



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Continental Paving, Inc.
1 Continental Drive
Londonderry, NH 03053

Re: 804 Ricker Road, Pembroke, NH
Temporary Permit No. TP-0083

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 16-007

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Continental Paving, Inc., pursuant to RSA 125-C:15. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division (“DES”) is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. Continental Paving, Inc. (“Continental Paving”) is a New Hampshire corporation having a mailing address of 1 Continental Drive, Londonderry, NH 03053.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH CODE ADMIN. RULES Env -A 100 *et seq.*
2. Pursuant to RSA 125-C:15, I-b, the Commissioner of DES “[.] may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter, any rule adopted pursuant to this chapter, or any permit [.]”.
3. RSA 125-C:6 and RSA 125-C:11, I, authorize DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env -A 600.
4. Continental Paving engages in commercial and industrial site development, asphalt paving, and trucking. Continental Paving conducts business at several locations including an operation at 804 Ricker Road in Pembroke, New Hampshire (the “Facility”).

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

5. Continental Paving owns and operates a hot mix asphalt (“HMA”) drum plant at the Facility. The HMA drum plant combines aggregate stone and liquid asphalt cement to produce an asphalt paving mix. The HMA drum plant has a maximum design capacity of 150 million British thermal units (“BTUs”) per hour that combusts gaseous or liquid fuel at the Facility.
6. Env-A 607.01(a) requires the owner or operator of an external combustion device with a design gross heat input of greater than or equal to 10 million BTUs per hour that combusts gaseous or liquid fuel to obtain a temporary permit prior to construction or installation of the device.
7. On June 10, 2011, DES issued Temporary Permit No. TP-0083 (the “Permit”) to Continental Paving for the installation of HMA Drum Plant #695 at the Facility. HMA Drum Plant #695 was identified as emission unit “EU02” in the Permit. The Permit was amended and reissued on December 14, 2012, and again on October 4, 2013. The Permit expired on December 31, 2014.
8. Env-A 607.10 provides that if an applicant submits a timely application for the reissuance of a temporary permit, the failure to have a current permit is not considered a violation unless DES takes final action on the application by denying the requested permit.
9. For the reissuance of a temporary permit, a “timely application” is defined in Env-A 607.02(b) as one that is submitted to DES at least 90 days prior to the expiration date of the temporary permit.
10. On July 17, 2014, DES received an application for renewal of the Permit from Continental Paving. Because Continental Paving submitted a timely application for renewal of the Permit, Continental Paving was granted an application shield until DES takes final action on its application.
11. Env-A 2702.01 states that the owner or operator of an HMA plant shall not cause or allow particulate matter (“PM”) emissions from the HMA plant to exceed 90 milligrams per dry standard cubic meter, or 0.04 grains per dry standard cubic foot (“gr/dscf”).
12. The Permit includes emission limits for various air pollutants, including PM emission limits. Pursuant to Permit Condition V, Table 4, Item 10; Env-A 2702.01; and, 40 CFR 60.92, PM emissions from EU02 may not exceed 0.04 gr/dscf.
13. Continental Paving is required to conduct emissions testing to evaluate compliance with PM standards within 60 days of achieving the maximum production rate, but not longer than 180 days from the start-up of the device, pursuant to Permit Condition VI, Table 5, Item 3; and, 40 CFR 60.8.
14. Continental Paving is required to submit notifications to DES, and to the United States Environmental Protection Agency (“EPA”), of start-up of EU02. Continental Paving is required to submit notification to DES, and EPA, of the actual date of initial startup of EU02, postmarked within 15 days after such date, pursuant to Permit Condition VIII, Table 7, Item 3.
15. On June 4, 2014, DES received notification from Continental Paving that the date of initial start-up of EU02 was May 27, 2014. Continental Paving was required to conduct emissions testing within 180 days from the start-up of the device, calculated by DES to be no later than November 24, 2014.

