



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. 2020-A-0019**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
PROTECTION OFFICER*

**Issued To:**

LNH, Inc., d/b/a Hosting.com  
Attn: Turner Huffaker, Operations Manager  
350 Pencader Drive  
Newark, DE 19702

**Registered Agent:**

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

This Assessment and Order serves to notify LNH, Inc., d/b/a Hosting.com (“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***

LNH, Inc., d/b/a Hosting.com, is a web hosting provider for small and medium size businesses located in Newark, DE. The main facility, with three physical data centers and three power centers, is located at 350 Pencader Drive in Newark, Delaware, (“350 Pencader Facility”). The main office for the facility is located at 650 Pencader Drive in Newark, Delaware, (“650 Pencader Facility”).

Both facilities also have a combined total of eight emergency generators, seven at the 350 Pencader Facility (EGEN 1, EGEN 2, EGEN 3, EGEN 4, EGEN 5, EGEN 6, and EGEN 7) and one at the 650 Pencader Facility (Office EGEN 1). The Department and the U.S. Environmental Protection Agency (“EPA”) conducted a joint inspection at both facilities on September 6, 2017. At the time of that inspection, the Department had issued permits for six emergency generators (EGEN 1 – EGEN 6) at the 350 Pencader Facility: **Permit: APC-2008/0045-OPERATION (Amendment 1)**, **Permit: APC-2008/0143-OPERATION (Amendment 1)**, **Permit: APC-2008/0144-OPERATION (Amendment 1)**, **Permit: APC-2008/0166-OPERATION (Amendment 1)**, **Permit: APC-2008/ 0167-OPERATION (Amendment 1)**, and **Permit: APC-2008/0168-OPERATION (Amendment 1)** all dated December 14, 2009. The emergency generator at the 650 Pencader Facility (Office EGEN 1) was governed by **Permit: APC-2008/0150-OPERATION (Amendment 1)** dated December 14, 2009. The Department discovered during the joint inspection that Respondent had installed and operated the seventh emergency generator (EGEN 7) at the 350 Pencader Facility in May of 2017 without a permit or required notification.

Upon review of records during the inspection, the Department discovered Respondent operated its emergency generators for non-emergency purposes, specifically to supply power while conducting maintenance on its Uninterruptible Power System (“UPS”). The Department’s regulation, 7 DE Admin. Code 1144, “Control of Stationary Generator Emissions” (“Regulation 1144”) sets forth definitions for “emergency generators,” “emergency,” “maintenance,” and “testing” all of which collectively define the circumstances under which the emergency generators can be operated. While Regulation 1144 allows for maintenance and testing of the emergency generators, with some limitations, it does not permit use of the emergency generators to conduct maintenance or testing of other equipment. The six permitted emergency generators at the 350 Pencader Facility were used to supply power while conducting the maintenance on the UPS on various dates from 2010 through the date of the inspection for a total of 27 days. After the unpermitted installation of the seventh emergency generator at the 350 Pencader Facility, there was an additional day that all seven generators were used for non-emergency purposes.

There was one day in 2011 that the emergency generator located at the 650 Pencader Facility was also used for non-emergency purposes. See Table 1 below for specific dates for each emergency generator.

