

**STATE OF TENNESSEE  
AIR POLLUTION CONTROL BOARD**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF AIR POLLUTION</b>
	)	<b>CONTROL</b>
	)	
<b>VALLEY RECYCLING, LLC,</b>	)	
	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. APC22-0085</b>

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**SETTLEMENT AGREEMENT AND ORDER**

On November 15, 2022, the Technical Secretary of the Tennessee Air Pollution Control Board (“Board”) issued Technical Secretary’s Order and Assessment of Civil Penalty APC22-0085 (“Order”) to Valley Recycling, LLC (“Respondent”). The Order was served upon the Respondent on March 22, 2024. The Respondent filed a timely appeal of the Order on March 27, 2024. Pursuant to sections 4-5-105 and 68-201-108 of the Tennessee Code Annotated, the Board and the Respondent have reached a settlement. By executing this Settlement Agreement and Order: (1) the Technical Secretary agrees to dismiss the Order and that this Settlement Agreement and Order supersedes it, and (2) the Respondent agrees that it waives its right to a contested case hearing before the Board and withdraws its appeal of the Order as settled. The Technical Secretary alleges as follows:

**PARTIES**

**I.**

Michelle Walker Owenby is the Technical Secretary of the Board and Director of the Division of Air Pollution Control (“Division”), Department of Environment and Conservation (“Department”).

**II.**

The Respondent is a domestic limited liability company authorized to do business in the State of Tennessee. The Respondent’s facility address is 325 Industrial Park Road, Sweetwater, Tennessee 37874. The Respondent’s registered agent for service of process is Cynthia England Horne, 220 Lynnwood Drive, Athens, Tennessee 37303-4141.

## AUTHORITY

### III.

The Technical Secretary may assess a civil penalty of up to \$25,000.00 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 June 26, 2018, the Technical Secretary issued True Minor Operating Permit (“Permit 073911”) to the Respondent for one natural gas-fired aluminum sweat furnace (“sweat furnace #1”), and on July 23, 2020, the Technical Secretary issued True Minor construction permit number 978316 (“Permit 978316”), (facility 62-0123), to the Respondent for an additional natural gas-fired aluminum sweat furnace (“sweat furnace #2”) for an aluminum recycling operation. Henceforth, semiannual reports shall be due March 1 and August 29 of every year.

**VIII.**

Condition S1-5I of Permit 073911 states, in pertinent part:

As required by 40 CFR § 63.1516(b), the permittee must submit semiannual reports according to the requirements in §63.10(e)(3), reports are due no more than 60 days after the end of each 6-month reporting period instead of 30 days after the calendar half as specified in §63.10(e)(3)(v). . . .

**IX.**

Condition F2 of Permit 978316 states, in pertinent part:

The permittee shall comply with the reporting requirements as specified in this permit condition. (1) Excess emissions/summary report. The owner or operator of a major or area source must submit semiannual reports according to the requirements in §63.10(e)(3). Except, the owner or operator must submit the semiannual reports within 60 days after the end of each 6-month period instead of within 30 days after the calendar half as specified in §63.10(e)(3)(v). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period. . . .

**X.**

Condition G11 of Permit 978316 states, in pertinent part:

The permittee shall apply for an operating permit within 30 days of initial start-up of this new or modified emission source. If construction of the source cannot be completed and an operating permit application cannot be filed with the Technical Secretary by the expiration date of this permit, a permit extension request must be submitted in writing at least thirty days prior to the permit expiration date unless a different time frame is approved by the Technical Secretary.

**XI.**

Condition G12 of Permit 978316 states, in pertinent part:

A. This permit shall serve as a temporary operating permit from the date of issuance to the receipt of a standard operating permit, provided that an operating permit application is filed in a timely manner as required by condition G11.

TAPCR 1200-03-09-.02(2)

B. Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of the Tennessee Division of Air Pollution Control Comprehensive Rules and Regulations, and all provisions of the Tennessee Air Quality Act.

TAPCR 1200-03-09-.02(6)

**XII.**

On September 10, 2020, the Division received the startup certification for sweat furnace #2 with an official startup date of August 10, 2020. The due date for submittal of the operating permit application for sweat furnace #2 to the Division by the Respondent was September 10, 2020. The operating permit application for sweat furnace #2 was submitted to the Division on April 28, 2022, which was 596 days late. The late submittal of the operating permit application for sweat furnace #2 demonstrates that the facility operated sweat furnace #2 without a permit.

**XIII.**

On March 1, 2022, the semiannual reports for the July 1 through December 31, 2021, time period were due. The semiannual reports for this period were received by the Division on March 21, 2022, 20 days late.

**XIV.**

On April 19, 2022, the Division issued a Notice of Violation (NOV) to the Respondent for failing to submit an operating permit application for sweat furnace #2, and for the late submittal of semiannual reports for sweat furnace #1 and sweat furnace #2.

**XV.**

On March 29, April 13, May 3 and 10, and June 9, 2022, Division personnel conducted inspections at facility 62-0123.

**XVI.**

Condition F1(2) of Permit 978316 states, in pertinent part:

Notification of compliance status report. Each owner or operator of a new affected source must submit a notification of compliance status report within 90 days after conducting the initial performance test required by §63.1511(b) or within 90 days after the compliance date (startup) established by §63.1501 if no initial performance test is required. . . .

**XVII.**

Condition F10 of Permit 978316 states, in pertinent part:

**Compliance Method:** Compliance with this requirement will be assured through submittal of the notification of compliance status report required by §63.1515 (see Condition F1).

