

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

LEON LOWE AND SONS, INC.

AI # 192629

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT

LA. R.S. 30:2001, ET SEQ.

* Settlement Tracking No.
* SA-MM-19-0064
*
* Enforcement Tracking No.
* MM-CN-14-01160,
* MM-CN-14-01160A
*
*
*

SETTLEMENT

The following Settlement is hereby agreed to between Leon Lowe and Sons, Inc. (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I

Respondent is a corporation that owns and/or operates an asphalt plant located in Pearl River, St. Tammany Parish, Louisiana (“the Facility”).

II

On January 15, 2015, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enf. No. MM-CN-14-01160 (Exhibit 1).

On April 17, 2015, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enf. No. MM-CN-14-01160A (Exhibit 2).

III

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00), of which Six Hundred Twenty Three and 45/100 Dollars (\$623.45) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), the Consolidated Compliance Order & Notice of Potential Penalty, the Amended Consolidated Compliance Order & Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VI

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may

be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

VIII

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. Tammany Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental

Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

LEON LOWE AND SONS, INC.

BY: [Signature]
(Signature)

Toby J Lowe
(Printed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 30th day of December, 20 19, at Pearl River, Louisiana



[Signature]
NOTARY PUBLIC (ID # 66883)
Angelyn M. Johnson, Notary No. 66883

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

BY: [Signature]
Lourdes Iturralde, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 8th day of April, 20 20, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: [Signature]
Lourdes Iturralde, Assistant Secretary

BOBBY JINDAL
GOVERNOR



PEGGY M. HATCH
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

January 15, 2015

CERTIFIED MAIL (7004 2510 0006 3853 8839)
RETURN RECEIPT REQUESTED

LEON LOWE AND SONS, INC.
c/o Toby J. Lowe
Agent for Service of Process
38266 Hwy Department Road
Pearl River, LA 70452

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. MM-CN-14-01160
AGENCY INTEREST NO. 192629**

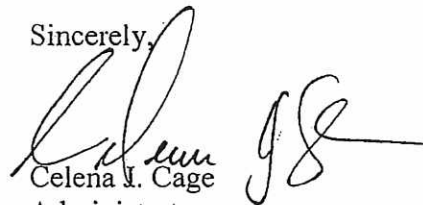
Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **LEON LOWE AND SONS, INC. (RESPONDENT)** for the violations described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to David Seymour at 225-219-3138.

Sincerely,


Celena I. Cage
Administrator
Enforcement Division

CJC/DGS/dgs
Alt ID No. N/A
Attachment



c: Leon Lowe and Sons, Inc.
PO Box 310
Pearl River, LA 70452

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF	*	
	*	
LEON LOWE AND SONS, INC.	*	ENFORCEMENT TRACKING NO.
ST. TAMMANY PARISH	*	
ALT ID NO. N/A	*	MM-CN-14-01160
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	AGENCY INTEREST NO.
ENVIRONMENTAL QUALITY ACT,	*	192629
La. R.S. 30:2001, ET SEQ.	*	

CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **LEON LOWE AND SONS, INC. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates the Asphalt Plant (the Facility) located at 38108 Highway Department Road in Pearl River, St. Tammany Parish, Louisiana (the Site). The facility commenced operation on or about July 1, 2014. On or about June 18, 2014, an inspection of the Facility was conducted to determine compliance with the Act and supporting regulations. During the course of the inspection it was determined that the facility did not have the required air permit. On or about August 18, 2014, a Notice of Deficiency (NOD) Letter was issued to the Facility for not applying for an air permit. There was no response to the NOD within the requested thirty (30) day response period. In correspondence dated November 5, 2014, the Respondent submitted the Facility's air emissions calculations to the Department. In correspondence dated November 17, 2014, the Department notified the Respondent that it had reviewed the Facility's air emissions calculations and that it was the

Department's recommendation that an air permit application be submitted for the Facility. The Respondent has not submitted an air permit application for the Facility. The Facility currently operates without an air permit.

II.

On or about June 18, 2014, August 19, 2014, December 10, 2014, and December 15, 2014, the Department conducted inspections of the Facility and a subsequent file review on December 17, 2014, to determine the degree of compliance with the Act and the Air Quality Regulations. While the Department's review is not yet complete, the following violations were noted:

- A. The Respondent failed to submit an air permit application prior to construction of the Facility. On or about June 18, 2014, a site visit conducted by the Department revealed that the Facility was in the process of constructing an asphalt plant and that no air permit application had been submitted to the Department. The failure to submit an air permit application prior to construction of a facility is a violation of LAC 33:III.501.C.1 and La. R.S. 30:2057(A)(2).
- B. The Respondent failed to obtain an air permit prior to commencing operations at the Facility. In correspondence dated October 2, 2014, the Respondent submitted a request for coverage under the Multi-Sector General Permit. In the request, the Respondent stated that operations at the Facility began on July 1, 2014. The Respondent failed to obtain an air permit for the Facility prior to this date. The failure to obtain an air permit prior to the operation of a facility is a violation of LAC 33:III.501.C.2 and La. R.S. 30:2057(A)(2).

III.

An inspection conducted by the Department on or about August 19, 2014, revealed that the Respondent caused or allowed an unauthorized discharge of wastewater. Specifically, the Asphalt Plant began operating on July 1, 2014, but a permit application was not received until October 17, 2014. In accordance with LPDES Permit LAG110253 the facility became authorized to discharge upon the receipt of a correctly completed NOI; therefore, the asphalt plant was operating without a permit from July 1, 2014, until October 17, 2014. The unauthorized discharge of pollutants to waters of the State is a violation of La. R.S. 30:2075.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is **hereby ordered**:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Air and Water Regulations and LPDES Permit LAG110253.

