



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2009-A-0035

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

Stoltz Management Company of Delaware, Inc.
Attn: Mr. Patrick Ammermon
Responsible Official
4417 Lancaster Pike, Bldg. 36
Wilmington, DE 19805

Registered Agent:

Stoltz Management of Delaware, Inc.
3828 Kennett Pike, Ste. 212
Greenville, DE 19807

Dear Mr. Ammermon:

This letter is to notify Stoltz Management Company of Delaware, Inc. ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. C.* Chapter 60 and accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del. C.* § 6005(b)(3).

BACKGROUND

Respondent owns a facility located at 20 Montchanin Road in Wilmington, Delaware ("Facility") subdivided into office spaces that it leases to various businesses. The facility has an emergency generator onsite. Operation of emergency generators results in the emission of various air contaminants such as particulate matter and nitrogen oxides in quantities that require a permit pursuant to 7 DE Admin. Code 1102.

The facility was previously owned by Bracebridge Corporation ("Bracebridge" or "previous owner"), a wholly owned subsidiary of MBNA Bank. Bracebridge had installed the

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emergency generator onsite in 1997 but had not applied for a permit as required by law. The Department discovered this violation but worked with the previous owner to obtain the documentation required to issue **Permit: APC-2005/0018-CONSTRUCTION/OPERATION** for the emergency generator on September 24, 2004.

Bracebridge sold the facility, including the emergency generator, to Respondent on December 20, 2006. Delaware law provides for the transfer of a permit from one person to another but requires the Department be given 30 days written notice indicating both parties agree to the transfer and approval of such transfer be obtained in writing from the Department. Based on the date of the sale of the facility, said permit transfer request should have been submitted to the Department by November 20, 2006. The Department did not receive any such request. Upon learning of the sale, the Department contacted and informed Bracebridge of this requirement. However, numerous attempts by both the Department and Bracebridge, to contact Respondent to obtain its written request for the permit transfer, were unsuccessful.

It was not until March 26, 2009, that Respondent submitted its written request that **Permit: APC-2005/0018-CONSTRUCTION/OPERATION** be transferred from the previous owner to Respondent. The Department issued Respondent **Permit: APC-2005/0018-CONSTRUCTION/OPERATION (Amendment 1)** on March 31, 2009.

A Notice of Violation was issued to Respondent on April 3, 2009. It included a request that Respondent submit the operating records for the emergency generator since December 20, 2006, the date of the sale, by no later than April 10, 2009. On April 7, 2009, Respondent submitted operating records covering the time period of September 7, 2008 through March 24, 2009, it was unable to produce records from December 20, 2006 through September 6, 2008. The records indicate Respondent operated the emergency generator for a total of 41.9 hours and that the generator's meter showed it had been operated a total of 131.6 hours. During the Department's last inspection of the facility on March 22, 2005, while still owned by the previous owner, the emergency generator had been operated a total of 67.9 hours. Based on the records provided by Respondent and the Department's last inspection, 21.8 hours of emergency generator operation are unaccounted for. While it is not possible to determine whether Respondent or the previous owner operated the generator for those hours, the records submitted by Respondent clearly show it operated the generator during the time period it did not have a permit to do so.

FINDINGS OF FACT

1. The Department issued the previous owner **Permit: APC-2005/0018-CONSTRUCTION/OPERATION** for operation of an emergency generator at a facility located at 20 Montchanin Road in Wilmington, Delaware.
2. The facility located at 20 Montchanin Road in Wilmington, Delaware, including the emergency generator, was sold to Respondent on December 20, 2006.

3. A written request to transfer the permit from the previous owner to Respondent should have been submitted to the Department by November*20, 2006, but was not submitted until March 26, 2009.
4. On March 31, 2009, the Department issued Respondent **Permit: APC-2005/0018-CONSTRUCTION/OPERATION (Amendment 1)** for operation of the emergency generator located at 20 Montchanin Road, Wilmington , Delaware.
5. A Notice of Violation was issued to Respondent on April 3, 2009 and included a request that Respondent submit information associated with operation of the emergency generator since December 20, 2006, the date of the sale.
6. On April 10, 2009, Respondent provided information covering the time period of September 7, 2008 through March 24, 2009. It was unable to provide information for the time period of December 20, 2006 through September 7, 2008.
7. The information submitted by Respondent show that Respondent operated the emergency generator without a permit at least 41.9 hours during the time period of September 7, 2008 and March 24, 2009.

