

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
NISSAN NORTH AMERICA, INC.,)	
)	
)	
RESPONDENT.)	CASE NO. APC24-0063

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

II.

Nissan North America, Inc. ("Respondent") is a foreign corporation formed in California and authorized to do business in Tennessee. The Respondent's facility address is 520 Nissan Powertrain Drive in Decherd, Tennessee. The Respondent's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

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 March 28, 2023, the Technical Secretary issued Major Source operating permit (“Title V”) permit number 579451, (facility 26-0091), to the Respondent for a powertrain manufacturing operation.

VIII.

Condition E9-11. of Title V permit number 579451 states, in pertinent part:

The permittee shall demonstrate compliance with the HCl and HF hourly emission limitations by maintaining a log of all materials used by this source which contribute to HCl and HF emissions and calculating daily average emissions. The specific times that cleaning wall flux is used shall be recorded and the HF emissions for each cleaning event shall be calculated.

IX.

Condition E9-13. of Title V permit number 579451 states, in pertinent part:

Cleaning wall flux usage shall not occur more than twice in a 24-hour period and no less than nine hours shall separate each usage event.

Compliance Method: Compliance with this condition shall be demonstrated by the recordkeeping required by **Condition E9-11**.

X.

On February 23, 2024, the Division received via e-mail the Respondent's Title V semiannual report ("Report") dated February 24, 2024, for the reporting period of July 1, through December 31, 2023. On March 27, 2024, the Division received via e-mail the Respondent's amended Report dated March 28, 2024, for the reporting period of July 1, through December 31, 2023. Upon review of the HCL/HF Emissions Logs in the Reports, the Division discovered the following violations:

- There were 23 times on 12 operating days that the time was not recorded and four times on two operating days that the usage amount was not recorded ("NR") during July through December 2023.
- There were 11 instances of flux usage less than nine hours apart across ten 24-hour periods during July through December 2023.

The following tables identify the violations indicated above:

Wall Flux	Condition E9-11.		
Date:	Flux Usage	Amount (lbs)	Time
8/4/2023	Stack Night		NR
	Chip Night		NR
8/13/2023	Stack Night		NR
	Chip Night		NR
8/14/2023	Stack Night		NR
8/19/2023	Stack Night		NR
	Chip Night		NR
8/20/2023	Stack Night		NR
	Chip Night		NR
8/27/2023	Stack Night		NR
	Chip Night		NR
9/2/2023	Stack Night	NR	NR
	Chip Night	NR	NR
9/5/2023	Stack Day	NR	
	Chip Day	NR	
9/6/2023	Stack Day		NR
	Chip Day		NR

9/7/2023	Stack Day		NR
	Chip Day		NR
9/9/2023	Stack Night		NR
	Chip Night		NR
9/10/2023	Stack Night		NR
	Chip Night		NR
12/1/2023	Stack Night		NR
	Chip Night		NR

Wall Flux	Condition E9-13.	
Date:	Flux Usage	Hours of Separation
8/1/2023	Stack Night	8:02
8/6/2023	Stack Day	4:45
8/7/2023	Stack Day	2:10
8/12/2023	Stack Day	5:05
8/21/2023	Chip Day	8:26
8/26/2023	Stack Day	8:50
9/11/2023	Stack Day	5:00
9/18/2023	Stack Day	7:00
9/23/2023	Stack Day	4:55
	Chip Day	6:50
9/24/2023	Chip Day	2:00

XI.

On March 26, 2024, the Division issued a Notice of Violation to the Respondent for the violations identified in Paragraph X.

VIOLATIONS

XII.

By failing to comply with conditions E9-11. and E9-13. of Title V permit number 579451, 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 \$3,000 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 number, APC24-0063, 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.

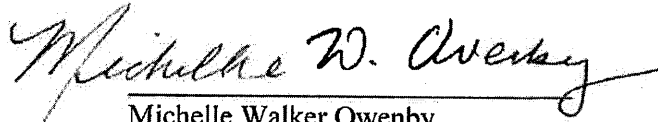
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has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

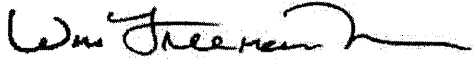
Attorneys should contact the undersigned counsel of record. The case number, APC24-0063, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on June 5, 2024.



Michelle Walker Owenby
Technical Secretary
Air Pollution Control Board

Reviewed by:



William Freeman Miller
BPR #028826
Senior Associate Counsel
Department of Environment & Conservation
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243
(615) 532-0136
William.F.Miller@tn.gov



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
Davy Crockett Tower
500 James Robertson Pkwy, 7th Floor
Nashville, TN 37243

Tory Lee Davis
1300 Jan Way
Kingsport, Tennessee 37660-5373

Certified Article Number

9414 7266 9904 2219 4240 78

SENDER'S RECORD

RE: Vic Davis Construction, Inc.
Facility Id. 82-0311
Case No. APC24-0071

Dear Mr. Davis:

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,

A handwritten signature in cursive script that reads "Kevin McLain".

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

vom

Enclosure