

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
COMMISSIONER

DIVISION OF AIR POLLUTION CONTROL

CASE NO. APC21-0061

PETITION FOR APPEAL AND STAY OF ORDER AND ASSESSMENT

Magpro, LLC (“Magpro”), by and through counsel, submits this Petition for Appeal and Stay of the Order and Assessment dated January 27, 2022 and received by Magpro on February 4, 2022 (the “Order and Assessment”). This Petition is submitted pursuant to the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-301 *et seq.*, the Tennessee Air Quality Act, Tenn. Code Ann. § 68-201-101 *et seq.*, including in particular Tenn. Code Ann. §§ 68-201-108 and 68-201-116, the Tennessee Air Pollution Control Regulations, Tenn. Comp. R. & Regs. 1200-03-01 *et seq.*, Tenn. Comp. R. & Regs. 0400-30-01 *et seq.*, and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.*, each as applicable. Magpro hereby requests a hearing on this matter before the Tennessee Air Pollution Control Board.

Magpro appeals and seeks review of the civil penalty in the Order and Assessment on the grounds that, in light of all relevant facts and circumstances, including in particular the factors that must be considered under Tenn. Code Ann. § 68-201-106 when exercising enforcement powers:

(i) some or all of the alleged violations cited in the Order and Assessment are not violations, (ii) the civil penalty assessed is excessive, arbitrary and capricious, and (iii) the factors that may be

considered when assessing a civil penalty do not support the imposition of the civil penalty assessed by the Order and Assessment.

In addition, Magpro appeals and seeks review of the facts and enumerated violations of conditions 9 and 11 of Permit 062800P alleged in the Order and Assessment as set forth below:

Violation of condition 9: Magpro disputes the assessment of a civil penalty for violation of the hydrogen chloride gas (HCl) emission limitation under condition 9 of the Permit during performance testing conducted on June 29 and 30, 2021. TDEC requested that Magpro change its plant operations for this testing to achieve maximum emissions of HCl and particulates. Magpro would not operate in that manner under ordinary conditions, and the alleged violation would not have occurred but for TDEC's request that Magpro change its normal operations. Magpro should not be penalized for the results of performance testing conducted under these circumstances.

Violation of condition 11: Magpro disputes the allegation that it violated the 10% permitted opacity limitation in condition 11 of the Permit. This alleged violation was based on a Visible Emissions Evaluation ("VEE") on March 26, 2021 that was incorrect. The majority of observed opacity from Magpro's scrubber exhaust stack was water vapor. Water from the wet scrubber condenses on very fine particulate matter prior to exiting the stack. When the stack burner is off, there is an attached water droplet plume at the stack exit. The EPA's Visible Emissions Field Manual for Method 9, 40 C.F.R. 60, Appendix A-4, states that where condensed water vapor is present within the plume as it emerges from the emission outlet, then opacity observations shall be made beyond the point in the plume at which condensed vapor is no longer visible. Magpro believes that the VEEs were made at the stack exit, when the stack burner was off and there was an attached water droplet plume. This would have resulted in an inaccurate opacity observation and would not be a violation of condition 11 of the Permit.

Without admitting any allegation in the Order and Assessment and without assuming any burden of proof or persuasion, Magpro asserts the following additional defenses, to the extent applicable:

1. The Order and Assessment is in excess of statutory authority and/or made under an unlawful procedure;
2. The Order and Assessment is arbitrary and capricious, including as stated above regarding the civil penalty;
3. The Order and Assessment is an abuse of discretion; and
4. The Order and Assessment is substantially and materially unsupported by the evidence.

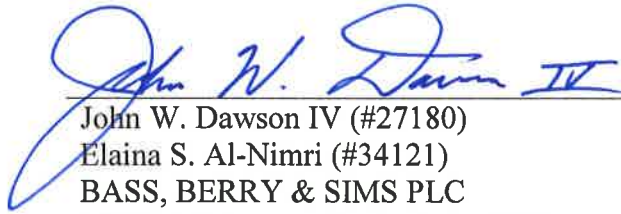
Magpro reserves the right to amend this Petition to the extent warranted by discovery of additional facts or information and to raise additional grounds and reasons for its objection to the Order and Assessment by amendment of this Petition or otherwise.

RELIEF REQUESTED

Magpro requests the following relief:

1. A stay of the pending deadlines in the Order and Assessment until the final resolution of this appeal;
2. Dismissal of the Order and Assessment and an award to Magpro of its attorney's fees and incurred expenses;
3. A contested hearing in accordance with Tenn. Code Ann. §§ 4-5-322(h) and 68-201-108, and Tenn. Comp. R. & Regs. 1360-04-01 *et seq*; and/or
4. All further relief to which Magpro is justly entitled.

DATED: March 4, 2022



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Attorneys for Respondent Magpro, LLC

CERTIFICATE OF SERVICE

I hereby certify that, on March 4, 2022, this document was served by hand delivery to:

Commissioner of the Tennessee Department of Environment and Conservation and
Technical Secretary, Tennessee Air Pollution Control Board

c/o Jenny L. Howard, General Counsel

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