



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

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

Pursuant to 7 Del. C. § 6005

**Order No. 2014-A-0012**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
ENFORCEMENT OFFICER*

**Issued To:**

Pettinaro Construction Co., Inc.  
Christina Crescent, LLC  
ATTN: Michael Walsh, President  
234 North James Street  
Wilmington, DE 19804

**Registered Agent:**

Verino Pettinaro  
234 North James Street  
Wilmington, DE 19804

Dear Mr. Walsh:

This is to notify Pettinaro Construction Co., Inc. and Christina Crescent, LLC (collectively, "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 state air regulations. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment pursuant to 7 Del. C. § 6005(b)(3).

***BACKGROUND***

Respondent owns a building located at 125 S. West Street in Wilmington, Delaware ("Christina Crescent Building"), that it leases to Barclays Bank Delaware ("Barclays Bank") and several other businesses.

On July 20, 2010, Barclays Bank submitted an application to the Department's Division of Air Quality ("DAQ") to obtain a permit for two natural gas fired 500 kW generators ("G1 and G2"); a 1,000 kW diesel generator and five small, natural gas fired boilers. The application listed the location of the equipment as 100 S. West Street. At that time, the DAQ's understanding was that the applicant, Barclay Bank, was the owner and operator of the

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equipment. The DAQ subsequently discovered that this equipment is actually divided between two buildings on S West St. This Order addresses only the non-compliance of generators, G1 and G2, located in the Christina Crescent Building at 125 S. West St.

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The DAQ sent Barclay Bank a letter dated November 9, 2010, requesting documentation including purchase orders and installation dates for generators G1 and G2 in order to review Regulation 1144 applicability. Barclay Bank's consultant sent an email to the DAQ on December 14, 2010, requesting an extension to January 1, 2011, so it could contact its landlord to respond to the November 9, 2010, request for information. This was when the DAQ was made aware that Barclay Bank, the applicant, did not own the building.

A Notice of Violation was issued to Barclays Bank Delaware, as operators of the equipment, on February 18, 2011, for the installation and operation of the equipment listed in the permit application without obtaining a permit.

Generators G1 and G2 are subject to the notification and emission limits set forth in Regulation 1144. Regulation 1144 references 40 C.F.R. § 1048 for the actual emission limits for new emergency generators. Generators G1 and G2 are not compliant with the applicable emission limits set forth in 40 C.F.R. § 1048.101(b) and therefore require either replacement or the installation of control devices in order to meet the applicable emission limits. Respondent did not notify the Department with the Initial Notification for the generators as required by Regulation 1144 until April 28, 2010.

The DAQ received an email from Respondent on June 7, 2011, indicating it was exploring options for replacing or retrofitting the generators. Because the DAQ had not received information needed to proceed with processing the permit application, it was returned to Barclay Bank on June 14, 2011. The DAQ also sent a letter that same day to Respondent to inform of the application's return and that the DAQ, from that point forward, was holding Respondent solely responsible for obtaining the appropriate permit(s) for the equipment.

Between that time and February 2013, communication with Respondent had been sporadic and progress on bringing generators G1 and G2 into compliance, slow. Respondent considered several options for achieving compliance for the generators and ultimately settled on installation of Non-Selective Catalytic Reduction ("NSCR") to G1 and G2.

Respondent's consultant submitted a Regulation 1102 construction application on its behalf, on June 24, 2013, to add the NSCR to generators G1 and G2. It was deemed technically

complete and advertised on July 28, 2013. Following expiration of the public comment period, during which no comments were received, the Regulation 1102 construction permit was issued on September 16, 2013.

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

1. Pettinaro Construction Co., Inc. and Christina Crescent, LLC (collectively, "Respondent") own the building located at 125 S. West Street in Wilmington, Delaware ("Christina Crescent Building") and it is currently leased to various businesses including Barclay Bank Delaware ("Barclay Bank").
2. Barclay Bank submitted a permit application to the DAQ on July 20, 2010, for two natural gas fired 500 kW generators ("G1 and G2"); a 1,000 kW diesel generator and five small, natural gas fired boilers that it indicated was located in a building at 100 S. West Street in Wilmington, Delaware.
3. This Order addresses only the non-compliance of generators G1 and G2 that are located in the Christina Crescent Building at 125 S. West Street.
4. Generators G1 and G2 are subject to Regulation 1144 notification requirements and emissions limits that are linked to those set forth in 40 C.F.R. § 1048.
5. Generators G1 & G2 are not compliant with Regulation 1144 emission limits.
6. On June 24, 2013, Respondent's consultant submitted an application on its behalf, to install Non-Selective Catalytic Reduction ("NSCR") to control emissions from generators G1 and G2 in order to come into compliance with Regulation 1144.
7. The DAQ issued Respondent a construction permit on September 16, 2013, to install the NSCR on generators G1 and G2.

