

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
GUY HOMMEL JR. D/B/A)	
HOMMEL CONCRETE COMPANY,)	
)	
RESPONDENT.)	CASE NO. APC22-0192

**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.

Guy Hommel Jr. d/b/a Hommel Concrete Company ("Respondent") owns and operates a portable drum mix asphalt plant and a concrete batch plant located at 1164 Raines Road, Newport, Tennessee. Service of process may be made upon Guy Hommel Jr., P. O. Box 762, Newport, Tennessee 37822.

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 17, 2016, the Technical Secretary issued construction permit number 971176P (“Permit 971176P”), identified as emission source reference number 15-0071-03, to the Respondent for a portable drum mix asphalt plant. The Technical Secretary amended Permit 971176P on June 8, 2018, and June 20, 2019.

VIII.

Conditions G5A and G5B of Permit 971176P state:

A. 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 thirty (30) days from the end of the month for which the data is required.
- 2) For weekly recordkeeping, all data, including the results of all calculations, must be entered into the log no later than seven (7) days from the end of the week for which the data is required.
- 3) For daily recordkeeping, all data, including the results of all calculations, must be entered into the log no later than seven (7) days from the end of the day for which the data is required.

- 4) All maintenance activities required by **Condition G4** (including any ongoing maintenance that has not been completed) shall be entered in the maintenance log no later than thirty (30) days following the start of the maintenance.
- B. Logs and records specified in this permit shall be kept readily available/accessible and made available upon request by the Technical Secretary or a Division representative and shall be retained for a period of not less than two (2) years unless otherwise noted. Logs and records contained in this permit are based on a recommended format. Any logs that have an alternative format may be utilized provided such logs contain the same or equivalent information that is required. Computer-generated logs are also acceptable.

IX.

Condition S1-2B of Permit 971176P states:

The production rate for this source shall not exceed 150 tons per hour on a monthly average basis and 75,000 tons during all intervals of twelve (12) consecutive months.

TAPCR 1200-03-09-.01(1)(d) and the application dated December 14, 2015

Compliance Method: A record of the type of fuel used, operating hours, and asphalt production in the following format, or an alternative format that readily shows compliance with this condition and **Condition S1-2A**, shall be maintained at the source location and kept available for inspection by the Technical Secretary or a Division representative. This record must be retained for a period of not less than two (2) years.

X.

On March 20, 2017, the Technical Secretary issued operating permit number 072314 (“Permit 072314”), identified as emission source reference number 15-0071-02, to the Respondent for a concrete batch plant.

XI.

Condition 2 of Permit 072314 states, in pertinent part:

Production rate for this source shall not exceed 20,000 cubic yards of concrete per calendar year.

XII.

On June 9, 2022, the Division conducted a site visit of the Respondent's drum mix asphalt plant. During this visit, the Respondent indicated that the drum mix asphalt plant has operated since the initial startup date of April 1, 2020.

XIII.

Based on the above site visit, the Division requested in a letter dated June 30, 2022, that the Respondent submit the records for the daily and monthly asphalt production for the period of April 1, 2020, through June 30, 2022.

XIV.

On or about October 3, 2022, the Division received the Respondent's asphalt and concrete production records. During the review of these records, the Division discovered the following violations:

- The Respondent failed to maintain a record of the type of fuel used, operating hours, monthly average asphalt production rate, and asphalt production rate during all intervals of 12-consecutive months for October 1, 2020, through September 30, 2022.
- The Respondent exceeded the concrete production rate of 20,000 cubic yards of concrete per calendar year as indicated in the table below:

Timeframe	Production (cubic yards)
January 1, 2021, through December 31, 2021	23,857
January 1, 2022, through October 3, 2022	30,771

XV.

On October 24, 2022, the Division issued a Notice of Violation to the Respondent for the violations identified in paragraph XIV.

VIOLATIONS

XVI.

By failing to comply with conditions G5.A.1), G5.A.3), G5.B., and S1-2B of Permit 971176P, the Respondent violated Division Rule 1200-03-09-.01(1)(d), which states, in pertinent part:

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[.]

XVII.

By failing to comply with condition 2 of Permit 072314, 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

XVIII.

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:

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 thirty-first day after receipt of this Order and Assessment of Civil Penalty. The case number, APC22-0192, 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
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 Judge 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 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

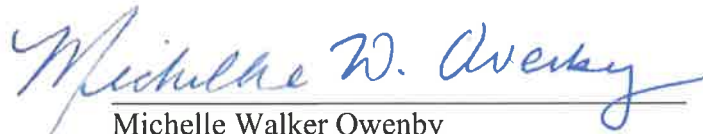
hearing, and the hourly fees incurred due to the presence of the Administrative Judge and a court reporter.

Technical questions and other correspondence involving compliance issues should be sent to:

Kevin McLain, Division of Air Pollution Control
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, APC22-0192, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on March 15, 2023.



Michelle Walker Owenby
Technical Secretary
Air Pollution Control Board

Reviewed by:



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