STATUTORY VIOLATIONS

1. Seven *Del. C.* § 6003(a)(1) 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. Seven DE Admin. Code 1102 § 2.1 states in part:
"...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...."
3. Seven DE Admin. Code 1102 § 7.1 states:
"No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another person unless 30 days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department."

CONCLUSION

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated 7 *Del. C.* § 6003 (a)(1) by operating an emergency generator, which may cause or contribute to the discharge of an air contaminant, for a minimum of 41.9 hours between September 7, 2008 and March 24, 2009, without a permit.
2. Respondent violated 7 DE Admin. Code 1102 § 2.1 by operating an emergency generator, which emits air contaminants, for a minimum of 41.9 hours between September 7, 2008 and March 24, 2009, without a permit.
3. Respondent violated 7 DE Admin. Code 1102 § 7.1 by failing to give the Department 30 days written notice to transfer the operating permit for the emergency generator from the previous owner to Respondent. The Department should have received the written notice by November 20, 2006, but it was not received until March 26, 2009.

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 \$12,775.00 for the violation identified in this Assessment and Order and costs according to 7 *Del. C.* § 6005(c). Respondent shall submit a check to the Department in the amount of \$12,775.00 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: Robert F. Phillips, Esq., Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING

This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$12,775.00 and the Department's estimated costs in the amount of \$1,916.25 in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

If you have any questions, please contact Paul Foster at (302) 323-4542.

10/7/09

Date



Collin P. O'Mara, Secretary

cc: Robert F. Phillips Esq., Deputy Attorney General
Marjorie A. Crofts, Acting Director
Ali Mirzakhali, P.E., Program Administrator
Paul Foster, P.E., Program Manager
Everett L. DeWhitt, Ph.D. Managing Engineer
Amy Mann, Engineer
Dawn Minor, Paralegal
Jenny Bothell, Enforcement Coordinator
Dover File

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WAIVER OF STATUTORY RIGHT TO A HEARING

Stoltz Management Company of Delaware, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Stoltz Management Company of Delaware, Inc.** will pay the administrative penalty in the amount of \$12,775.00 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 Robert F. Phillips, Esq., Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. **Stoltz Management Company of Delaware, Inc.** will reimburse the Department in the amount of \$1,916.25 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Robert F. Phillips, Esq., Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

Stoltz Management Company of Delaware, Inc.

Date: _____

By: _____

Title: _____

FACILITY/REGULATED PARTY

RETURN OF SERVICE

I personally served Notice of Administrative Penalty Assessment and Secretary's Order No. 2009-A-0035, issued to:

Stoltz Management of Delaware, Inc., upon _____, by leaving in his/her hands, a true
(Name of Recipient)

and correct copy, at his/her business/residence on _____.
(Date)

Printed Name of DNREC Environmental Officer

Signature of DNREC Environmental Officer

Note to Environmental Officer: Please send completed Return of Service to Jenny Bothell, Enforcement Coordinator, OTS, R&R Building for copying and distribution. Thank you.

REGISTERED AGENT

RETURN OF SERVICE

I personally served Notice of Administrative Penalty Assessment and Secretary's Order
No. 2009-A-0035, issued to: **Stoltz Management Company of Delaware, Inc.**, upon
(Facility/Respondent)

_____, Facility/Respondent's Registered Agent,
(Name of Recipient)

by leaving in his/her hands, a true and correct copy, at 3828 Kennett Pike, Ste. 212, Greenville, DE

on _____.
(Date)

Printed Name of DNREC Environmental Officer

Signature of DNREC Environmental Officer

Note to Environmental Officer: Please send completed Return of Service to Jenny Bothell, Enforcement Coordinator, OTS, R&R Building for copying and distribution. Thank you.