**Table 1: EGEN Run hours for Non-Emergency Purposes**

Non-Emergency Runs								
Dates Run	EGEN 1 (Hours)	EGEN 2 (Hours)	EGEN 3 (Hours)	EGEN 4 (Hours)	EGEN 5 (Hours)	EGEN 6 (Hours)	Office EGEN 1 (Hours)	EGEN 7 (Hours)*
2/15/2010-2/16/2010	4.5	4.5	4.5	4.5	4.5	4.5	0	N/A
3/22/2010	7.2	0.5	7.3	7.3	8.3	7.2	0	N/A
4/2/2010	3.4	0.5	3.4	3.4	3.4	3.4	0	N/A
12/13/2010	6.3	6.2	6.2	6.2	6.2	6.2	0	N/A
7/6/2011	1.6	1.6	1.6	1.2	1.6	1.6	0	N/A
7/7/2011	1.8	1.8	1.8	1.8	1.8	1.8	0	N/A
7/25/2011	6.1	6.1	6.1	6.1	6.1	6.2	3.2	N/A
8/16/2011	5.1	5.1	5.1	5.1	5.1	5.1	0	N/A
8/17/2011	4.5	4.6	4.6	4.5	4.6	4.5	0	N/A
9/29/2011	5	5.1	5	5	5	5	0	N/A
9/30/2011	1.8	3.2	3.3	3.3	3.3	3.3	0	N/A
11/7/2011	6.2	6.1	6.6	6.1	6.2	6.1	0	N/A
2/1/2012	2.5	2.6	2.5	2.5	2.5	2.5	0	N/A
12/20/2012	1.6	1.6	1.6	1.7	1.6	1.6	0	N/A
1/9/2013	6.2	6.6	6.6	6.3	6.3	6.3	0	N/A
2/27/2013	2.4	2.8	2.4	2.4	0	2.4	0	N/A
8/3/2013	0	0	0	0	2.8	2.8	0	N/A
12/19/2013	6.2	6.2	6.2	6.2	6.2	6.3	0	N/A
2/13/2014	0	0	0.6	0.6	0.6	0.9	0	N/A
10/29/2014	6.4	6.3	6.3	6.3	6.4	6.3	0	N/A
6/4/2015	1.9	0.7	1.9	1.9	1.9	2	0	N/A
4/2/2016	1.9	1.9	2	2	1.9	1.9	0	N/A
4/14/2016	0.9	0.9	0.9	0.9	0.9	1	0	N/A
6/16/2016	1.7	1.7	1.7	1.7	1	1.7	0	N/A
6/24/2016	0.7	0.7	0.7	0.7	0.7	0.7	0	N/A
10/20/2016	3.5	3.4	3.5	3.5	3.5	4.2	0	N/A
8/29/2017	6.3	6.3	6.3	6.3	6.3	6.3	0	6.3

The records review also showed that Respondent operated the six emergency generators located at the 350 Pencader Facility for testing or maintenance purposes before 5:00 p.m. on eight separate ozone action days between 2011 and the date of the joint inspection.

The emergency generator located at 650 Pencader Facility was operated for testing or maintenance purposes before 5:00 p.m. on one ozone action day. See Table 2 below for specific dates for each emergency generator.

**Table 2: EGENs Ozone Action Days Run Hours Before 5:00 p.m.**

Ozone Action Date	EGEN1 (Hours)	EGEN2 (Hours)	EGEN3 (Hours)	EGEN4 (Hours)	EGEN5 (Hours)	EGEN6 (Hours)	Office EGEN1 (Hours)	EGEN7 (new) (Hours)
5/31/2011	0.2	0.2	0.2	0.2	0.2	0.2	0.3	N/A
7/6/2011	1.6	1.6	1.6	1.2	1.6	1.6	N/A	N/A
7/7/2011	1.8	1.8	1.8	1.8	1.8	1.8	N/A	N/A
8/31/2012	0.3	0.3	0.3	0.3	0.2	0.2	N/A	N/A
6/17/2014	0.3	0.3	0.3	0.4	0.3	0.3	N/A	N/A
8/5/2014	0	0.4	0.4	0.3	0.3	0.4	N/A	N/A
12/8/2015	0.7	0.7	0.7	0.6	0.7	0.7	N/A	N/A
6/11/2016	4.2	4.1	4.1	4.1	4.8	4.2	N/A	N/A

Finally, Respondent could not produce records of required visible emission (“VE”) observations for any of the emergency generators. A Notice of Violation (“NOV”) dated April 23, 2019, for the violations described in this Order, was issued to Respondent on May 1, 2019. The NOV required Respondent submit, within 30 days of receipt of the NOV, documentation that records of the VE observations are being maintained. Respondent did not submit the documentation and it was not until after a December 16, 2019, inquiry by the Department, that Respondent finally submitted the information.

Respondent applied for a permit on May 3, 2018, for the seventh emergency generator at the 350 Pencader Facility which included the required notification. **Permit: APC-2008/0150-CONSTRUCTION/OPERATION (NSPS)(GACT)** was issued by the Department on July 20, 2018, for that emergency generator.

As a result of the inspection and subsequent NOV, Respondent is now explicitly on notice that the use of the emergency generators to supply power while conducting maintenance or testing of the UPS as well as operation of the emergency generators for testing or maintenance purposes before 5:00 p.m. on ozone action days, are not allowed. The Department has informed Respondent how to sign up for notifications of ozone action days.

