



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

Pursuant to 7 Del. C. § 6005

Order No. 2015-A-0022

*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 violated 7 Del. C. Chapter 60 and state air regulations. Accordingly, the Department is issuing this Amended Notice of Administrative Penalty Assessment and Secretary's Order ("Amended Assessment and Order") pursuant to 7 Del. C. § 6005(b)(3). When this Order becomes final (either upon signature by Respondent of the Waiver portion of this Amended Assessment and Order or upon expiration of the time to request a hearing without one being requested), this Order will supersede and withdraw Notice of Administrative Penalty Assessment and Secretary's Order No. 2014-A-0012, issued to Respondent on August 14, 2014.

BACKGROUND

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

Delaware's Good Nature depends on you!

On July 20, 2010, Barclays Bank submitted an application to the Department's Division of Air Quality ("DAQ") to obtain a permit for two (2) 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 all of this equipment as 100 S. West Street. At that time, the DAQ's understanding was that the applicant, Barclays Bank, was the owner and operator of the 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.

The DAQ sent Barclays 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. Barclays Bank's consultant sent an email to the DAQ on December 14, 2010, requesting an extension to respond until January 1, 2011, so that it could contact its landlord to respond to the November 9, 2010, request for information. This was when the DAQ was made aware that Barclays Bank, the applicant, did not own the Christina Crescent Building at 125 S. West St.

A Notice of Violation was issued to Barclays Bank Delaware, as operators of G1 and G2, on February 18, 2011, for the installation and operation of such generators listed in the permit application without first 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 themselves 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 Barclays Bank on June 14, 2011. The DAQ also sent a letter that same day to Respondent to inform of the Barclay's Bank's application's return and that the DAQ, from that point forward, was holding Respondent solely responsible for obtaining the appropriate permit(s) for G1 and G2.

Between that time and February 2013, communications with Respondent were sporadic and progress on bringing generators G1 and G2 into compliance was 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 Respondent's behalf, on June 24, 2013, to add NSCR to generators G1 and G2. It was deemed technically complete and was 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, to add NSCR to G1 and G2. Construction was completed and a construction to operation inspection was conducted on June 19, 2014. Stack testing was also completed on both generators G1 and G2 on June 2, 2014, and both generators with installed NSCR were shown to be compliant with State and federal regulations. Operating permits for G1 and G2 were issued on July 18, 2014.

FINDINGS OF FACT

1. Christina Crescent, LLC owns the building located at 125 S. West Street in Wilmington, Delaware (“Christina Crescent Building”) and it is currently leased to various businesses including Barclays Bank Delaware (“Barclay Bank”).
2. Barclays Bank submitted a permit application to the DAQ on July 20, 2010, for various equipment, including the two (2) natural gas fired 500 kW generators (“G1 and G2”) located on the Christiana Crescent Building.
3. This Order addresses only the former non-compliance of generators G1 and G2 that are located in the Christina Crescent Building at 125 S. West Street, Wilmington Delaware.
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 were not compliant with Regulation 1144 emission limits.
6. To address such non-compliance, Christina Crescent, LLC together with its contractor, Pettinaro Construction Co., Inc (collectively, “Respondent”) through its consultant submitted on June 24, 2013, an application for approval to install Non-Selective Catalytic Reduction (“NSCR”) to control emissions from generators G1 and G2 in order to cause the same 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.
8. Upon completion of the installation of the NSCR on generators G1 and G2, Respondent arranged for stack testing of the generators on June 2, 2014 which demonstrated that generators G1 and G2 operated with the NSCR, are now compliant with State and federal regulations, including Regulation 1144.
9. Subsequently, on June 19, 2014, the DAQ conducted a construction to operation inspection of generators G1 and G2, and the DAQ issued operating permits for generators G1 and G2 on July 18, 2014.

