

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

STATE OF CONNECTICUT

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Order No. 2123

VS.

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IBM CORPORATION

)

CONSENT ORDER

A. With the agreement of IBM Corporation ("Respondent"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds the following:

1. The Respondent owns and operates a computer data center in Southbury, Connecticut ("facility").
2. At the facility, the Respondent operates seven Detroit Diesel Emergency Engines ("engines") and operated four Detroit Diesel Allison Turbines ("turbines").
3. The uncontrolled potential to emit Nitrogen Oxides ("NOx") from each engine exceeds 15 tons per year.
4. The Respondent operates under the General Permit to Limit Potential to Emit ("Registration No. 167-0019-GPLPE")
5. Pursuant to Section 22a-174-3a(a)(1)(D) of the Regulations of Connecticut State Agencies ("RCSA"), the owner or operator of any stationary source for any new emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant shall apply for and obtain a permit to construct and operate prior to beginning actual construction.
6. Pursuant to RCSA Section 22a-174-3b(e) however, the owner or operator of a stationary source that is an emergency engine may construct and operate such source without obtaining a permit pursuant to RCSA Section 22a-174-3a provided that the operation of such engine shall not exceed 300 hours during any period of twelve (12) consecutive months.
7. In February 2009 the Respondent caused three of the engines, designated as Emission Unit Nos. 29, 30, and 31, in Registration No. 167-0019-GPLPE to exceed 300 hours of operation during each period of 12 consecutive months that included February 2009.

Date Issued: February 9, 2012

Consequently, Notice of Violation No. 16318 was issued to the Respondent on April 2, 2009.

8. The Respondent operated turbine Nos. 1 through 4 under new source review (“NSR”) Permit Nos. 167-0011, 167-0012, 167-0013, and 167-0017 (“permits”), respectively. The permitted NOx emissions rates for the turbines were 21.3 pounds per hour.
9. The turbines are subject to RCSA Section 22a-174-22 pertaining to the control of NOx emissions. Pursuant to RCSA Section 22a-174-22(k)(1), NOx emission tests shall be conducted on the turbines at least once every five years after performing the initial NOx emission test to ensure continued compliance with the allowable NOx emission rates set forth in RCSA Section 22a-174-22(e) Table 22-1 and the permits
10. The Respondent conducted initial NOx emission tests on the turbines on January 18, 2004. Accordingly, the Respondent was required to conduct NOx emission tests on the turbines by January 18, 2009.
11. A record review, conducted on March 3, 2009, revealed that the Respondent did not test the turbines on or before January 18, 2009. On March 17, 2009 Notice of Violation No. 16319 was issued to the Respondent for failing to conduct timely NOx emissions tests on the turbines within five years of the previous tests.
12. The Respondent conducted NOx emissions tests on turbine Nos. 1, 2, and 4 on April 22, 23 and on turbine No. 3 on August 11, 2009. The NOx emissions were reported as 28.3, 28.8, 28.4, and 26.7 pounds per hour, respectively.
13. On July 17, 2009, Notice of Violation No. 16383 was issued to the Respondent for exceeding the NOx emission limits contained in part V of the permits. Subsequently, Department staff discovered that the information utilized to establish the NOx emission limits in the permits was incorrect. Based on Allison gas turbine emissions data, the correct NOx emission rates in the permits should have been 30 pounds of NOx per hour. As such, it was determined that the tested emission rates for NOx from the turbines were in compliance with the applicable emissions limits. Notice of Violation No. 16383 will be closed with no further enforcement.
14. By virtue of the above, the Respondent violated the requirements of Permit Nos. 167-0011, 167-0012, 167-0013, and 167-0017; and RCSA Sections 22a-174-3a and 22a-174-22(k).
- B. With the agreement of the Respondent, the Commissioner, pursuant to Sections 22a-6, 22a-171, 22a-174, 22a-176, 22a-177, and 22a-178 of the Connecticut General Statutes, orders the Respondent as follows:
1. New Source Review Permits. On or before ninety (90) days after the issuance of this consent order, the Respondent shall submit NSR permit applications for the three engines to:

Central Permit Processing Unit,
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

2. NOx Compliance Plan. On or before ninety (90) days after the issuance of this consent order, the Respondent shall submit an updated "Compliance Plan for Connecticut Regulations for the Control of Oxides of Nitrogen." The updated NOx compliance plan shall be completed on forms provided by the Commissioner and shall include all emissions units at the Facility, which are subject to RCSA Section 22a-174-22.
3. Progress reports. On or before the last day of each calendar quarter following issuance of this consent order, and continuing until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction, the Respondent shall submit a progress report to the Commissioner describing the actions which the Respondent has taken to date to comply with this consent order.
4. Full compliance. The Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.
5. Civil Penalty. On or before 30 days after the issuance of this consent order, the Respondent shall pay a penalty of \$36,814 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.7 and A.11 of this consent order. The portion of the civil penalty attributed to the violation illustrated in paragraph A.7 is \$21,600 and the portion of the civil penalty attributed to the violation illustrated in paragraph A.11 is \$15,214.
6. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to Bureau of Financial & Support Services--Accounts Receivable Office["F&SS"], Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106, and shall be by certified or bank check payable to the Connecticut Department of Energy and Environmental Protection. The check shall state on its face, "Air Management Civil Penalty, Engineering and Enforcement Division, Consent Order No. 2123 "
7. Approvals. The Respondent shall use best efforts to submit to the Commissioner all documents required by this order in a complete and approvable form. If the Commissioner notifies the Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and the Respondent shall correct the deficiencies and resubmit it within the time specified by the

Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.

8. **Definitions.** As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. Mail or personally delivered, whichever is earlier.
9. **Dates.** The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
10. **Certification of documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by the Respondent or, if the Respondent is not an individual, by the Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and the Respondent or the Respondent's chief executive officer and each such individual shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under Section §53a-157b of the Connecticut General Statutes and any other applicable law."
11. **Noncompliance.** This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this consent order may subject the Respondent to an injunction and penalties.

12. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
13. Notice of transfer; liability of Respondent. Until the Respondent has fully complied with this consent order, the Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. The Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
14. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondents pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require the Respondents to undertake further investigation or further action to prevent or abate violations or pollution.
15. Respondent's obligations under law. Nothing in this consent order shall relieve the Respondent of other obligations under applicable federal, state and local law.
16. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by the Respondent pursuant to this consent order will result in compliance or prevent or abate pollution.
17. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the action required or allowed by this consent order.
18. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.
19. Notice to Commissioner of changes. Within 15 days of the date the Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, the Respondent shall submit the correct or omitted information to the Commissioner.

20. Notification of noncompliance. In the event that the Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, the Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, the Respondent shall submit in writing the date, time and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and the Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

21. Joint and several liability. Respondents shall be jointly and severally liable for compliance with this consent order.

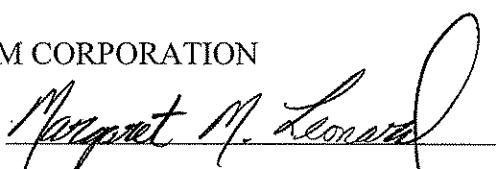
22. Submission of documents. Any document required to be submitted to the Commissioner under this consent order, unless otherwise specified in this consent order or in writing by the Commissioner, shall be directed to:

Rickey Bouffard
Department of Energy and Environmental Protection
Bureau of Air Management
Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind Respondent to the terms and conditions of the consent order.

IBM CORPORATION

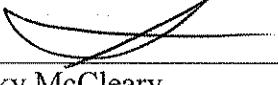
Signature:



Type Name: Margaret M. Leonard

Type Title: Director of Real Estate
Site Operations, Americas
Date: February 2, 2012

Issued as a final order of the Commissioner of Energy and Environmental Protection.



Macky McCleary
Deputy Commissioner

2/8/12

Date

*Department of Energy and Environmental Protection

*Public Act 11-80, effective July 1, 2011, established the Department of Energy and Environmental Protection as the successor agency to the Department of Environmental Protection.