



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to *7 Del. C.* § 6005

Order No. 2021-A-0011

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

GT USA Wilmington, LLC
Attn: Michael Hall, Chief Operating Officer
Port of Wilmington
1 Hausel Road
Wilmington, DE 19801

Registered Agent:

Corporate Creations Network Inc.
Tatnall Building
3411 Silverside Road, Suite 104
Wilmington, DE 19810

This Assessment and Order serves to notify GT USA Wilmington, LLC (“Respondent”) that the Secretary of the Department of Natural Resources and Environmental Control (“Department” or “DNREC”) has found Respondent in violation of *7 Del. C.* Chapter 60, state air regulations, and its permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary’s Order pursuant to *7 Del. C.* §6005(b)(3).

BACKGROUND

The Port of Wilmington (“Port”) is a facility located at 1 Hausel Road in Wilmington, Delaware (“Facility”). GT USA Wilmington, LLC (“Respondent”) is the operator of the Facility. Respondent’s material handling operations, which include the operation of five cranes, makes Respondent a major source for nitrogen oxides (“NO_x”).

The Facility is undergoing a project to upgrade the electricity infrastructure due to unreliability of the original infrastructure.

Non-residential, stationary generators are subject to the requirements of 7 DE Admin. Code 1144 - Control of Stationary Generator Emissions (“Regulation 1144”), including but not limited to, initial notification requirements. Depending on size and use, stationary generators must also meet certain emission standards set forth in Regulation 1144, and may require acquisition of an air quality permit pursuant to 7 *Del. C.* Chapter 60 and 7 DE Admin. Code 1102 – Permits (“Regulation 1102”) prior to construction or use.

On August 14, 2020, a consultant working for Respondent contacted the Department. The consultant explained that there were several diesel-fired generators, approximately 400 kW in size, currently being operated at the Facility. Respondent had not applied for a permit for the generators. Further, Respondent had not submitted initial notifications to the Department regarding use of the generators as required by DNREC Regulations. (Section 1.4 of Regulation 1144).

On August 18, 2020, Respondent claimed that the generators were being used for non-emergency purposes to power refrigerated warehouses. Respondent had been renting the generators. The generators were periodically replaced with different generators so that no generator was in the exact same place for a 12-month interval. This process of rotating the generators was an attempt to avoid the “12-consecutive months in place” criteria that would classify the generator as stationary for regulatory purposes. Since they believed the generators were mobile or non-stationary, Respondent incorrectly believed it had avoided the permitting and notification requirements for stationary generators.

Respondent’s attempt to avoid regulatory requirements for stationary generators is neither novel nor effective. In a similar situation in Virginia, the U.S. Environmental Protection Agency (“EPA”) determined that the act of removing a generator and replacing it with another one did not reset the “12 consecutive month in-place” clock for designation of the generator as stationary. Since Respondent has been utilizing the generators for more than 12-month intervals,

according to the regulations, the generators are stationary. Further, the stationary generators were being used as distributed generators and were installed on or after January 11, 2006. These facts mean the generators are categorized as “new.” Therefore, the Department informed Respondent that in addition to requiring permits, the generators are subject to the new distributed generator emission standards set forth in Section 3.2.2 of Regulation 1144.

Respondent failed to provide information concerning the generators by an agreed upon deadline of August 24, 2020. Respondent then again failed to submit information by an extended deadline of August 28, 2020. On August 28, 2020, the Department sent a written request requiring submission of requested information by September 12, 2020. The letter also required Respondent to submit Regulation 1102 permit applications for the generators to the Department by October 27, 2020. In addition, Respondent submitted a draft Title V permit application on September 17, 2020, which identified nine diesel-fired rental generators at the Facility. The Title V permit application included some, but not all, of the information requested by the Department.

The Department issued a Notice of Violation (“NOV”) dated September 25, 2020, for the installation and operation of the nine generators without a permit. Respondent received the NOV on October 2, 2020. The NOV set an October 27, 2020, deadline for Respondent to submit all of the information requested in the August 28, 2020 letter, including the submission of Regulation 1102 permit applications for the generators.