### ***FINDINGS OF FACT***

1. LNH, Inc. d/b/a Hosting.com is a web hosting provider with a main facility located at 350 Pencader Drive and an office at 650 Pencader Drive in Newark, DE.
2. A joint inspection of both facilities was conducted by the Department and EPA on September 6, 2017.
3. At the time of that inspection, Respondent had permits for six emergency generators at the 350 Pencader Facility and one emergency generator at the 650 Pencader Facility.
4. During the joint inspection, the Department discovered that Respondent had installed and operated a seventh emergency generator at the 350 Pencader Facility without a permit in May 2017.
5. A records review during the joint inspection showed that Respondent had operated the emergency generators for non-emergency purposes for testing or maintenance on its UPS (see Table 1 in the Background Section of this Order).
6. A records review during the joint inspection showed that Respondent had operated its emergency generators for testing or maintenance purposes before 5pm on ozone action days (see Table 2 in the Background Section of this Order).
7. During the joint inspection, Respondent could not produce records of the required visible emissions observations for its emergency generators.
8. A Notice of Violation dated April 23, 2019, was issued to Respondent on May 1, 2019.
9. The NOV required documentation that VE observations were being maintained, be submitted to the Department within 30 days of receipt of the NOV.

10. Respondent did not submit the documentation until December 16, 2019.
11. Respondent submitted an application for EGEN 7 to the Department on May 3, 2018.
12. The Department issued Permit: APC-2018/0105-CONSTRUCTION/OPERATION (NSPS)(GACT) for EGEN 7 on July 20, 2018.
13. As a result of the joint inspection and the subsequent NOV, Respondent has been made aware that use of the emergency generators for non-emergency purposes and operation of the emergency generators before 5pm on ozone actions days, are prohibited.

### ***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. Under definitions of 7 DE Admin. Code 1144, the following words and terms are defined:  
*“Emergency” means an electric power outage due to: a failure of the electrical grid; on-site disaster; local equipment failure; or public service emergencies such as flood, fire, natural disaster, or severe weather conditions (e.g., hurricane, tornado, blizzard, etc.); or when there is a deviation of voltage or frequency from the electrical provider to the premises of 3% or greater above, or 5% or greater below, standard voltage or frequency.*

*“Emergency generator” means a stationary generator used only during an emergency, during testing, and for maintenance purposes. An emergency generator may not be operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator (e.g., Delmarva Power, Delaware Electric Cooperative, PJM, etc.).*

*“Maintenance” means the recurrent, periodic, or scheduled work necessary to repair, prevent damage, or sustain existing components of a generator or any ancillary equipment associated with its use.*

*“Testing” means determining the capability of a generator to meet the specified requirements of this regulation or determining if the generator and any ancillary equipment associated with its use are functioning correctly.*

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 4.4 of 7 DE Admin. Code 1144 it states:

*“No emergency or distributed generator shall be used during testing or for maintenance purposes before 5 p.m. on a day which has a Ground Level Ozone Pollution Forecast or Particle Pollution Forecast of “Code Red” or “Code Orange” as announced by the Department.”*

7. In Condition 3.4 of **Permit: APC-2008/0045-OPERATION (Amendment 1), Permit: APC-2008/0143-OPERATION (Amendment 1), Permit: APC-2008/0144-OPERATION (Amendment 1), Permit: APC-2008/0166-OPERATION (Amendment 1), Permit: APC-2008/0167-OPERATION (Amendment 1), Permit: APC-2008/0168-OPERATION (Amendment 1)** and **Permit: APC-2008/0150-OPERATION (Amendment 1)** it states:

*“The emergency generators may operate only during an emergency as defined below: An electrical power outage due to: a failure of the electrical grid; on-site disaster; local equipment failure; or public service emergencies such as flood, fire, natural disaster, or severe weather conditions (e.g. hurricane, tornado, blizzard, etc.); or When there is a deviation of voltage or frequency from the electrical provider to the premises of 3% or greater above, or 5% or greater below, standard voltage or frequency.”*

8. In Condition 3.5 of Permit: APC-2008/0045-OPERATION (Amendment 1), Permit: APC-2008/0143-OPERATION (Amendment 1), Permit: APC-2008/0144-OPERATION (Amendment 1), Permit: APC-2008/0166-OPERATION (Amendment 1), Permit: APC-2008/ 0167-OPERATION (Amendment 1), Permit: APC-2008/0168-OPERATION (Amendment 1) and Permit: APC-2008/0150-OPERATION (Amendment 1) it states:

*“The emergency generators shall not be operated for testing or maintenance purposes before 5 p.m. on any day which has a Ground Level Ozone Pollution Forecast or Particulate Forecast of “Code Purple,” “Code Red,” or “Code Orange” as announced by the Department.”*

