

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
SMYRNA READY MIX)	
CONCRETE, LLC,)	
)	
RESPONDENT.)	CASE NO. APC24-0231

**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.

Smyrna Ready Mix Concrete, LLC ("Respondent"), is a domestic limited liability company authorized to do business in the State of Tennessee. The Respondent's facility address is 1601 6th Street NE, Cleveland in Bradley County, Tennessee. The Respondent's registered agent for service of process is J D Kious, 1000 Hollingshead Cir, Murfreesboro, Tennessee 37129-4036.

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 5, 2022, the Technical Secretary issued operating permit 079635 (“Permit 079635”) (Facility 06-0221), to the Respondent for a concrete batch plant with two silos (Source 01) and an Extec Pitbull Crusher C10 Unit (Source 02). This permit was amended on August 22, 2022.

VIII.

Condition S1-2 of Permit 079635 states:

Production rate of this source shall not exceed 70,000 cubic yards of concrete per calendar year. Should the permittee need to modify the source(s) in a manner that increases the capacity, a construction permit shall be applied for and received in accordance with TAPCR 1200-03-09-.01 prior to making the change.

TAPCR 1200-03-09-.03(8), 1200-03-10-.02(2)(a), and the permittee’s application dated November 22, 2021, from the permittee.

Compliance Method: The permittee shall maintain a log of the actual monthly production in the format in Appendix 8 or in an alternative format which provides the same information. The log shall be retained in accordance with Condition G9

IX.

On September 19, 2024, the Division conducted an inspection at the Respondent's facility. Upon a review of the Respondent's production logs, it was determined that the production rate for calendar year 2023 was 71,920.5 cubic yards, which was an exceedance of 1,920.5 cubic yards. On September 26, 2024, the facility submitted a modification application requesting an annual production limit increase from 70,000 cubic yards to 200,000 cubic yards per year as a corrective action.

X.

On October 23, 2024, the Division issued a Notice of Violation (NOV) to the Respondent for the violations identified in paragraph IX.

VIOLATIONS

XI.

By failing to comply with Condition S1-2 of Permit 079635, 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

XII.

The Respondent is assessed a civil penalty of \$2,250 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 Parkway, 6th Floor
Nashville, Tennessee 37243-1204.

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, APC24-0231, 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 Parkway, 5th Floor
Nashville, Tennessee 37243-1204

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.

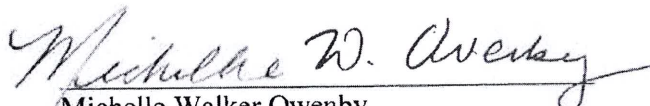
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has 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:

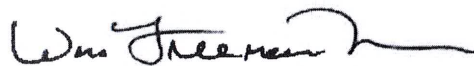
Kevin McLain, Division of Air Pollution Control
Department of Environment and Conservation
Davy Crocket Tower
500 James Robertson Parkway, 7th Floor
Nashville, Tennessee 37243-1204

Attorneys should contact the undersigned counsel of record. The case number, APC24-0231, 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 22, 2025.


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

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