D and E of this permit, including emission limitations, standards, or work practices. This compliance certification shall include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

- (3) The status of compliance with each term or condition of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in E2(b)2 above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion* or exceedance** as defined below occurred; and

IX.

Condition E14-1. of Title V permit (Permit 569520) states:

Pursuant to TAPCR paragraph 1200-03-09-.01(4), this permit shall cover 14 Fermenters and 14 charcoal mellowing vats, for the new expansion at Jack Daniel Distillery Lem Motlow Proprietor, Inc. facility. These sources are listed in the PSD application dated July 9, 2012.

X.

Condition E14-3(MM2). of Title V permit (Permit 569520) states:

The permittee shall not cause, allow, or discharge to the atmosphere, VOC emissions from 14 charcoal mellowing vats and 14 fermenters in excess of the following:

<u>Process</u>	<u>VOC Emissions Tons per 12 Consecutive Months</u>
14 Charcoal mellowing vats	158
14 Fermenters (D-64 to D-77)	12.6

TAPCR 1200-03-09-.01(4), 1200-03-.07-07(2), and PSD construction permit (Permit 966417P).

Compliance method: Compliance with this emission limitation shall be demonstrated by calculating the total VOC emissions from this source during each calendar month and during all intervals of 12 consecutive months. The permittee shall maintain a log of the information in the following format or equivalent format that provides the same required information. A material balance log shall be maintained to demonstrate compliance with the applicable VOC limit and kept available for inspection by the Technical Secretary or Division Representative upon request. The material balance log is not required to be included in the semiannual reporting required by Condition E2(a). These records shall be maintained in accordance with **Conditions E3-4** and **E3-6**.

**LOG 31
MONTHLY VOC EMISSION LOG FOR SOURCE 26**

Month/Year	Operation	VOC Emission Factors	Throughput	VOC Emissions (pounds per month)	VOC Emissions (tons per month)
	Fermentation: No. of Bushels of Grain per Month	14.3 lb ethanol per 1000 bushels(2)	No. of Bushels		
	Charcoal Mellowing No. of Proof Gallons of Whiskey per Month	0.0165 lb VOC/Proof Gallon(1)	No. of Proof Gallons		
	Total monthly VOC emissions				Total VOC (tons)

- (1) Emission factor provided by JDD Inc. resulting from 0.5% loss during charcoal mellowing: Pounds of VOC emitted/proof gallon= (0.5% loss) x (6.6 lb/gal ethanol) x (1 gallon/2 proof gallons)
- (2) AP-42 Emission Factor Table 9.12.3-1

LOG 32
12 CONSECUTIVE MONTH VOC EMISSIONS LOG FOR SOURCE26

Month/Year	VOC Emissions - Fermentation		VOC Emissions - Charcoal Mellowing	
	Tons/month	Tons/12 months*	Tons/month	Tons/12 months*

*The Tons per 12 Month value is the sum of the VOC emissions (for both Fermentation and Charcoal Mellowing Operation) in the 11 months preceding the month just completed plus the VOC emissions in the month just completed.

XI.

On November 30, 2023, Division personnel conducted an inspection at the Respondent's facility. However, on October 23, 2023, prior to the inspection, Division personnel requested that the Respondent submit Log 32 for the inspection timeframe of November 2021 through September 2023. On November 2, 2023, the Division received Log 32. Log 32 was initially submitted to the Division with the fermentation and charcoal mellowing processes combined showing a single 12 month rolling total as opposed to a speciated record as exemplified in condition E14-3(MM2). of Title V permit number 569520. Division personnel requested a corrected Log 32 for the timeframe of November 2021 through September 2023. On November 29, 2023, the Division received a revision to Log 32 that indicated that the Respondent exceeded the 12.6 tons per 12 consecutive month limit for the 14 fermenters for the months August 2022 through September 2023. Log 32 was also requested for the months of October and November 2023. This updated Log 32 indicated

additional exceedances of the 12-month rolling total VOC limit for the 14 fermenters. The table below lists the months and emissions when the VOC emissions were above the permit limit:

Month	VOC Emissions, Tons per 12 Consecutive Months
August 2022	12.96
September 2022	13.31
October 2022	13.43
November 2022	13.52
December 2022	13.49
January 2023	13.43
February 2023	13.40
March 2023	13.45
April 2023	13.49
May 2023	13.51
June 2023	13.20
July 2023	13.10
August 2023	13.05
September 2023	12.80
October 2023	12.95
November 2023	12.90

During the November 30, 2023 inspection, Division personnel observed the presence of 16 charcoal mellowing vats onsite, which exceeded the number of charcoal mellowing vats specified in the PSD application dated July 9, 2012, the PSD construction permit (Permit 966417P) issued July 29, 2013, and in the Title V permit (Permit 569520). Therefore, the Respondent constructed and operated two charcoal mellowing vats prior to applying for and receiving the required permits.

