



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMENED INITIAL DECISION

OAL DKT. NO. ECE 04318-21

AGENCY DKT. NO. PEA190001-80114

**NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
AIR COMPLIANCE AND ENFORCEMENT,**

Petitioner,

v.

**HOLIDAY INN OF CLINTON/SNG
PROPERTIES LLC,¹**
Respondent.

J. Matthew Novak, Deputy Attorney General, for petitioner New Jersey
Department of Environmental Protection, Air Compliance and Enforcement
(Matthew J. Platkin, Acting Attorney General, State of New Jersey, attorney)

Gulshan Chhabra, Managing Director, for respondent Holiday Inn of Clinton/SNG
Properties LLC, pursuant to N.J.A.C. 1:1-5.4(a)(5)

Record Closed: June 10, 2022

Decided: June 28, 2022

¹ After the commencement of this matter, the franchise license issued to SNG Properties LLC by Holiday Inn expired. SNG Properties LLC did not renew the license and the subject hotel is now known as the Liyo Inn.

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Respondent Holiday Inn of Clinton/SNG Properties LLC appeals the determination of petitioner, the New Jersey Department of Environmental Protection, Air Compliance and Enforcement (NJDEP), that respondent has violated the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. (the Act), and the regulations promulgated thereunder, specifically, N.J.A.C. 7:27-8.3(e), -8.13(d), and -19.11. Respondent also appeals the assessment by the NJDEP of a civil administrative penalty of \$7,000.

PROCEDURAL HISTORY

On April 18, 2019, the NJDEP issued an Administrative Order and Notice of Civil Penalty Assessment (AONOCAPA) to respondent finding violations of the regulations and of the conditions and provisions of respondent's permit.² On May 15, 2019, respondent requested an adjudicatory hearing. On June 19, 2019, the NJDEP notified respondent that this matter would be transmitted to the Office of Administrative Law (OAL). The matter was filed for determination as a contested case on May 14, 2021, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Telephone prehearing conferences with the parties were held on July 27, October 25, and November 15, 2021. During the last conference, petitioner requested a briefing schedule for a motion for summary decision and on January 11, 2022, petitioner filed a motion for summary decision in its favor finding that respondent is liable for the violations of the Act and regulations alleged in the NJDEP's April 18, 2019, AONOCAPA, and upholding the NJDEP's assessment of a civil administrative penalty of \$7,000 against respondent.

² I/M/O Holiday Inn of Clinton (SNG Properties LLC), PEA 190001-80114, AONOCAPA, April 18, 2019.

On March 22, 2022, I issued an order granting partial summary decision to petitioner, concluding that:

1. Respondent was not in compliance with the Act, regulations, and its operating permit prior to January 23, 2017, both with respect to the failure to check air quality prior to running the emergency generator and failure to keep adequate records.
2. Respondent was not in compliance with the Act, regulations, and its operating permit in connection with the specific recordkeeping requirements of its permit.

The parties were directed to provide testimony and documentary evidence as to the remaining issue, that being whether respondent violated its permit and the applicable regulations between February 2017 and November 2018 by failing to check air quality prior to running the emergency generator for testing and maintenance purposes. The hearing was scheduled for June 10, 2022. In a prehearing conference, Gulshan Chhabra (Chhabra), Managing Director of SNG Properties LLC, stated that he no longer appealed the determination of violations and only appealed the assessment of the civil administrative penalty. Accordingly, testimony at the hearing was limited to the appropriateness of the penalty. The record closed on June 10, 2022.

FACTUAL DISCUSSION AND FINDINGS

The facts of this matter are not in dispute. Based on the testimony of Leslie Bates (Bates), NJDEP Environmental Specialist 3; Jeffrey Mayer (Mayer), Bureau Chief, NJDEP North Field Office; and Chhabra, and on the papers filed by the parties in this case,³ including the certifications of J. Matthew Novak (Novak), Deputy Attorney General; Bates; and Chhabra, I **FIND as FACT:**

³ Neither party introduced exhibits at the hearing, choosing to rely on those documents submitted in connection with the motion for summary decision.

