



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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

Issued pursuant to 7 Del. C. § 6005(b)(3)

Order No. 2004-A-0008

*Personally Served By An
Environmental Protection Officer*

ISSUED TO:

Tilcon Delaware, Inc.
Attn: Daniel Messick, Plant Manager
1262 Horsepond Road
P.O. Box 858
Dover, DE 19903

REGISTERED AGENT:

National Corporate Research, Ltd.
615 S. DuPont Highway
Dover, DE 19901

Dear Mr. Messick:

This is to notify Tilcon Delaware, Inc. ("Tilcon") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department"), has found that Tilcon violated 7 Del. C. Chapter 60. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Edward J. Kaye Construction, Inc., owns a hot mix asphalt production plant located west of County Road 525 in Seaford, Delaware ("Seaford Plant"). Tilcon operates the Seaford Plant in addition to other similar plants it owns and operates in the State of Delaware. The Seaford Plant currently holds air quality management permit No. APC-96/0800-OPERATION (Amendment 4) (NSPS) (SM) ("AQM Permit") for various machinery at the facility. The Seaford Plant is a synthetic minor source because its AQM Permit contains enforceable operating restrictions in order for it to remain below major source emission thresholds.

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On January 16, 2002, a Department employee conducted a site visit at the Seaford Plant and confirmed that a 750 kW diesel generator ("Generator"), had been permanently installed in the Seaford Plant and was operational. Air pollution factors and information from the permit application for the installation and use of this Generator indicated that operation of the Generator using 0.3 percent sulfur content diesel fuel at normal operating rates of 27 gallons an hour for 1,600 hours would generate the following emissions:

| <u>Type</u> | <u>Estimated Total Emissions</u> | <u>Actual Emissions</u> |
|----------------------------|----------------------------------|-------------------------|
| Volatile Organic Compounds | 0.27 tons | 0.34 lbs/hr |
| Carbon Monoxide | 2.57 tons | 3.21 lbs/hr |
| SOx | 0.92 tons | 1.15 lbs/hr |
| NOx | 9.68 tons | 12.10 lbs/hr |
| PM | 0.30 tons | 0.38 lbs/hr |

On January 26, 2002, an employee of Tilcon informed a Department employee that the Generator was being used only when the Seaford Plant lost power or when the local electric utility advised that service would be interrupted due to demand. (It appears Tilcon has an interruptible service agreement with the electric utility for the Seaford Plant.) At that time, Tilcon was informed that use of the Generator must be permitted by the Department, or the Generator must be disconnected from the Seaford Plant.

On July 2, 2002, Tilcon and its Consultant met with Department representatives. At that time, the Consultant stated that the Generator had been moved to the Seaford Plant approximately four years earlier. The Consultant indicated that the Generator had operated for only 25 to 30 hours for the entire year of 2001. At that time, Tilcon was informed that it needed to apply for a permit to operate the Generator.

On September 20, 2002, the Department received from Tilcon an application for the installation and operation of the 750 kW diesel generator at the Seaford Plant. The application requested permission to operate the Generator 90 hours per year. The requested permit amendment was issued on February 13, 2003, and the permitted total NOx emissions from the Generator based on 100 percent capacity and 90 hours of operation are 1.09 tons per year.

STATUTORY PROVISIONS

Seven Del. C. § 6003(a)(1) states:

- (a) No person shall, without first having obtained a permit from the Secretary, undertake any activity