16. Continental Paving contracted with CK Environmental, Inc. to conduct the required stack emission testing. On October 15, 2014, CK Environmental conducted the stack emission testing of EU02 required under the Permit.
17. On October 21, 2014, DES received the final test report presenting results of the stack emission testing conducted on October 15, 2014, from Engineering Technologies Group, Inc. on behalf of Continental Paving. The results showed that, at the time of the stack test, EU02 emitted PM at a rate of 0.254 gr/dscf, 635% in excess of the permitted emission limit.
18. On October 31, 2014, DES sent a letter to Continental Paving asserting that the PM emissions from EU02 exceeded the emission standards set out in the Permit.
19. On November 12, 2014, DES received correspondence from Engineering Technologies Group on behalf of Continental Paving. In its letter, Engineering Technologies Group identified the likely cause of excess PM emissions from EU02 as failing filter bags. In its letter, Engineering Technologies Group also stated that Continental Paving had ordered 1,100 new filter bags; however, the delivery of the bags would take approximately six weeks, or about the first week of December.
20. Continental Paving operated EU02 on each of the following dates in 2014, after the failed stack emission test conducted on October 15, 2014: 10/17, 10/20, 10/21, 10/22, 10/25, 10/28, 11/3, 11/4, 11/5, 11/10, 11/11, 11/12. Continental Paving remained out of compliance with the Permit until June 3, 2015.
21. On November 12, 2014, Continental Paving shut down EU02.
22. On November 21, 2014, DES received supplemental data for the stack emission testing conducted at the Facility on October 15, 2014, from CK Environmental on behalf of Continental Paving.
23. On December 22, 2014, DES completed its review of the final report of the results of the stack emission testing conducted at the Facility on October 15, 2014. DES agreed that the test report was technically correct, and that EU02 emitted PM at a rate of 0.254 gr/dscf, in excess of the permitted limit.
24. On December 24, 2014, DES received correspondence from Continental Paving describing events leading up to and after the stack test.
25. On April 28, 2015, DES received notice that Continental Paving replaced the filter bags in EU02 at the Facility, and then started-up EU02 on April 20, 2015.
26. On June 3, 2015, CK Environmental conducted the required stack emission testing of EU02.
27. On July 7, 2015, DES received the final test report, from Engineering Technologies Group, presenting results of the stack emission testing conducted at the Facility on June 3, 2015. The results showed that, at the time of the stack test, EU02 emitted PM at a rate of 0.017 gr/dscf, in compliance with the permitted limit.
28. On August 27, 2015, DES sent a letter to Continental Paving accepting the results of the stack test conducted at the Facility on June 3, 2015.

IV. ALLEGATIONS

Continental Paving violated Permit Condition V, Table 4, Item 10; Env-A 2702.01; and, 40 CFR 60.92, by causing or allowing PM emissions from EU02 at the Facility to exceed 0.04 gr/dscf on at least 12 separate occasions in 2014.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES has determined the violation of the Permit to be a major deviation from the requirements with a minor potential for harm for which RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500.
2. Each period of operation of EU02 over the permitted PM emissions limit constitutes a separate offense. For settlement purposes only, DES proposes a fine of \$1,388 for each of nine occasions Continental Paving operated EU02 over the permitted PM emission limit in 2014, prior to shut down. [9 periods x \$1,388 = \$12,492]
3. Continental Paving agrees to pay the proposed fine of \$12,492 upon execution of this Agreement by an authorized representative of Continental Paving.
4. Payment pursuant to preceding paragraph shall be paid by certified or corporate check made payable to "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Compliance Attorney
P.O. Box 95
Concord, NH 03302-0095
5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
6. By executing this Administrative Fine by Consent, Continental Paving waives its right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
7. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Continental Paving, the Director of the Air Resources Division, and the Commissioner of DES.
8. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

Continental Paving, Inc.

~~COPY~~

By: Mark Charbonneau, President
Duly Authorized

~~3/21/14~~

Date

NH Department of Environmental Services

~~COPY~~

Thomas S. Burack, Commissioner

~~3/24/2016~~

Date

- cc: DES Legal Unit
File AFS#3301300042 (Stationary Source)

- ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Pembroke Select Board and Town Administrator
Compliance Bureau, Air Resource Division - DES
EPA Region 1