Respondent owns and/or operates a hotel formerly known as the Holiday Inn of Clinton, located at 111 West Main Street/Rte. 173, Lot 2, Block 3, Clinton Township, Hunterdon County, New Jersey (the Hotel). In July 2012, the NJDEP issued a New Jersey Air Pollution Control permit, No. GEN 120001, to respondent for operation of an emergency backup generator. The effective dates of this permit were July 25, 2012, through July 24, 2017. A subsequent permit covering the same emergency backup generator, No. GEN 170002, was issued by the NJDEP to respondent, effective July 25, 2017, through July 25, 2022.

Permit No. GEN 120001, provides, in pertinent part:

Ref. #6: The [emergency generator] shall be operated only . . . [d]uring the performance of normal testing and maintenance procedures, as recommended in writing by the manufacturer and/or as required in writing by a Federal or State law or regulation.

The owner or operator of an emergency generator shall record in a logbook or computer data system, the following information for each emergency generator:

(a) Total operating time from the emergency generator's hour meter, once per month;

(c) If testing or maintenance is the reason for the operation of the emergency generator, the Permittee shall record the following upon occurrence of event:

1. The reason for its operation.

2. The date(s) of operation and the start-up and shutdown time;

3. The total operating time for testing or maintenance based on the emergency generator's hour meter; and

4. The name of the operator.

5. The monthly hours of operation during emergency periods shall be maintained. The owner or operator of an emergency generator shall maintain the records on site for a period of no less than five years after the record was made

and shall make the records readily available to the Department or the EPA, upon request. [N.J.A.C. 7:27-19.11]

Ref. #7: Emergency generators shall not be used: 1) In a circumstance other than an emergency; for normal testing and maintenance on days when the Department forecasts air quality anywhere in New Jersey to be "unhealthy for sensitive groups," "unhealthy," or "very unhealthy" or "hazardous" unless required in writing by Federal or State law or regulation. Procedures for determining the air quality forecasts for New Jersey are available at <http://www.state.nj.us/dep/aqpp/aqforecast>.

Permittee shall check the air quality forecast for New Jersey available at the Department air quality website at <http://www.state.nj.us/dep/aqpp/aqforecast> prior to operating during testing and maintenance periods. [N.J.A.C. 7:27-8.13(d)]

[No. GEN 120001, Ref. #6, #7.]

The renewal permit, No. GEN 170002, provides, in pertinent part:

Ref. #4: Recordkeeping Requirement [as provided at] #7(a). [N.J.A.C. 7:27-8.13(d)]

Ref. #7: Permittee shall record the following information for each [emergency generator (EG)] for each site:

(a) Total operating time from the EG's hour meter, once per month;

(c) If testing or maintenance is the reason for operation of the EG(s), the Permittee shall record the following upon occurrence of event:

1. The reason for its operation.

2. The date(s) of operation and the start-up and shutdown time;

3. The total operating time for testing or maintenance based on the EG's hour meter; and

4. The name of the operator.

(d) The Permittee of an EG shall maintain records on-site for a period of no less than five years after the records was [sic] made and shall make the records readily available to the Department. [N.J.A.C. 7:27-8.13(d)]

Ref. #7: The emergency generator(s) specified in the permit shall be operated only during the following situations:

(a) During the performance normal testing and maintenance procedures, as recommended in writing by the manufacturer, the facility's standard operating procedures, and/or as required in writing by a Federal or State law or regulations EXCEPT on days when the Department forecasts air quality anywhere in New Jersey to be "unhealthy," or "very unhealthy" or "hazardous." Procedures for determining the air quality forecasts for New Jersey are available at the Department air quality website at <http://www.state.nj.us/dep/aqpp/aqforecast>.

[No. GEN 170002, Ref. #4, #7.]

