

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

HAWKINS ASPHALT PAVING, LLC

RESPONDENT

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DIVISION OF AIR POLLUTION

CASE NO. APC19-0175

**TECHNICAL SECRETARY’S ORDER AND ASSESSMENT OF
CIVIL PENALTY**

Comes now, Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, and states that:

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.

Hawkins Asphalt Paving, LLC (“Respondent”) is a domestic limited liability company authorized to do business in the State of Tennessee. Respondent’s facility address is 849 Bradyville Road, Woodbury, Tennessee. Respondent’s registered agent for service of process is Chris Hawkins, P.O. Box 292, Wartrace, Tennessee 37183.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated (“Tenn. Code Ann.”) § 68-201-116, 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 (“Act”) or any rules or regulations promulgated thereunder (“Division Rules”) against any person who violates said Act or Division Rules, and/or the Technical Secretary may issue an order for correction to the responsible person when provisions of the Act

or Division Rules are violated. In addition, such person may also be liable for any damages to the State resulting therefrom.

IV.

Respondent is a “person” within the meaning of Tenn. Code Ann. § 68-201-102 and has violated the Division Rules as hereinafter stated.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof, as stated in Tenn. Code Ann. § 68-201-102.

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, as stated in Tenn. Code Ann. § 68-201-102.

VII.

Respondent operates an “air contaminant source” within the meaning of Tenn. Code Ann. § 68-201-102.

FACTS

VIII.

On August 3, 2018, the Technical Secretary issued construction permit number 974075 (“Permit 974075”), identified as emission source reference number 08-0065-01, to Respondent for a batch mix asphalt plant.

IX.

Condition 12 of Permit 974075 states:

This permit shall serve as a temporary conditional major operating permit from the date of issuance to the receipt of a standard conditional major operating permit, provided the conditional major operating permit is applied for in a timely manner as required by Condition 13 of this permit.

X.

Condition 13 of Permit 974075 states, in pertinent part:

The permittee shall apply for a conditional major operating permit no later than thirty (30) days after the results of the performance test required by Condition 29 is submitted to the Division.

XI.

Condition 29 of Permit 974075 states, in pertinent part:

Within 60 days after achieving the maximum production rate at which the source will be operated, but no later than 180 days after initial start-up, the owner or operator shall furnish the Technical Secretary a written report of the results of the performance test(s) which will demonstrate compliance with Conditions 22 and 28 of this permit.

XII.

Condition 30 of Permit 974075 states, in pertinent part:

The completed [start-up] certification shall be submitted in hard copy to the Permit Program at the address listed below or electronic pdf copy via e-mail, no later than thirty (30) days after the air contaminant source is started-up[.]

XIII.

On or about November 21, 2018, the Division received Respondent's performance test results dated November 20, 2018.

XIV.

On September 5, 2019, the Division received Respondent's start-up certification dated September 5, 2019. The start-up certification indicated that the date of initial start-up was September 15, 2018. On the same day, the Division received Respondent's Conditional Major operating permit application dated September 5, 2019.

XV.

By failing to submit the Conditional Major operating permit application in the time period required by conditions 13 of Permit 974075, Respondent rendered condition 12 ineffective. Without the temporary operating permit provided by condition 12, Respondent has been operating without a permit since the September 15, 2018 start-up.

XVI.

On October 17, 2019, the Division issued a Notice of Violation to Respondent for late submittal of the start-up certification, late submittal of the Conditional Major operating permit application, and operating without a permit.

VIOLATION

XVII.

By failing to comply with conditions 13 and 30 of Permit 974075, 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[.]

XVIII.

By operating an air contaminant source not specifically exempted by Division Rule 1200-03-09-.04 without first applying for and receiving the necessary Conditional Major operating permit, 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.

RELIEF

XIX.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby order as follows:

1. Respondent is assessed a Civil Penalty in the amount of **\$1,500** for the violation of Division Rules. If Respondent complies with subsection 2, the **\$1,500** Civil Penalty shall be waived. If Respondent fails to comply with subsection 2, Respondent shall pay **\$1,500**, within 31 days of noncompliance, to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC19-0175**, should be clearly written on all correspondence.

2. Respondent shall adhere to all conditions in Permit 974075, except conditions 13 and 30. Provided that Respondent adheres to all conditions except conditions 13 and 30, compliance with the terms of this permit through this Order and Assessment shall serve as an alternative to a temporary operating permit until such time as Respondent receives a Conditional Major operating permit.

DEPARTMENT'S RESERVATION OF RIGHTS

In issuing this Order and Assessment, 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. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (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 (not subject to review).

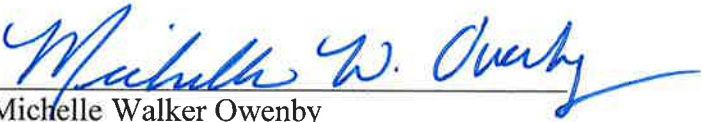
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). 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 (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. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, 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.

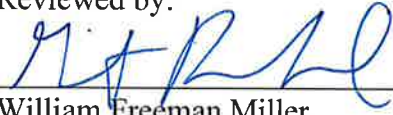
Any petition for review (appeal) must be directed to the Technical Secretary, Tennessee Division of Air Pollution Control, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Attn: Tammy Gambill, Division of Air Pollution Control, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee

37243 or via e-mail to air.pollution.control@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, APC19-0175, 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 8th day of January, 2020.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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