On October 23, 2020, Respondent submitted a response to the NOV. The cover letter indicated that Respondent owned, but was not operating, one generator and the other 10 were rental generators. The letter further indicated that there were previously four additional generators that had since been removed from the Facility. Further, the information provided indicated the generators had been in place at the Facility beginning in December 2019. The letter also included Regulation 1102 permit applications for 11 distributive generators.

By letter dated October 30, 2020, the Department notified Respondent that the Title V permit application was incomplete, in part, because it was missing information regarding the

generators. Further, the information contained in the Regulation 1102 permit application demonstrated that emissions from the generators currently being used were too high for the Department to issue permits for them. In a November 10, 2020, conference call between the Department and Respondent's consultant, the Department explained again that the generators are not compliant with the emission standards set forth in Regulation 1144. Therefore, DNREC could not permit these particular generators for Respondent's purposes.

The Department now had data suggesting that Respondent had violated 7 DE Admin. Code 1125 – Requirements for Preconstruction Review (“Regulation 1125”), specifically, Section 2.0 Emission Offset Provisions. This section of Regulation 1125 is the non-attainment new source review (“NSR”) requirement in the State of Delaware. The Department indicated in the November 10 conference call that operation of the high emissions non-compliant generators needed to cease. The Department told Respondent that the generators that could not be permitted should be removed, and that Respondent must submit applications for compliant generators. On November 25, 2020, Respondent submitted a revised Title V permit application, which showed that the 11 generators had a potential to emit 198.9 tons per year of NO_x. This information confirmed that the installation and operation of the generators did violate Section 2.0 of Regulation 1125.

By letter dated December 11, 2020, the Department offered Respondent an expedited path to compliance with Delaware law. Since the current rental generators cannot meet the emissions standards in Section 3.2.2 of Regulation 1144 and cannot be permitted for Respondent's use, operation of the non-compliant generators must cease. Respondent was instructed to follow the Department's permitting process and submit permit applications for compliant generators within 15 days of receipt of the letter.

The Department committed to expediting review of the applications and drafting of the permits to facilitate prompt advertisement which could promptly result in issuance of a temporary permit valid for 180 days. Respondent should have the compliant generators ready for installation within 30 days of receipt of the letter and upon receipt of a temporary permit. This was the most expeditious process DNREC could envision that would ensure Respondent's

compliance with the regulations. In a December 23, 2020 call, Respondent's consultant indicated that Respondent would not avail itself of the expedited path to compliance due to the associated costs. This stance was formally repeated by Respondent in a letter dated January 13, 2021.

FINDINGS OF FACT

1. GT USA Wilmington, LLC is the operator of the Port of Wilmington located at 1 Hausel Road, Wilmington, Delaware ("Facility").
2. Respondent is undertaking a project at the Facility to stabilize the electrical service which necessitates shutdown of electric at the Port.
3. Respondent's consultant, working on a Title V permit application, contacted the Department for guidance on the permitting requirements for diesel-fired generators being used for non-emergency purposes to power refrigerated warehouses at the Facility.
4. Respondent has failed to meet several deadlines the Department set for Respondent to submit information related to the generators.
5. Respondent submitted a draft Title V permit application to the Department on September 17, 2020, that identified nine generators and provided some, but not all, of the requested information for the generators.
6. A September 25, 2020, Notice of Violation ("NOV") was issued to Respondent requiring submittal of the missing information and Regulation 1102 permit applications for the generators.
7. In an October 23, 2020, response to the NOV, Respondent submitted all of the requested information and Regulation 1102 permit applications for 11 generators. This included one generator owned by Respondent that was not in use, and 10 rental generators. In

addition, Respondent indicated four other generators were previously installed and operated at the Facility, but had been removed.

8. The generators had been in place since December 2019, despite periodic replacement of the generators. The generators meet the 12 consecutive month in-place criteria for a stationary generator, because EPA has determined that periodic replacement in kind does not reset the 12 consecutive month in-place clock.
9. The generators are used to provide power for non-emergency purposes.
10. The generators were installed on or after January 11, 2006. Thus, the generators are categorized as new and are subject to the requirements of Regulation 1144, including the emission standards for new distributed generators set forth specifically in Section 3.2.2 of Regulation 1144.
11. The generators are not compliant with the emission standards set forth in Section 3.2.2 of Regulation 1144.
12. The Department informed Respondent in a December 11, 2020, letter that the unpermitted generators are non-compliant and operation of them must cease. The Department explained that they could be replaced with compliant generators following the Department's permitting procedures. The Department committed to expedite its application review and permit drafting to facilitate prompt issuance, following required advertisement, of temporary 180-day permits.
13. Respondent's consultant informed the Department on December 23, 2020, that Respondent will not avail itself of the expedited permitting of compliant generators offered in the December 11, 2020, letter due to costs, and intended to continue to operate the non-compliant generators. This stance was formally repeated in a January 13, 2021 letter to the Department.