At all relevant times, Bates was the NJDEP inspector assigned to the Hotel. Her duties included, among other matters, conducting "inspections to determine compliance with New Jersey Air Quality permits, New Jersey Air Pollution Control regulations, and US [Environmental Protection Agency] Clean Air Act regulations." Revised Certification of Leslie Bates (March 15, 2022), ¶ 1.

On January 23, 2017, Bates inspected the Hotel. She stated that at that time, "the managers of the Holiday Inn expressed that they were unaware that they were required to check air quality prior to running their emergency generator." *Id.*, ¶ 3.

On February 16, 2017, NJDEP issued a Notice of Violation (NOV) to respondent, PEA 170001, alleging that respondent failed to fulfill conditions of its permit by not checking the air quality forecast prior to operating the generator for testing/maintenance and by not maintaining proper records regarding the operation of the generator. AONOCAPA, p. 3 of 6. In her certification and at the hearing, Bates stated that the NOV

provided for no penalty if respondent operated the generator in compliance with the regulations.⁴

On November 15, 2018, Bates inspected the Hotel for the second time. During this inspection, Bates stated that James Saloczy (Saloczy),⁵ the general manager of the hotel “instructed his employee to in the future check the air quality prior to running the generator, and to change the generator settings to allow this.” Bates Cert., ¶ 4. Based on this exchange, Bates concluded that respondent was still not in compliance with the terms of its permit and the regulations.⁶

On April 19, 2019, the NJDEP issued the AONOCAPA to respondent charging it with failure to comply with the conditions of its permit by not checking air quality forecasts prior to operating the emergency generator and failing to keep records as specified in the Permit regarding the operations of the emergency generator, in violation of the Act and regulations, specifically, N.J.A.C. 7:27-8.13(d), N.J.A.C. 7:27-19.11, and N.J.A.C. 7:27-8.3(e).

Respondent was ordered to cease operation of the emergency generator or to operate the emergency generator in accordance with its permit and to pay a civil administrative penalty of \$7,000. The penalty was calculated as follows: \$500 for each violation of the permit and regulations related to failure to keep proper records as discovered by Bates at the inspections in 2017 and 2018; and \$3,000 for each violation of the permit and regulations related to failure to check air quality prior to operating the generator as discovered by Bates at the inspections in 2017 and 2018. Br. of Petitioner, at 9-10.

⁴ As was discussed in the order on summary decision, the NOV was not provided and the AONOCAPA is less clear with respect to the potential waiver of the penalty that would be assessed after the first inspection, stating that respondent was afforded “a period of time to correct the violation before a penalty would be assessed.” AONOCAPA, p. 3 of 6.

⁵ In her certification, Bates refers to the general manager as “John” Saloczy. Presumably, this is an error.

⁶ In its response to the motion for summary decision, respondent argued that Hotel staff had, since February 2017, checked air quality prior to operating the generator for testing and maintenance purposes and had kept the requisite records. Considering all evidence in the light most favorable to respondent, I concluded that a dispute as to a material fact remained. As stated above, respondent no longer challenges any of the findings in the AONOCAPA.

Petitioner contends that the Act, the regulations, and the terms of respondent's permits make clear that the operator of an emergency generator is required to (1) check air quality prior to conducting tests of the generator; and (2) keep specific records regarding the operations of the generator. The undisputed evidence shows that respondent failed to meet these requirements prior to and following the NJDEP inspection in January 2017, and by the time of the NJDEP inspection in November 2018.

Petitioner also contends that the imposition of a civil administrative penalty of \$7,000 is permitted and appropriate under the regulations.

Respondent did not argue with the calculation of the proposed civil administrative penalty but asks that the penalty be waived as "it would be a great help in our current financial circumstances." Ltr. of Gulshan Chhabra in Response to Motion for Summary Decision (February 15, 2022). Respondent provided its financial data for the years 2020, 2021, and 2022 (to date), to show the severe financial distress realized by respondent as a result of the COVID-19 public health emergency, distress that respondent claims affected the entire tourism and hospitality industry.⁷ Chhabra stated that high franchise fees impacted the decision not to renew the Holiday Inn franchise license. Due to its financial situation, respondent requests that the proposed penalty of \$7,000 be waived or reduced to a sum of approximately \$2,000.

