

CLARE E. CONNORS 7936
Attorney General of Hawaii

21-386C&E CAB

DIANE K. TAIRA 3761
DALE K. SAKATA 5861
Deputy Attorneys General
465 South King Street, Room 200
Honolulu, Hawaii 96813
Telephone: 587-3050

Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,)	DOCKET NO. 18-CA-EO-07
STATE OF HAWAII,)	
)	
Complainant,)	
)	275 TPH Stone Crushing Plant
vs.)	386 TPH Mobile Crushing Plant
)	
POWERSCREEN OF CALIFORNIA,)	
)	
)	
Respondent)	
)	

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

Prior to signing the attached proposed Consent Order, the Department of Health (DOH) and Powerscreen California (Respondent), agree to comply with the public notice and comment provisions of Hawaii Revised Statutes (HRS) Section 342B-55.

The DOH and Respondent agree to sign the proposed Consent Order in the form attached if no comments are submitted during the public comment period or, if after DOH's review of the comments submitted, DOH still concludes that the proposed Consent Order is appropriate.

If DOH does not so conclude, the DOH and Respondent will use their best efforts to agree on changes to be made. If, after a reasonable time, DOH determines that such efforts will not result in agreement, DOH shall request that the Hearings Officer set a date and time for a hearing on the issues raised by the Notice and Finding of Violation and Order in this matter and shall notify the Respondent of such hearing in accordance with HRS Chapter 91.

DATED: Honolulu, Hawaii,

APR - 8 2022

DEPARTMENT OF HEALTH
STATE OF HAWAII

By: *Kathleen Ho*
KATHLEEN HO
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii,

APR - 8 2022

POWERSCREEN OF CALIFORNIA

By: *Diane Tucker*
DIANE TUCKER
Controller

APPROVED AS TO FORM:

Dale K. Sakata
DALE K. SAKATA
Deputy Attorney General

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CONSENT ORDER

The Department of Health (DOH), State of Hawaii, and POWERSCREEN OF CALIFORNIA (Respondent) enter into this Consent Order pursuant to Hawaii Revised Statutes (HRS) Chapter 342B and Hawaii Administrative Rules (HAR) Chapter 11-60.1.

1. STIPULATED FACTS AND FINDINGS. Respondent is a corporation organized and existing under the laws of the State of California. Respondent owns, operates, manages and controls the 275 TPH Stone Crushing Plant and 386 TPH Mobile Crushing Plant listed in Temporary Covered Source Permit (CSP) Nos. 0831-01-CT and 0828-01-CT.
 - 1.1 Docket No. 18-CA-EO-07. On June 29, 2020, DOH issued Respondent a Notice and Finding of Violation and Order (NOVO), under Docket No. 18-CA-EO-07, alleging that Respondent violated HAR §11-60.1-2, HRS §342B-11, and the following conditions of Temporary CSP No. 0831-01-CT:

- 1.1.1 Attachment II, Section E, Special Condition 3: Failed to submit the 2017 annual emission report within sixty (60) days after the end of the calendar year.
- 1.1.2 Attachment II, Section E, Special Condition 4: Failed to submit the semi-annual monitoring report within sixty (60) days after the end of the following semi-annual periods:
 - a) January to June 2017; and
 - b) July to December 2017.
- 1.1.3 Attachment II, Section E, Special Condition 6: Failed to submit the 2017 compliance certification within sixty (60) days after the end of the calendar year.
- 1.1.4 Attachment III: Failed to submit the 2017 annual fee within one hundred twenty (120) days after the end of the calendar year.

DOH assessed and ordered that Respondent pay an initial penalty of \$6,200.00 for the alleged violations of Temporary CSP No. 0831-01-CT found under the NOVO in Docket No. 18-CA-EO-07, along with an order for Respondent to pay the outstanding 2017 annual fee of \$500.00.

1.2 Docket No. 19-CA-EO-04. On June 29, 2020, DOH issued Respondent another NOVO, under Docket No. 19-CA-EO-04, alleging that Respondent violated HAR §11-60.1-2, HRS §342B-11, and the following conditions of Temporary CSP No. 0828-01-CT:

- 1.2.1 Attachment II, Section E, Special Condition 3: Failed to submit the 2018 annual emission report within sixty (60) days after the end of the calendar year.
- 1.2.2 Attachment II, Section E, Special Condition 4: Failed to submit the semi-annual monitoring report within sixty (60) days after the end of the following semi-annual periods:
 - a) January to June 2018; and
 - b) July to December 2018.
- 1.2.3 Attachment II, Section E, Special Condition 6: Failed to submit the 2018 compliance certification within sixty (60) days after the end of the calendar year.

