



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243**

January 27, 2022

John Haack
245 Foundry Lane
Camden, Tennessee 38320-1884

Certified Article Number

9414 7266 9904 2170 1008 13

SENDER'S RECORD

RE: MagPro, LLC
Facility Id. 03-0055
Case No. APC21-0061

Dear Mr. Haack:

Enclosed, please find an Order and Assessment of Civil Penalty issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Tennessee Department of Environment and Conservation (TDEC), in the above-referenced matter. 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 Grant Ruhl at (615) 313-5682 or via e-mail at Grant.Ruhl@tn.gov. For all other questions, please contact the TDEC Division of Air Pollution Control at (615) 532-0554 or via e-mail at air.pollution.control@tn.gov.

Sincerely,

A handwritten signature in blue ink, reading "Kevin McLain", is positioned above the typed name.

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

vom

Enclosure

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	DIVISION OF AIR POLLUTION
	)	CONTROL
	)	
MAGPRO, LLC,	)	
	)	
	)	
RESPONDENT.	)	CASE NO. APC21-0061

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.

MagPro, LLC ("Respondent") is a domestic limited liability company authorized to do business in the State of Tennessee. Respondent's facility address is 245 Foundry Lane, Camden, Tennessee 38320-1884. Respondent's registered agent for service of process is John Haack at the same address.

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.

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). Respondent operates an air contaminant source.

FACTS

VII.

On May 4, 2011, the Technical Secretary issued operating permit number 062800P (“Permit 062800P”), (facility 03-0055), to Respondent for a secondary magnesium smelting operation. On August 2, 2011, the Technical Secretary amended Permit 062800P.

VIII.

Condition 9 of Permit 062800P states:

Hydrogen chloride (HCl) gas emitted from this source shall not exceed 1.5 pounds per hour and 6.57 tons per year. This emission limitation is established pursuant to Rule 1200-03-07-.07(2) of the Tennessee Air Pollution Control Regulations and emission factor of 0.4 pound of HCl per tons of input material. This emission factor is based on the Secondary Aluminum MACT allowable, estimating 85% removal efficiency.

IX.

Condition 11 of Permit 062800P states:

Visible emissions from the scrubber exhaust stack shall not exhibit greater than ten percent (10%) opacity, except for one (1) six-minute period in any one (1) hour period, and for no more than four (4) six-minute periods in any twenty-four (24) hour period. Visible emissions from this source shall be determined by EPA Method 9, as published in the current 40 CFR 60, Appendix A (six-minute average). TAPCR 1200-03-05-.03(6) and TAPCR 1200-03-05-.01(1). Based on a letter of

conditional approval of an alternative monitoring plan from EPA Region IV to TN APC dated September 14, 2009 and the mutual agreement letter from the permittee dated November 3, 2009.

X.

On or about March 26, 2021, Division personnel conducted a complaint response investigation at Respondent's facility and conducted a Method 9 Visible Emission Evaluation (VEE) on the wet scrubber stack. Based on this VEE, the second highest six-minute average was 17.50% which is an exceedance of the 10% permitted opacity limitation as required by condition 11 of Permit 062800P.

XI.

On May 10, 2021, the Division issued a Notice of Violation (NOV) to Respondent for failing to comply with condition 11 of Permit 062800P. The NOV required Respondent to submit an APC 115 Proposed Schedule of Corrective Action within 14 days ensuring the wet scrubber is operating properly and that opacity limits are kept at or below the 10% opacity limitation. On May 25, 2021, the Division received the APC 115 Proposed Schedule of Corrective Action.

XII.

On June 29 and 30, 2021, Respondent conducted performance testing of the secondary magnesium smelting operation. This testing was conducted to comply with Division's March 16, 2020, request for emissions testing of particulate matter (PM) and HCl.

XIII.

On or about July 29, 2021, the Division received Respondent's results from the performance testing of the secondary magnesium smelting operation for PM and HCl. Based on the Division's review of these results, the following violation was discovered:

- HCl emissions from both furnaces was 2.34 pounds per hour.

XIV.

On August 18, 2021, the Division issued an NOV to Respondent for failing to comply with condition 9 of Permit 062800P. The NOV required Respondent to submit an APC 115 Proposed Schedule of Corrective Action ("APC 115") within 20 days of receipt of the NOV. On September

7, 2021, the Division received via e-mail Respondent's APC 115 which referenced an August 26, 2021 letter to the Division. In the August 26, 2021 letter Respondent requested a production cap for metal charged to the rotary furnace of 13,159 tons per year derived based on an HCl emission factor of 1.37 pounds per ton. This will restrict HCl emissions to 9.0 tons per year or less for this emission source.

VIOLATIONS

XV.

By failing to comply with conditions 9 and 11 of Permit 062800P, 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

XVI.

Respondent is assessed a civil penalty of \$20,000.00 for violation of the Act and Rules, to be paid to the Department at the following address:

Division of Fiscal Services - Consolidated Fees Section
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the 31st day after receipt of this Order and Assessment of Civil Penalty. The case number, APC21-0061 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(s). 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(s).

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 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
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -325; 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 ALJ 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 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.

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
William R. Snodgrass Tennessee Tower, 15th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC21-0061, 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 27th day of January, 2022.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Grant LeMaster Ruhl
BPR # 036182
Assistant Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
615-313-5682
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