II.

To submit to the Air Permits Division, within sixty (60) days of receipt of this **COMPLIANCE ORDER**, an air permit application. The Respondent shall submit a copy of the cover letter to the Enforcement Division.

III.

To submit to the Enforcement Division, within thirty (30) days of receipt of this **COMPLIANCE ORDER**, the date on which construction of the Facility commenced.

IV.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: David Seymour
Re: Enforcement Tracking No. MM-CN-14-01160
Agency Interest No. 192629

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This

request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. MM-CN-14-01160
Agency Interest No. 192629

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with

this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact David Seymour at 225-219-3138 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

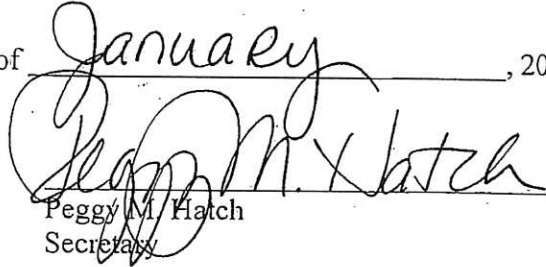
III.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement.

IV.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 15th day of January, 2015.


Peggy M. Hatch
Secretary

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: David Seymour

BOBBY JINDAL
GOVERNOR



PEGGY M. HATCH
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

April 17, 2015

CERTIFIED MAIL (7004 2510 0006 3853 8884)
RETURN RECEIPT REQUESTED

LEON LOWE AND SONS, INC.
c/o Toby J. Lowe
Agent for Service of Process
38266 Hwy Department Road
Pearl River, LA 70452

**RE: AMENDED CONSOLIDATED COMPLIANCE ORDER &
NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. MM-CN-14-01160A
AGENCY INTEREST NO. 192629**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **AMENDED CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **LEON LOWE AND SONS, INC. (RESPONDENT)** for the violations described therein.

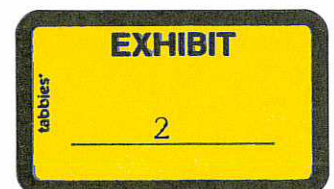
Any questions concerning this action should be directed to David Seymour at 225-219-3138.

Sincerely,

A handwritten signature in black ink, appearing to read "Celena J. Cage".

Celena J. Cage
Administrator
Enforcement Division

CJC/DGS/dgs
Alt ID No. N/A
Attachment



c: Leon Lowe and Sons, Inc.
PO Box 310
Pearl River, LA 70452

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF	*	
	*	
LEON LOWE AND SONS, INC.	*	ENFORCEMENT TRACKING NO.
ST. TAMMANY PARISH	*	
ALT ID NO. N/A	*	MM-CN-14-01160A
	*	
	*	AGENCY INTEREST NO.
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	192629
ENVIRONMENTAL QUALITY ACT,	*	
La. R.S. 30:2001, ET SEQ.	*	

**AMENDED CONSOLIDATED COMPLIANCE ORDER &
NOTICE OF POTENTIAL PENALTY**

The Louisiana Department of Environmental Quality (the Department) hereby amends the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. MM-CN-14-01160** issued to **LEON LOWE AND SONS, INC. (RESPONDENT)** on January 15, 2015, in the above-captioned matter as follows:

I.

The Department hereby removes paragraphs II.A, and II.B of the Finding of Facts portion of the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. MM-CN-14-01160.

II.

The Department hereby adds paragraph IV to the Finding of Facts portion of the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. MM-CN-14-01160 which shall read as follows:

“IV.

The Respondent is required under 40 CFR 60 NSPS Subpart I to conduct a performance test at the Facility in accordance with the standards set forth in 40 CFR 60 NSPS Subpart A. Subpart A requires that this performance test be completed no later than 180 days after initial startup of the Facility. In the Respondent’s response to MM-CN-14-01160, dated January 29, 2015, the Respondent

furnished the Department with additional information regarding operations at the Facility. According to this information, on July 25, 2014, asphalt was produced and sold by the Facility. A performance test should have been conducted at the Facility within 180 days of the July 25, 2014 startup date. The failure to conduct this performance test in a timely manner is a violation of LAC 33:III.3003.A which incorporates 40 CFR 60.8(a) and La. R.S. 30:2057(A)(2).”

III.

The Department hereby amends the Order portion of the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-14-001160 to replace paragraph II. in its entirety to read as follows:

“II.

To conduct, within ninety (90) days of receipt of this **COMPLIANACE ORDER**, a performance test of the facility as required by 40 CFR 60 NSPS Subpart I. The Respondent shall notify the Department sixty (60) days prior to the performance test date of its intent to conduct this performance test.”

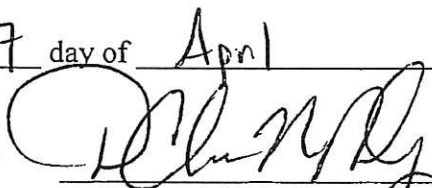
IV.

The Department incorporates all of the remainder of the original **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. MM-CN-14-01160** and **AGENCY INTEREST NO. 192629** as if reiterated herein.

V.

This **AMENDED CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 17 day of April, 2015.



D. Chance McNeely
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
Post Office Box 4312
Baton Rouge, LA 70821-4312
Attention: David Seymour