DOH assessed and ordered that Respondent pay an initial penalty of \$3,660.00 for the alleged violations of Temporary CSP No. 0828-01-CT found under the NOVO in Docket No. 19-CA-EO-04.

- 1.3 Additional Violations. Subsequent to the issuance of the NOVO under Docket No. 18-CA-EO-07, pursuant to a records review conducted by DOH on May 21, 2019, DOH alleges that Respondent violated the following conditions of Temporary CSP No. 0831-01-CT:
 - 1.3.1 Attachment II, Section E, Special Condition 3: Failed to submit the 2018 annual emission report within sixty (60) days after the end of the calendar year.
 - 1.3.2 Attachment II, Section E, Special Condition 4: Failed to submit the semi-annual monitoring report within sixty (60) days after the end of the following semi-annual periods:
 - a) January to June 2018; and
 - b) July to December 2018.
 - 1.3.3 Attachment II, Section E, Special Condition 6: Failed to submit the 2018 compliance certification within sixty (60) days after the end of the calendar year.
 - 1.3.4 Attachment III: Failed to submit the 2018 annual fee within one hundred twenty (120) days after the end of the calendar year. The fee was submitted late on September 11, 2019, one hundred thirty-four (134) days after the due date of April 30, 2019.
 - 1.4 On July 21, 2020, DOH and Respondent discussed the NOVOs found under Docket Nos. 18-CA-EO-07 and 19-CA-EO-04 and the subsequent alleged violations of Temporary CSP No. 0831-01-CT. DOH has assessed an additional penalty of \$1,640.00 for the subsequent alleged violations of Temporary CSP No. 0831-01-CT. Respondent agreed to pay a total penalty of \$11,500.00 for the existing and the subsequent alleged violations.
 - 1.5 DOH and Respondent have agreed to settle their disputes without the risks of adverse findings and conclusions, or a final order or judgment after litigation.
2. EFFECT OF SETTLEMENT. This Consent Order and any actions taken to comply with its terms are not admissions of violation, fault, or liability by Respondent. This Consent Order settles and resolves all civil liability of Respondent to DOH for allegedly violating HAR §11-60.1-2, HRS §342B-11, and all alleged violations of Temporary CSP No. 0831-01-CT, set forth in NOVO Docket No. 18-CA-EO-07 and Temporary CSP No. 0828-01-CT set forth in NOVO Docket No. 19-CA-EO-04, and the subsequent alleged violations of Temporary CSP No. 0831-01-CT set forth in Section 1.3.
 3. PENALTY AND FEE. Within thirty (30) days of the Effective Date, Respondent shall pay the following:

- 3.1 The outstanding annual fee of FIVE HUNDRED DOLLARS (\$500) by cashier's check payable to the "Clean Air Special Fund-COV."
 - 3.2 Administrative penalties described in Sections 1.1, 1.2, and 1.4 of ELEVEN THOUSAND FIVE HUNDRED DOLLARS (\$11,500) by cashier's check payable to the "State of Hawaii."
 - 3.3 Respondent shall send both checks to the Manager of the Clean Air Branch at the address set forth in Section 7.
4. STIPULATED PENALTIES. From July 21, 2020, until two (2) years after the Effective Date, Respondent agrees to pay the following stipulated penalties for future violations of notification and reporting requirements found under Temporary CSP Nos. 0828-01-CT, 0831-01-CT, and 0850-01-CT held by Respondent, according to the following table:

Consent Order Violation	Penalty Per Violation	
Failure of notification and reporting requirements as described in Temporary CSP Nos. 0828-01-CT, 0831-01-CT, and 0850-01-CT, Attachment II, Section E, Special Condition Nos. 3, 4, and 6.	Number of days late:	
	1 to 14 days:	\$500
	15 to 30 days:	\$1,000
	31 or more days	\$2,000