9. In Condition 4.3.1 of Permit: APC-2008/0045-OPERATION (Amendment 1), Permit: APC-2008/0143-OPERATION (Amendment 1), Permit: APC-2008/0144-OPERATION (Amendment 1), Permit: APC-2008/0166-OPERATION (Amendment 1), Permit: APC-2008/ 0167-OPERATION (Amendment 1), Permit: APC-2008/0168-OPERATION (Amendment 1) and Permit: APC-2008/0150-OPERATION (Amendment 1) it states:

*“Once a month the emergency generators shall be observed for the presence or absence of visible emissions for at least fifteen minutes while the equipment is operating. Compliance with this condition shall be demonstrated by the maintenance of a bound log of visible emissions. If visible emissions are observed, the owner or operator shall take actions per manufacturer’s recommendations to correct the problem as soon as possible. After corrective actions are taken, the owner or operator shall observe visible emissions when the equipment is next operated or tested. If visible emissions still persist, these steps (observe, correct, document) shall be repeated until visible emissions are not observed.”*

## **CONCLUSION**

Based on the above, the Department has concluded that Respondent committed 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 emergency generator EGEN 7 at its 350 Pencader Drive Facility without obtaining a permit from the Department and submitting the required notification.



2. Respondent violated 7 DE Admin. Code 1144 and Condition 3.4 of **Permit: APC-2008/0045-OPERATION (Amendment 1)**, **Permit: APC-2008/0143-OPERATION (Amendment 1)**, **Permit: APC-2008/0144-OPERATION (Amendment 1)**, **Permit: APC-2008/0166-OPERATION (Amendment 1)**, **Permit: APC-2008/ 0167-OPERATION (Amendment 1)**, **Permit: APC-2008/0168-OPERATION (Amendment 1)** and **Permit: APC-2008/0150-OPERATION (Amendment 1)** when it operated its emergency generators for non-emergency purposes on the dates set forth in Table 1 in the Background Section of this Order.
3. Respondent violated Section 4.4 of 7 DE Admin. Code 1144 and Condition 3.5 of **Permit: APC-2008/0045-OPERATION (Amendment 1)**, **Permit: APC-2008/0143-OPERATION (Amendment 1)**, **Permit: APC-2008/0144-OPERATION (Amendment 1)**, **Permit: APC-2008/0166-OPERATION (Amendment 1)**, **Permit: APC-2008/ 0167-OPERATION (Amendment 1)**, **Permit: APC-2008/0168-OPERATION (Amendment 1)** and **Permit: APC-2008/0150-OPERATION (Amendment 1)** when it operated its emergency generators for testing or maintenance purposes before 5:00 p.m. on the ozone actions days set forth in Table 2 in the Background Section of this Order.
4. Respondent violated Condition 4.3.1 of **Permit: APC-2008/0045-OPERATION (Amendment 1)**, **Permit: APC-2008/0143-OPERATION (Amendment 1)**, **Permit: APC-2008/0144-OPERATION (Amendment 1)**, **Permit: APC-2008/0166-OPERATION (Amendment 1)**, **Permit: APC-2008/ 0167-OPERATION (Amendment 1)**, **Permit: APC-2008/0168-OPERATION (Amendment 1)** and **Permit: APC-2008/0150-OPERATION (Amendment 1)** when it failed to produce records of visible emission observations.

### ***ASSESSMENT OF PENALTY AND COSTS***

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 \$13,840 for the violations identified in this Assessment and Order. In addition to the penalty assessment, Respondent is hereby assessed costs in the amount of \$3,387, pursuant to 7 *Del. C.* §6005(c), which were incurred by the Department in the investigation and abatement of the noted violations.

Respondent shall submit one check to the Department in the amount of \$13,840 to pay the penalty and one check in the amount of \$3,387, to pay the Department's costs within 30 days from the receipt of this Assessment and Order. The checks 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).

### ***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. If no hearing is requested or appeal filed as described above and the administrative penalty of \$13,840 and costs in the amount of \$3,387 are not paid within the time frame above, DNREC may immediately take action to collect the above amounts.

June 30, 2020

Date



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

***WAIVER OF STATUTORY RIGHT TO A HEARING***

**LNH, Inc. d/b/a/ Hosting.com** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **LNH, Inc. d/b/a/ Hosting.com** will pay the administrative penalty in the amount of \$13,840 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; and
2. **LNH, Inc. d/b/a/ Hosting.com** will reimburse the Department in the amount of \$3,387, which represents the Department's requested costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The separate check shall be made payable to the "State of Delaware" and be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19904.

**LNH, Inc. d/b/a/ Hosting.com**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_