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 _x	CO	HC+NO _x	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:

- 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.
- 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.
- Respondent violated Section 1.4 of 7 DE Admin. Code 1144 because it failed 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 violated Section 3.1.2 of 7 DE Admin. Code 1144 because generators G1 and G2 were installed and operated in the Christina Crescent Building when they did not meet the emission limits set forth in 40 C.F.R. § 1048.101(b)(1).
5. Respondent has since corrected the aforementioned violations and operating permits for generators G1 and G2 have been issued.

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 \$24,695.00 for the violations identified in this Amended Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$3,704.25, pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$24,695.00 to pay the penalty and one check to the Department in the amount of \$3,704.25 to pay the estimated costs within 30 days from the receipt of this Assessment and Order. Alternatively, Respondent may choose the alternative described in the Waiver section herein. Any 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-3rd Floor, Dover, Delaware 19904.

At any time prior to the time that this Assessment and Order becomes a Final Assessment and Order (as provided in the first paragraph above), the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these 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.

PUBLIC HEARING

This Amended 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). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

PAYMENT

Respondent shall pay the Department's estimated costs in the amount of \$3,704.25 in the manner described in the assessment section above and the Respondent shall pay the administrative penalty of \$24,695.00 either in the manner described in the assessment section above or in the alternative, in the manner set forth 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.

Date

4/10/15



David S. Small, Secretary

cc: Valerie S. Edge, Deputy Attorney General
Ali Mirzakhali, P.E., Director DAQ
Paul Foster, P.E., Program Manager 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 Amended Assessment and Order and will settle the above alleged violations as set out below.

1. The Department shall accept \$12,247.50 of the administrative penalty to be paid to the Department within 30 days of receipt of this Amended Assessment and Order signed by the Secretary. The penalty shall be paid by submitting a check payable to the "State of Delaware" to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.
2. The Department shall allow Respondent to offset the remaining \$12,247.50 of the administrative penalty on a minimum 2:1 basis in the form of an Environmental Improvement Project ("EIP"). This EIP is described in Attachment A, which is incorporated herein by reference. Respondent shall complete the EIP as described, and by the dates specified, in Attachment A. If the Respondent fails to complete the EIP, Respondent shall pay the difference, on the same 2:1 basis, 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.

As conditions of completing this EIP to offset the remaining \$12,247.50 of the administrative penalty described above and in Attachment A, 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.

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3. Respondent 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 signed by the Secretary. 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-3rd Floor, Dover, DE 19904.

Pettinaro Construction Co., Inc.

Date: _____

By: _____

Title: _____

Christina Crescent, LLC

Date: _____

By: _____

Title: _____

ATTACHMENT A

ENVIRONMENTAL IMPROVEMENT PROJECT CORNELL BUSINESS PARK LIGHTING EFFICIENCY IMPROVEMENT

Cornell Business Park
300-701 Cornell Drive
Wilmington, Delaware 19801

1. Respondent will remove conventional light fixtures at the Cornell Business Park and install 35 new LED wall mounted light fixtures. The environmental benefits of this project are estimated to be a total energy savings of 21,000 kWh and a reduction of 14.5 metric tons of CO₂ emissions per year with a total life cycle savings of 420,000 kWh and a reduction of 290 metric tons of CO₂ emissions.
2. The project shall be completed no later than 30 days from the date the Secretary signs this Notice of Administrative Penalty Assessment.
3. Respondent may offset up to \$12,247.50 of the administrative penalty at a ratio of 2:1. (If Respondent spends a minimum of \$24,695.00 of qualifying expenses related to the project, Respondent shall have offset the maximum \$12,247.50 portion of the penalty).
4. Respondent shall submit to the Department within 30 days of completion of the project, a detailed accounting of expenses associated with this project as well as before and after pictures. The Department will review the submitted costs and shall determine if the Respondent has met the \$24,695.00 cost requirement of paragraph 3 above. Such determination is expected to take no longer than 30 days following the Department's receipt of the cost information. If the Department determines that the Respondent's actual allowable costs for the projects do not equal or exceed \$24,695.00, then the Respondent shall submit the difference utilizing the same 2:1 offset ratio to the Department, as an additional administrative penalty within 30 days of the date Respondent is notified of the Department's final determination of the Respondent's allowable costs documentation.