- 4.1 Except as otherwise provided herein, the stipulated penalties incurred by Respondent shall be due within sixty (60) days of the violation, by cashier's check made payable to the "State of Hawaii" and sent to the Manager of the Clean Air Branch at the address set forth in Section 7.
- 4.2 Failure to pay any stipulated penalty incurred by Respondent by the deadlines provided herein is cause for default and termination of this Consent Order.
- 4.3 Respondent may dispute its liability for such stipulated penalty pursuant to the dispute resolution provisions of Sections 5 by, within sixty (60) days of the violation, giving written notice, in the form as required by Section 5 via U.S. Mail to DOH and the Hearings Officer at the address set forth in Section 7, advising them of the dispute. Pending resolution of any such dispute, stipulated penalties continue to accrue if the obligation at issue has not been met; provided, however, that Respondent may argue to the Hearings Officer that stipulated penalties should not run after the giving of written notice by Respondent to DOH and to the Hearings Officer and that the DOH can argue to the contrary. Upon completion of the dispute resolution, any stipulated penalties that are ultimately determined to be due, shall be paid within twenty (20) days of the date of the Hearings Officer's written decision or Respondent's acknowledgment that the stipulated penalties are owing.

5. RETENTION OF JURISDICTION AND DISPUTE RESOLUTION. The Hearings Officer shall retain jurisdiction of this matter for the purpose of adjudicating and resolving any and all of Respondent's disputes arising out of a stipulated penalty assessed under Section 4.

5.1 The dispute resolution procedure shall be invoked by giving written notice to DOH and to the Hearings Officer advising them of a dispute. The written notice shall describe the nature of the dispute and shall state Respondent's position with regard to such dispute.

5.2 Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between Respondent and DOH. Such period of informal negotiations shall not extend beyond ninety (90) calendar days of the receipt of the written notice by DOH.

5.3 In the event that Respondent and DOH are unable to reach agreement during the informal negotiations, DOH shall provide Respondent with a written summary of its position regarding the dispute.

5.3.1 The position of DOH shall be considered binding unless, within forty-five (45) calendar days of Respondent's receipt of DOH's written summary, Respondent files with the Hearings Officer a petition which describes the nature of the dispute.

5.3.2 Respondent shall serve a filed copy of the petition on DOH within five (5) calendar days of its filing date.

5.3.3 DOH shall file with the Hearings Officer a response to the petition within forty-five (45) calendar days of DOH's receipt of the filed copy of the petition.

5.3.4 In resolving the dispute between Respondent and DOH, the position of DOH shall be upheld if supported by substantial evidence in the administrative record.

6. [Intentionally Omitted]

7. NOTIFICATION. Notice or payment required under this Consent Order shall be directed to the individual specified below at the address given, unless a party gives notice in writing to the other party that another individual has been designated to receive such communications:

Ms. Marianne Rossio, P.E.
Manager, Clean Air Branch
Hawaii State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801
Telephone: (808) 586-4200
Fax: (808) 586-4359

Ms. Diane Tucker
Controller
Powerscreen of California
1205 Business Park Drive
Dixon, California 95620
Telephone: (707) 253-1874

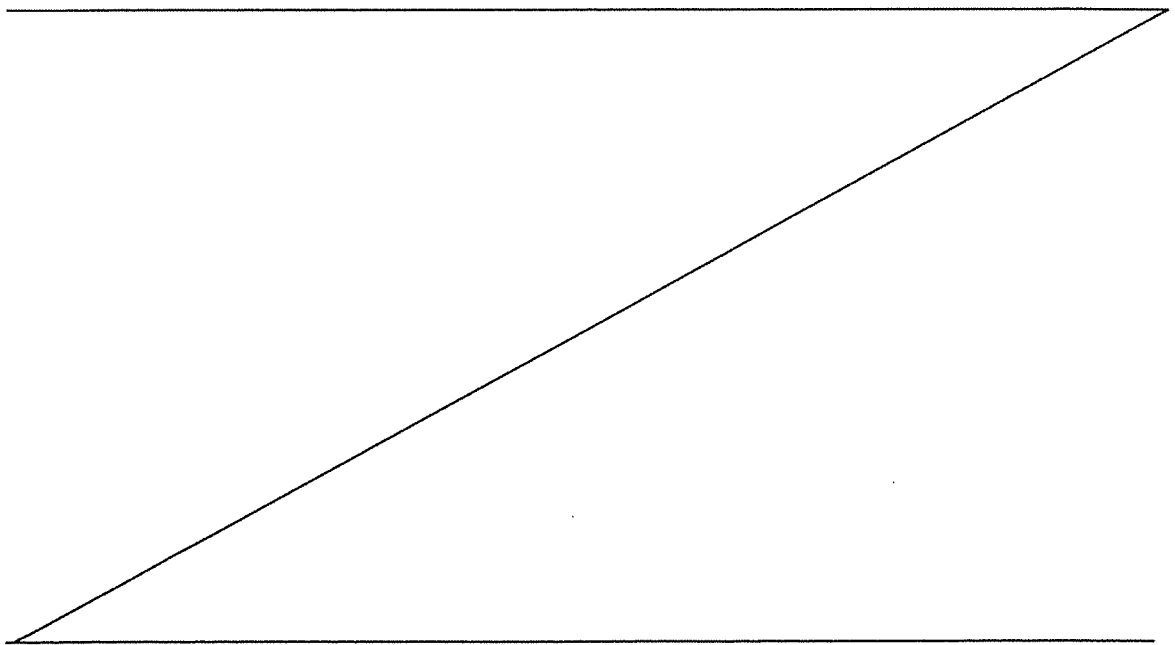
As required by Section 5, the following individual shall also be notified:

