

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

MRE JASPER, LLC.

RESPONDENT

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**DIVISION OF AIR POLLUTION
CONTROL**

CASE NO. APC19-0012

**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.

MRE Jasper, LLC (“Respondent”) is a foreign limited liability company established in Delaware and authorized to do business in the State of Tennessee. Respondent’s facility address is 1570 Industrial Boulevard, Jasper, Tennessee 37347-5235. Respondent’s registered agent for service of process is Timothy M. Gibbons at 605 Chestnut Street, Suite 1700, Chattanooga, Tennessee 37450-0019.

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, 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 April 13, 2015, the Technical Secretary issued Respondent construction permit number 969891P (“Permit 969891P”) for a pellet mill operation (Emission Source Reference No. 58-0135-01). Permit 969891P was amended on February 13, 2018.

Condition 15 of Permit 969891P states, in pertinent part:

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 standard are met.

IX.

On December 13, 2018, the Division received a new construction permit application for a Wet Milling and Drying Line (58-0135-02). The new construction permit application indicated that the Pellet Mill operation (58-0135-01) was currently in operation. The Division contacted Respondent and requested more information regarding the Pellet Mill operation.

X.

On or about December 26, 2018, Respondent submitted an operating permit application. In that application Respondent stated that the Pellet Mill operation was started up on September 24, 2018. The Division elected to allow the information provided in the operating application to serve as notification of start-up.

XI.

By failing to submit the certification of start-up as required by Condition 15, Respondent has been operated without a permit since September 24, 2018.

XII.

The Division issued a Notice of Violation to Respondent on January 25, 2019, for the violation listed above.

VIOLATIONS

XIII.

By failing to comply with the conditions of a construction permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d), which states:

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; this Division 1200-03; any applicable measures of the control strategy; and the Tennessee Air Quality Act.

XIV.

By operating an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first applying for and receiving the necessary operating permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 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.

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 **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** for the violation of Division Rules, as discussed herein.
2. Respondent shall pay the assessed CIVIL PENALTY in full as follows: 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, **APC19-0012**, 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.
3. Respondent shall adhere to all conditions stipulated in the expired Permit 969891P, except Conditions 5a, 5b, 14, 15, and 16 discussed herein. Provided that Respondent adheres to these conditions, compliance with the terms of the expired permit through this Order shall serve

as an alternative to a temporary operating permit until such time as Respondent receives an operating permit.

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).

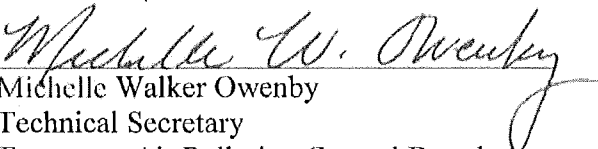
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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, APC19-0012, 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 6th day of May, 2019.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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