STATUTORY, REGULATORY AND PERMT PROVISIONS

1. In 7 Del. C. §6003(a)(1) it states:

“No person shall, without first having obtained a permit from the Secretary, undertake any activity in a way which may cause or contribute to the discharge of an air contaminant.”

2. In 7 Del. C. §6003(b)(1) it states:

“No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant.”

3. In Section 2.1 of 7 DE Admin. Code 1102 it states:

“No person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.”

4. In Section 2.4.1 of 7 DE Admin. Code 1125 it states:

“Conditions for Approval - No person subject to the provisions of subsection 2.1 of this regulation shall install a major stationary source of volatile organic compounds or of nitrogen oxides, PM_{2.5}, or sulfur oxides or make a major modification to a source which will cause or contribute to any violation of the national ambient air quality standards for ozone or PM_{2.5} within an area of non-attainment for that pollutant unless the following conditions are met: The new major source or the major modification is controlled by the application of lowest achievable emission rate (LAER) control technology.”

5. In Section 1.4 of 7 DE Admin. Code 1144 it states:

“Initial Notification. The owner of a stationary generator shall submit to the Department the following information: the generator owner’s name and telephone number; the physical address where the generator is installed, or will be installed; a description of the generator including the make, model number, and serial number; the year of manufacture for the generator; the standby power rating or the prime power rating for the generator, or both power ratings if both are known; and the date of installation for existing generators, or the expected date of installation for new generators. The owner of a stationary generator shall submit to the Department a letter stating whether the generator is to be classified as an emergency generator or a distributed generator.”

6. In Section 3.2.2.1 of 7 DE Admin. Code 1144 it states:

“Except as provided for in 3.2.2.2 of this regulation, a new distributed generator shall meet the following emission standards: Nitrogen Oxides 0.6 lbs/MWh; Nonmethane Hydrocarbons 0.3 lbs/MWh; Particulate Matter (liquid-fueled reciprocating engines only) 0.07 lbs/MWh; Carbon Monoxide 2.0 lbs/MWh; Carbon Dioxide 1,650 lbs/MWh.”

CONCLUSION

Based on the above, the Department has concluded that Respondent committed and continues to commit, as noted, the following violations:

1. Respondent violated 7 *Del. C.* §6003(a)(1), 7 *Del. C.* §6003(b)(1), Section 2.1 of 7 DE Admin. Code 1102 and Section 1.4 of 7 DE Admin. Code 1144 when it installed and operated 14 rental distributed generators and installed one generator it owned, at its Facility without obtaining a permit from the Department and submitting the required notification.
2. Respondent continues to be in violation of 7 *Del. C.* § 6003(a)(1), Section 2.1 of 7 DE Admin. Code 1102, Section 2.4.1 of 7 DE Admin. Code 1125, and Section 3.2.2.1 of 7 DE Admin. Code 1144 by continuing to operate the non-compliant, distributed generators without a permit.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 *Del. C.* §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$530,000 for the violations identified in this Assessment and Order.

Respondent shall submit one check to the Department in the amount of \$530,000 or in the amount allowed for as an alternative set forth in the Waiver Section, to pay the penalty within 30 days from the receipt of this Assessment and Order. The check shall be made payable to the “State of Delaware” and shall be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under the authority vested in the Secretary by *7 Del. C. Chapter 60* and *7 DE Admin. Code 1100* to revoke Respondent's air quality permit(s) for the State of Delaware, an action under *7 Del. C. §6005(b)(1)* seeking penalties for past violations, an action under *7 Del. C. §6005(b)(2)* seeking penalties for continuing violations, an action in the Court of Chancery pursuant to *7 Del. C. §6005(b)(2)* seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to *7 Del. C. §§6005(b)(3) & (c)(1)*.