In support of his request for a hardship waiver,⁸ Chhabra accepts full responsibility for the failure of the Hotel staff to comply with the regulations and the operating permit. He stated that "we have learned our lesson" and operate in full compliance with law. Further, Chhabra notes that although respondent failed to check air quality prior to running the emergency generator for testing and maintenance purposes, respondent did consult the NJDEP website during these proceedings and confirmed that air quality in the vicinity of the Hotel was of acceptable levels on the dates on which testing and maintenance activities were conducted and, therefore, no environmental harm resulted.

⁷ Chhabra makes a comparison to the Hotel's finances in 2018-2019, but did not provide financial data for those years.

⁸ Neither party presented evidence of NJDEP policies and/or regulations regarding eligibility for hardship waivers.

LEGAL ANALYSIS AND CONCLUSIONS

In this case, the NJDEP bears the burden of proving by a preponderance of the credible evidence that respondent has violated the Act, regulations, and its permits.

With respect to respondent's alleged failure to check the air quality forecast on the NJDEP website prior to conducting monthly generator tests, as required by its permit, NJDEP contends that respondent has violated the Act and the following two provisions of the regulations:

The Department may include, as a condition of approval [of an operating permit], a compliance plan. The compliance plan shall include monitoring, recordkeeping, and reporting requirements. Such requirements may include:

3. Recordkeeping including, but not limited to, information pertaining to air contaminant emissions, process operations, maintenance, raw material usage or concentrations, and operations of equipment and control apparatus. Such records shall be kept in a manner approved by the Department and be available on the operating premises for review by the Department or its representatives[.]

[N.J.A.C. 7:27-8.13(d).]

No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto.

[N.J.A.C. 7:27-8.3(e).]

Further, with respect to respondent's alleged failure to maintain adequate records of its use of the emergency generator, NJDEP contends that respondent has violated the Act and the following two provisions of the regulations:

- (a) The owner or operator of an emergency generator with a maximum rated power output of 37 kW or greater, shall maintain on site and record in a logbook or computer data system, the following information:
1. Once per month, the total operating time from the generator's hour meter;
 2. For each time the emergency generator is specifically operated for testing or maintenance:
 - i. The reason for its operation;
 - ii. The date(s) of operation and the start up and shut down time;
 - iii. The total operating time for testing or maintenance based on the generator's hour meter; and
 - iv. The name of the operator; and
 3. If a voltage reduction is the reason for the use of the emergency generator, a copy of the voltage reduction notification from PJM or other documentation of the voltage reduction.
- (b) The owner or operator of an emergency generator shall maintain the records required under (a) above for a period of no less than five years after the record was made and shall make the records readily available to the Department or the EPA upon request.

[N.J.A.C. 7:27-19.11.]

No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto.

[N.J.A.C. 7:27-8.3(e).]

Based on the undisputed facts described above, I **CONCLUDE** that as of February 16, 2017, and as of November 24, 2018, respondent failed to verify that air quality was of

acceptable levels prior to conducting monthly generator tests, in violation of N.J.A.C. 7:27-8.13(d), and -8.3(e), and failed to maintain adequate records of its use of the emergency generator, in violation of N.J.A.C. 7:27-19.11, and -8.3(e).

I further **CONCLUDE** that respondent failed to comply with the specific recordkeeping requirements of the Act, regulations, and its permit because respondent did not record (1) the total operating time for testing or maintenance based on the generator's hour meter; and (2) the reason for the operation of the generator. See N.J.A.C. 7:27-19.11 and -8.3(e).

Bates explained that the penalty was assessed pursuant to the guidelines found at N.J.A.C. 7:27-19.11, and in the Air Compliance and Enforcement Penalty Calculation Sheet found at N.J.A.C. 7:27A-3.10. Respondent was assessed a penalty of \$500 per violation for failure to maintain proper records on February 16, 2017, and November 24, 2018. Respondent was assessed a penalty of \$3000 per violation for failure to verify that air quality was of acceptable levels prior to conducting monthly generator testing on February 16, 2017, and November 24, 2018.