Also, the semiannual reports that covered the timeframe from June 1, 2022, through December 31, 2022, and January 1, 2023, through May 30, 2023, did not indicate that the Respondent deviated from condition E14-3(MM2), as required by condition E2.(a) of Title V permit (Permit 569520). In addition, the annual compliance certification that covered the timeframe from January 1, 2022, through December 31 2022, did not indicate that the Respondent

deviated from Condition E14-3(MM2)., as required by condition E2.(b) of Title V permit (Permit 569520).

XII.

On January 18, 2024, the Division issued a Notice of Violation to the Respondent for the violations identified in paragraph **XI**.

VIOLATIONS

XIII.

By failing to comply with conditions E2., E14-1., and E14-3(MM2). of Title V permit number 569520, 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.

XIV.

By constructing the two charcoal mellowing vats prior to applying for and receiving the required permit, the Respondent violated Division Rule 1200-03-09-.01(4)(a), which states, in pertinent part:

1. No new major stationary source or major modification, as defined in parts (b)1. and (b)2. of this paragraph, shall begin actual construction unless the requirements of this paragraph, as applicable, have been met.
- ...
3. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this paragraph or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this paragraph who commences construction after June 3, 1981 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

XV.

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, the 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.

ORDER AND ASSESSMENT OF CIVIL PENALTY

XVI.

The Respondent is assessed a civil penalty of \$40,500 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
Davy Crockett Tower
500 James Robertson Pkwy, 6th Floor
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 numbers, **APC24-0018**, 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
Davy Crockett Tower
500 James Robertson Pkwy, 5th Floor
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 -326; 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.

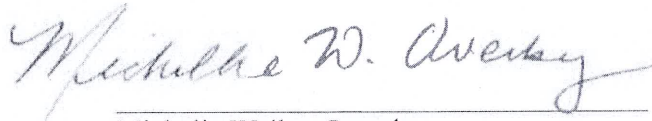
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has 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
Tennessee Department of Environment and Conservation
Davy Crockett Tower
500 James Robertson Pkwy, 7th Floor
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, **APC24-0018**, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on June 28, 2024



Michelle Walker Owenby
Technical Secretary
Air Pollution Control Board

Reviewed by:



William Freeman Miller
BPR # 028826
Senior Associate Counsel
Department of Environment & Conservation
Davy Crockett Tower
500 James Robertson Pkwy, 5th Floor
Nashville, Tennessee 37243
(615) 532-0136
william.f.miller@tn.gov

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FORM #45663 VERSION: E0423

Label #1

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300 Montvue Road
Knoxville, TN 37919-5546

Label #2

CT Corporation System
300 Montvue Road
Knoxville, TN 37919-5546

Label #3

TN Dept. of Environment & Conservation
Division of Air Pollution Control
Davy Crockett Tower
500 James Robertson Pkwy, 7th Floor
Nashville, TN 37243

A FOLD AND TEAR THIS WAY → OPTIONAL

B Label #5 (OPTIONAL)

TN Dept. of Environment & Conservation
Division of Air Pollution Control
Davy Crockett Tower
500 James Robertson Pkwy, 7th Floor
Nashville, TN 37243

Label #6 - Return Receipt Barcode (Sender's Record)



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9590 9266 9904 2219 4246 06

1. Article Addressed to:
CT Corporation System
300 Montvue Road
Knoxville, TN 37919-5546

2. Certified Mail (Form 3800) Article Number

9414 7266 9904 2219 4246 03

PS Form 3811, Facsimile, July 2015

U.S. Postal Service®
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USPS® ARTICLE NUMBER

9414 7266 9904 2219 4246 03

Certified Mail Fee \$
Return Receipt (Hardcopy) \$4.35
Return Receipt (Electronic) \$3.55
Certified Mail Restricted Delivery \$0.00
Postage \$0.00
Total Postage and Fees \$0.63

Postmark
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CT Corporation System
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Knoxville, TN 37919-5546

Reference Information

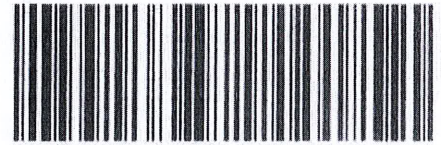
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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

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9414 7266 9904 2219 4246 03

RETURN RECEIPT REQUESTED

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type:

Certified Mail

Reference Information

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