



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-4403
FAX: (302) 739-6242

**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.

Delaware's Good Nature depends on you!

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

- (1) in a way which may cause or contribute to the discharge of an air contaminant;

Seven Del. C. § 6003(b)(1) states:

- (b) 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:

- (1) which may cause or contribute to the discharge of an air contaminant;

CONCLUSIONS

Based on the foregoing facts and statutory provisions, the Department has determined that Tilcon has violated 7 Del. C. Chapter 60 as follows:

1. Tilcon violated 7 Del. C. § 6003(a)(1) by operating a 750 kW diesel powered generator at the Seaford Plant on numerous occasions over a period that may have spanned up to 4 years, without first having obtained a permit from the Secretary to operate the generator at that location.
2. Tilcon violated 7 Del. C. § 6003(b)(1) by installing a 750 kW diesel powered generator at the Seaford Plant without first having obtained a permit from the Secretary to install the generator at that location.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Tilcon that on the basis of its findings, the Department is assessing Tilcon an administrative penalty of \$17,000.00 for the violations identified in this Notice of Assessment and Order.

In the event Tilcon signs the Waiver herein and agrees to settle the above alleged violations through this Notice of Administrative Penalty and Order, the Department shall accept \$8,500.00 of the penalty to be paid to the Department by check, and allow Tilcon to offset the remaining \$8,500.00 on a 1:1 basis in the form of Environmental Improvement Projects ("EIPS"). These EIPS are described in Attachment A hereto, which is incorporated herein by reference. In the event Tilcon signs the Waiver and agrees to this Notice of Assessment and Order, Tilcon shall pay the \$8,500.00 within 30 days of the date Tilcon signs the Waiver and Tilcon shall complete the EIPS described in Attachment A by the dates specified in Attachment A. If Tilcon does not sign the Waiver, Tilcon shall pay the \$17,000 penalty within 45 days of receipt of this Notice of Assessment and Order.

Tilcon shall submit a check to the Department in the amount of the penalty made payable to the "State of Delaware," to be received within 30 days of the date of this Order. Payment shall be sent to: Valerie Csizmadia, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, DE 19904.

Tilcon is also hereby assessed costs of \$1,005.03 pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in the investigation of the violations. Tilcon shall pay these costs by submitting a separate check in the amount of \$1,005.03, made payable to the "State of Delaware," to be received within 30 days of the date of this Order. Payment shall be sent to: Valerie Csizmadia, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904.

PUBLIC HEARING

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Tilcon, no later than thirty (30) days from 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 Tilcon requests a hearing, the Department reserves the right to withdraw this Administrative Penalty Assessment and Order and to take additional enforcement action it deems appropriate, including, but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorneys 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.

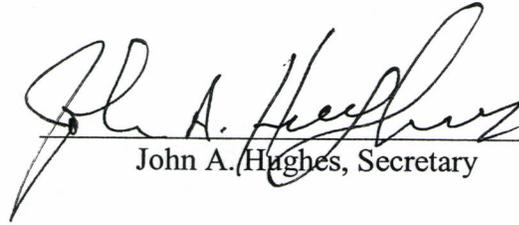
PRE-PAYMENT

Tilcon may prepay the administrative penalty and the cost recovery of \$1,005.03 by signing the attached Waiver and returning it to the Department to the address above noted. By so doing, Tilcon waives its right to a hearing and the opportunity to appeal or contest this Assessment, which shall become a final Order upon signature.

If you have any questions, please contact Robert J. Taggart at (302) 323-4542.

2-26-04

Date



John A. Hughes, Secretary

Cc: John Blevins, Director
Valerie Csizmadia, Deputy Attorney General
Ali Mirzakhali, Administrator
Robert J. Taggart, Program Manager
Nancy E. Terranova, Program Manager
Everett DeWhitt, Program Manager
Steven Mann, Environmental Scientist
Melanie A. Smith, Environmental Engineer
Steve Ours, Environmental Engineer
Jennifer Bothell, Enforcement Coordinator
Mercedes Rooks, Paralegal
Dover File

WAIVER OF STATUTORY RIGHT TO A HEARING

Tilcon hereby waives its right to a hearing and its opportunity to appeal or contest this Notice of Assessment and Order and agrees to forward to the Department checks payable to the State of Delaware, in accordance with the above terms, within 30 days of receipt of this Assessment and Order and to complete the EIPS as set out in Attachment A. The checks shall be directed to Valerie S. Csizmadia, Deputy Attorney General, Department of Justice Environmental Unit, 102 W. Water Street, Dover, DE 19904.

TILCON DELAWARE, INC.

BY: _____
NAME: _____
TITLE: _____
DATE: _____

ATTACHMENT A

Tilcon shall undertake two Environmental Improvement Projects ("EIP") as follows:

1. First EIP—Edgemoor Odor Study.

The Department hired Sterns and Wheeler, a consulting company, to conduct an odor study in Edgemoor, Delaware. As part of the study, the consultant analyzed Tilcon's emissions and took odor samples. Funds Tilcon expends or expended in the amount of \$1,175.00 to accomplish this odor study shall be applied towards the \$8,500 EIP offset. In order to accomplish the offset, within 30 days from signing the Waiver, Tilcon shall provide the Department with an accurate accounting of all funds Tilcon applied to the costs of the Sterns and Wheeler Study.

2. Second EIP—Materials and Services Component.

Tilcon shall provide materials and/or services to the Department up to the amount of the offset (\$8,500.00 minus credit for the First EIP) related to a beach improvement project to be approved or requested by the Division of Soil and Water Conservation within one year of the date of Tilcon's signature of the Waiver portion of the Notice of Assessment and Order. Tilcon agrees that all materials and services will meet the required specifications for the type of work to be accomplished and shall be billed at the same rates which would apply for similar services and materials purchased by a third party in an arms length transaction. If requested by the Department, Tilcon shall supply documentation which evidences compliance with this billing provision.