As was discussed by the parties throughout the course of these proceedings, NJDEP has the authority to adjust or reduce penalties either in settlement or "prior to assessment . . . pursuant to the factors listed in N.J.A.C. 7:27A-3.5(e)." N.J.A.C. 7:27A-3.10(j).

The factors to be considered by the NJDEP in adjusting a penalty are:

1. The compliance history of the violator;
2. The number of times and the frequency with which the violation occurred;
3. The severity of the violation, including impact on the environment;
4. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

5. The nature, timing and effectiveness of measures taken to prevent future similar violations, and the extent to which such measures are in addition to those required under an applicable statute or rule; and
6. Any other mitigating, extenuating or aggravating circumstances.

[N.J.A.C. 7:27A-3.5(e).]

Respondent makes a strong argument for reduction of the proposed penalty, that being that it will have great difficulty in paying any fine as the Hotel (and entire hospitality industry) attempts to regain its financial footing as the COVID-19 public health emergency abates. Respondent's other argument, that no environmental harm resulted from its non-compliant conduct as the air quality on testing days was within acceptable limits, is not as compelling, especially given that following Bates' first inspection – in February 2017 – the Hotel was given ample opportunity to comply with the regulations and if it had, it would not face any penalty.

While the NJDEP may currently be treating violations, and respondents, such as those involved here, with leniency, the discretion to do so is reserved for the Commissioner. I **CONCLUDE** that on the record before me, the imposition by the NJDEP of a civil administrative penalty in the amount of \$7,000 is appropriate.

ORDER

I **ORDER** that the determination of petitioner, the New Jersey Department of Environmental Protection, Bureau of Air Compliance and Enforcement, that respondent Holiday Inn of Clinton/SNG Properties, LLC, has violated N.J.A.C. 7:27-8.3(e), -8.13(d), and -19.11, and the terms of its permit to operate an emergency generator, and the imposition by petitioner of a civil administrative penalty in the amount of \$7,000, are **AFFIRMED** and the appeal of respondent is **DISMISSED**.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Environmental Protection does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF LEGAL AFFAIRS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State Street, 4th Floor, West Wing, PO Box 402, Trenton, New Jersey 08625-0402**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 28, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

June 28, 2022

Date Mailed to Parties:

June 28, 2022 (email)

TMC/nmn

APPENDIX

WITNESSES

For Petitioner:

Leslie Bates

Jeffrey Mayer

For Respondent:

Gulshan Chhabra

Newman,Nicole [OAL]

From: Newman,Nicole [OAL]
Sent: Thursday, July 7, 2022 4:21 PM
To: Candice Hendricks; DEP Decisions; Greco, Margaret [OAL]; Hoagland Janice (depdecision@dep.state.nj.us); Rick Keiser; Robert Guzek
Subject: OAL Docket No. ECE 04318-21 / Initial Decision
Attachments: ECE 04318-21 NJDEP v. Holiday Inn of Clinton ID (002).docx

Good afternoon,

After submitting the Initial Decision in OAL Docket No. ECE 04318-21, NJDEP/Air Compliance and Enforcement v. Holiday Inn of Clinton (SNG Properties, LLC), a typographical error in the caption was brought to Judge Caliguire's attention. Specifically, the agency docket number was changed from PEA19001-80114 was changed to PEA190001-80114. This correction **does not change** the outcome of the judge's decision. This error has been corrected and the amended ID is attached.

Thank you for your consideration.

Sincerely,
Nicole Newman



STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

Phone 609-689-4038
Judicial Assistant 1 to:
Hon. Edward J. Delanoy, Jr., Deputy Director/ALAJ
Hon. Mary Ann Bogan
Hon. Tricia M. Caliguire
Hon. Susan M. Scarola (ret., on recall)
9 Quakerbridge Plaza, Mercerville, NJ 08619

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Newman,Nicole [OAL]

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