**XVIII.**

Condition F17 of Permit 978316 states:

The permittee must submit the information described in §63.1515(b) (see condition F18(2)) as part of the notification of compliance status report to document conformance with the operational standard in 1506(b)(2) (see Condition F1

40 CFR §63.1512(r)

**Compliance Method:** Compliance with this requirement shall be demonstrated by submittal of the notification of compliance status report as required by 63.1506(b) (see condition F18).

**XIX.**

Condition F18 of Permit 978316 states, in pertinent part:

The permittee must submit a notification of compliance status report within 90 days after startup. . . .

**Compliance Method:** Compliance with this requirement shall be demonstrated by submitting the required notification of compliance status report to the Division within the timeframe specified above.

**XX.**

Condition G5(A) of Permit 978316 states, in pertinent part:

The following recordkeeping requirements shall apply to this facility:

- (1) For monthly recordkeeping, all data, including the results of all calculations, must be entered into the log no later than 30 days from the end of the month for which the data is required.

**XXI.**

Condition F14 of Permit 978316 states:

The permittee must provide and maintain easily visible labels posted at this furnace which identify the applicable emission limits and means of compliance, including:

- (1) The type of affected source or emission unit (e.g., scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace, in-line fluxer).
- (2) The applicable operational standard(s) and control method(s) (work practice or control device). This includes, but is not limited to, the type of charge to be used for a furnace (e.g., clean scrap only, all scrap, etc.), flux materials and addition practices, and the applicable operating parameter ranges and requirements as incorporated in the Operation, Maintenance, and Monitoring (OM&M) plan.

40 CFR §63.1506(b)

**Compliance Method:** Compliance with this requirement shall be demonstrated by performing the monthly inspections required by §63.1510(c) (see condition F15) and maintaining records of the inspections, as required by 40 CFR §63.1517(b)(12) and (13) (see condition F21)

**XXII.**

Condition F15 of Permit 978316 states:

The permittee must inspect the labels for each group 2 furnace at least once per calendar month to confirm that posted labels, as required by the operational standard in §63.1506(b) (see condition F21) are intact and legible.

40 CFR §63.1510(c)

**Compliance Method:** Compliance with this requirement shall be demonstrated through the recordkeeping required by §63.1506(b) (see Condition F14).

**XXIII.**

Condition F21 of Permit 978316 states, in pertinent part:

In addition to the general records required by §63.10(b) and 63.1517(a), (see condition F20), the owner or operator of a new or existing affected source (including an emission unit in a secondary aluminum processing unit) must maintain records of:

(2) Records of monthly inspections for proper unit labeling for each affected source and emission unit subject to labeling requirements.

40 CFR §63.1517(b)(12) and (13)

**Compliance Method:** The permittee shall maintain the above specified records in accordance with 63.10(b).

**XXIV.**

During the referenced inspections, Division personnel discovered that the Respondent submitted the startup certification one day late, failed to submit the compliance status reports, and failed to do proper monthly inspections at the facility.

**XXV.**

On July 7, 2022, the Division issued an NOV to the Respondent for the Division rule violations mentioned in the previous paragraph.

**XXVI.**

On July 19, 2022, the Respondent submitted the notification of compliance status report for the group 2 furnace, with the applicable requirements of Conditions F1(2), F10, F17, and F18 to the Division. The report was submitted 618 days late.

## VIOLATIONS

### **XXVII.**

By failing to comply with Condition S1-5I of Permit 073911, 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 . .

### **XXVIII.**

By failing to comply with Conditions F2, G11, G5(A), F1(2), F10, F14, F15, F17, F18, and F21 of Permit 978316 as discussed herein, the Respondent violated Division Rule 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; Division 0400-30; any applicable measures of the control strategy; and the Tennessee Air Quality Act.

### **XXIX.**

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.



## **SETTLEMENT AGREEMENT AND ORDER**

### **XXX.**

Pursuant to section 68-201-116 of the Tennessee Code Annotated, the Technical Secretary orders and the Respondent agrees to the following:

1. The Respondent is assessed a civil penalty of \$3,600.00 for violation of the Act and Rules, to be paid to the Department in four equal installments of \$900.00 with the first payment due to the following address within 30 days of this settlement's date of execution and each subsequent payment due every 30 days thereafter.

Treasurer, State of Tennessee  
Division of Fiscal Services - Consolidated Fees Section  
Davy Crockett Tower, 6th Floor  
500 James Robertson Pkwy  
Nashville, Tennessee 37243

If any payment is late, the full remaining balance shall be immediately due. The case number, APC22-0085, should be clearly written on all correspondence.

### **DEPARTMENT'S RESERVATION OF RIGHTS**

In agreeing to this Settlement Agreement and Order, the Department does not implicitly or expressly waive any provision of the Act or the regulations 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.

### **RESPONDENT'S RESERVATION OF RIGHTS**

The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Settlement Agreement and Order. This Settlement Agreement and Order shall not be deemed an admission of any fault or waiver of rights by the Respondent. The Respondent reserves its rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

Executed by the Technical Secretary of the Board on October 11, 2024.

*/s/ John Horne*

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**John Horne**  
Owner  
Valley Recycling, LLC



Michelle W Owenby (Oct 11, 2024 16:44 CDT)

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**Michelle Walker Owenby**  
Technical Secretary  
Tennessee Air Pollution Control Board


Reviewed by:



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**Grant LeMaster Ruhl**  
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Executed by the Technical Secretary of the Board on \_\_\_\_\_ 2024.

  
**John Horne**  
Owner  
Valley Recycling, LLC

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**Michelle Walker Owenby**  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

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