STIPULATED PENALTIES

Respondent is urged to immediately cease operation of all of the 10 generators described above in order to avoid future violations of the laws and regulations described above. Should Respondent fail to cease its operation of the generators, because of its inability to operate the Port without the generators, this Order sets out stipulated penalties that will be assessed for a limited term of future violations. The stipulated penalties are only applicable for a maximum period of 90 days from the date of the Order. The stipulated penalties are only applicable for the exact equipment described in this Order and for operation of the generators in a manner consistent with their operation of the previous period. The acceptance and payment of stipulated penalties will not absolve Respondent of liability for any conduct, except the Department will not assess an additional administrative penalty for the air quality violations related to unpermitted construction and operation of the generators during that timeframe.

1. Respondent shall pay a stipulated penalty in the amount of \$5,000 per day that Respondent continues to operate the non-compliant generators after issuance of this Order for a period of up to April 1, 2021. Operation will be considered ongoing until such time that Respondent provides proof that it has ceased operation of the non-compliant generators.

2. Continued operation of the non-compliant generators beyond April 1, 2021 will be subject to additional enforcement action by the Department.
3. Payment of stipulated penalties will be requested via certified letter from the Department and must be paid within 30 days of the receipt of the certified letter.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to 7 *Del. C.* §6008, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20 days of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* §6005(b)(3), request a public hearing on the penalty assessment and Order, within 30 days of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del. C.* §6006, and the Secretary's Order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* §6008, by any person substantially affected.

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

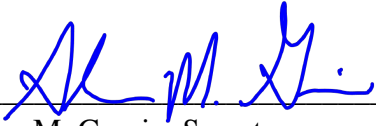
Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this Assessment and Order to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

Respondent may waive its right to request a hearing or to file an appeal by signing the waiver attached herein and prepaying the penalty. If no hearing is requested or appeal filed as described above and the administrative penalty of \$530,000, or as described as an alternative in the Waiver Section of this Assessment and Order, is not paid within the time frame above, DNREC may immediately take action to collect the above amount.

March 18, 2021
Date


Shawn M. Garvin, Secretary
Department of Natural Resources
and Environmental Control

cc: Valerie S. Edge, Deputy Attorney General
David Fees, P.E., Director

WAIVER OF STATUTORY RIGHT TO A HEARING

GT USA Wilmington, LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **GT USA Wilmington, LLC** will pay the administrative penalty in the amount of \$530,000 by sending a check payable to the “State of Delaware” within 30 days of receipt of this Assessment and Order. The check shall be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19904; *or in the alternative*
2. The Department shall allow Respondent to offset up to half of the administrative penalty set forth in Item #1 above in exchange for complete implementation of an approved Environmental Improvement Project (“EIP”) Plan per Item #3 below. Payment of the reduced penalty shall be paid to the Department within 30 days of the Department’s written approval of the proposed EIP Plan submitted by Respondent within 30 days of receipt of this Assessment and Order. If the Department does not approve the EIP Plan, the remainder of the original penalty set forth in Item #1 shall be paid by Respondent within 30 days of the written disapproval. If approved and Respondent fails to complete the EIP as described in the approved EIP Plan, Respondent shall pay the full offset penalty amount as an additional administrative penalty, within 30 days of notification in writing by the Department that Respondent has failed to meet the terms associated with the EIP.
3. The Department shall allow Respondent to offset up to half of the original administrative penalty on a minimum 2:1 basis in the form of an Environmental Improvement Project (“EIP”), meaning the costs associated with the EIP must be at least twice the amount of the offset penalty. The Department recommends Respondent submit a proposal for the implementation of a street sweeping program for all industrial roads in the vicinity of the Port of Wilmington. The proposal shall include frequency, type of sweeping, explanation of demonstration of completeness,

route, cost and duration. As conditions of completing this EIP, Respondent shall not use any state, federal or local funds, including but not limited to grants, to fund the EIP. Respondent shall also not publicize the undertaking of said project or the results thereof, without clearly stating in a prominent manner that it was undertaken as part of the settlement of an enforcement action.

GT USA Wilmington, LLC

Date: _____

By: _____

Title: _____