Hearings Officer
Department of Health
1250 Punchbowl Street, Third floor
Honolulu, Hawaii 96813
Telephone: (808) 586-4424

8. ACTIONS AGAINST OTHER PARTIES. This Consent Order does not limit or affect the rights of the Respondent or DOH against any third parties.
9. AUTHORITY OF SIGNATORIES. Each undersigned representative of a party to this Consent Order certifies that he or she has full authority to enter into the terms of this Consent Order and legally to bind the party which he or she represents.
10. BINDING EFFECT. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their officers, agents, trustees, servants, employees, successors, and assignees, until terminated pursuant to Section 16 below. Respondent shall give notice of this Consent Order to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Consent Order and shall submit a copy of each such notice to DOH until the Consent Order is terminated pursuant to Section 16 below.
11. CONTINUING APPLICATION OF LAW. This Consent Order is not intended to nor shall it be construed as a permit. Compliance with this Consent Order shall not relieve Respondent of its obligations to comply with the Hawaii Air Pollution Control Act or any other applicable State, Federal, or local statutes, rules, ordinances, orders, or permits.
 - 11.1 Except as set forth in this Consent Order, DOH retains all rights to take, direct, or order any and all actions necessary to protect public health and the environment, including the right to bring enforcement actions under applicable statutes or regulations. In relation to any action arising under or in connection with this Consent Order, unless required on an emergency basis, DOH will first undertake good faith efforts to address such matter through a modification of this Consent Order.

11.2 Except as specifically provided for in this Consent Order, DOH reserves all of its statutory and regulatory powers, authorities, rights, defenses, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any requirements of this Consent Order, including without limitation the assessment of penalties under HRS §§342B-42, -47, and -48 and injunctive relief under HRS §342B-44.

- 12. ENTIRE AGREEMENT. This Consent Order sets forth the entire agreement between the parties with respect to this matter.
- 13. EFFECTIVE DATE. This Consent Order shall become effective as soon as it has been signed by both parties (Effective Date).
- 14. MODIFICATIONS. This Consent Order shall not be modified except in writing, signed by both parties.
- 15. NO TAX BENEFITS. Respondent shall not deduct any of the penalty amount paid pursuant to this Consent Order from its federal or state taxable income, nor shall Respondents claim any tax credits for said penalty amount.
- 16. TERMINATION. Within thirty (30) days after DOH determines that Sections 3 and 4 are satisfied, DOH shall issue a letter to Respondent certifying satisfactory compliance which shall terminate this Consent Order.
- 17. EFFECT. This Consent Order constitutes the final order in this case, replacing the NOVOS under Docket No. 18-CA-EO-07, dated June 29, 2020, and Docket No. 19-CA-EO-04, dated June 29, 2020.
- 18. COSTS. Each party shall bear its own costs and attorney's fees.



DATED: Honolulu, Hawaii,

DEPARTMENT OF HEALTH
STATE OF HAWAII

By: _____

KATHLEEN HO
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii,

POWERSCREEN OF CALIFORNIA

By: *Diane Tucker* _____

DIANE TUCKER
Controller

APPROVED AS TO FORM:

Dale K. Sakata

DALE K. SAKATA
Deputy Attorney General