### ***REGULATORY AND PERMIT REQUIREMENTS***

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 *Del. C.* § 6003(b)(1) 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. Section 2.1 of 7 DE Admin. Code 1102 states:  
*"Except as exempted in 2.2 of this regulation, 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. Section 1.4 of 7 DE Admin. Code 1144 states:

*“Initial Notification.*

*1.4.1 The owner of a stationary generator shall submit to the Department the following information:*

*1.4.1.1 the generator owner’s name and telephone number;*

*1.4.1.2 the physical address where the generator is installed, or will be installed;*

*1.4.1.3 a description of the generator including the make, model number, and serial number;*

*1.4.1.4 the year of manufacture for the generator;*

*1.4.1.5 the standby power rating or the prime power rating for the generator, or both power ratings if both are known; and*

*1.4.1.6 the date of installation for existing generators, or the expected date of installation for new generators.*

*1.4.2 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.*

5. Section 3.1.2 of 7 DE Admin. Code 1144 states:

*“New emergency generator. A new emergency generator shall meet the applicable emissions standards set by the US EPA for non-road engines (40 CFR 89, 90, 91, 92, 94, 1039, or 1048 July 1, 2004 Edition).”*

6. Section 7.3.2 of 7 DE Admin. Code 1144 states:

*“Emissions Verification by an Owner. An owner shall verify, by each generator’s respective compliance date as detailed in 1.3 of this regulation, that a generator complies with its respective emission requirements of 3.0 of this regulation by submitting any or all of the following types of data to the Department for review: any emissions certification of a new emergency generator as detailed in 7.2 of this regulation.”*

7. Section 1048.1(a) of 40 C.F.R. states:

*“The regulations in this part 1048 apply for all new, spark-ignition nonroad engines (defined in § 1048.801) with maximum engine power above 19 kW, except as provided in § 1048.5.”*

8. Section 1048.101(b) of 40 C.F.R. states:

*“Standards for steady-state testing. Except as we allow in paragraph (d) of this section, steady-state exhaust emissions from your engines may not exceed emission standards, as follows:*

(1) *The following table shows the Tier 1 exhaust emission standards that apply to engines from 2004 through 2006 model years: ”*

**TABLE 2 OF § 1048.101—TIER 1 EMISSION STANDARDS (G/KW-HR)**

Testing	General emission standards		Alternate emission standards for severe-duty engines	
	HC+NO <sub>x</sub>	CO	HC+NO <sub>x</sub>	CO
Certification and production-line testing	4.0	50.0	4.0	130.0
In-use testing	5.4	50.0	5.4	130.0

### **CONCLUSION**

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

1. Respondent violated 7 Del. C. § 6003(a)(1) and Section 2.1 of 7 DE Admin. Code 1102 because generators G1 and G2 located in the Christina Crescent Building were installed without obtaining approval from the Secretary in the form of a permit.
2. Respondent violated 7 Del. C. § 6003(b)(1) and Section 2.1 of 7 DE Admin. Code 1102 because generators G1 and G2 located in the Christina Crescent Building were operated without obtaining approval from the Secretary in the form of a permit.
3. Respondent violated Section 1.4 of 7 DE Admin. Code 1144 for failing to timely submit information to the Department to satisfy the Initial Notification requirement for generators G1 and G2 located in the Christina Crescent Building.
4. Respondent is in violation of Section 3.1.2 of 7 DE Admin. Code 1144 because generators G1 and G2 that were installed and operated in the Christina Crescent Building do not meet the emission limits set forth in 40 C.F.R. § 1048.101(b)(1).

### **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 \$24,695.00 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 \$24,695.00 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: Valerie S. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> 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 \$24,695.00 and the Department's estimated costs in the amount of \$3,704.25 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.

August 7, 2014  
Date

  
\_\_\_\_\_  
David S. Small, Secretary

cc: Valerie S. Edge, Deputy Attorney General  
Ali Mirzakhali, P.E., Director DAQ  
Paul Foster, P.E., Program Manager DAQ  
Tammy Henry, Managing Engineer DAQ  
Amy Mann, P.E., Engineer DAQ  
Dawn Minor, Paralegal DAQ  
Jenny Bothell, Enforcement Coordinator  
Dover File

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

**Pettinaro Construction Co., Inc. and Christina Crescent, LLC** hereby waive their right to a hearing and their opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Pettinaro Construction Co., Inc. and Christina Crescent, LLC** will pay the administrative penalty in the amount of \$24,695.00 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 Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **Pettinaro Construction Co., Inc. and Christina Crescent, LLC** will reimburse the Department in the amount of \$3,704.25 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 Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

**Pettinaro Construction Co., Inc.**

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

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

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

**Christina Crescent, LLC**

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

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

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