

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



STATE OF CONNECTICUT)
)
 VS.)
)
 ESPN, INC.)
)

Order No. 2196

CONSENT ORDER

- A. With the agreement of ESPN, Inc. (the "Respondent") the Commissioner of Environmental Protection ("Commissioner") finds the following:
1. The Respondent is a twenty-four (24) hour cable sports broadcasting, and entertainment company, with headquarters at ESPN Plaza in Bristol, CT ("facility").
 2. At the facility, the Respondent owns and operates thirteen (13) Caterpillar Standby Diesel fired Generators, model Nos. 3516, 3516B, and 3516C. Three (3) of the generators were installed in 1996; two (2) in 1998; and the remaining eight (8) in 2008. Each unit has potential nitrogen oxide ("NO_x") emissions greater than fifteen (15) tons per year and two-hundred seventy four (274) pounds per day.
 3. Said Generators were installed at the facility for limited use as "*emergency engines*" only as that term is defined by the Regulations of Connecticut State Agencies ("RCSA") Section 22a-174-22(a)(3).
 4. As "*emergency engines*" said Generators were to operate only in "*emergencies*" as that term is narrowly defined pursuant to Section 22a-174-22(a)(4) of the RCSA.
 5. Pursuant to Section 22a-174-3a(a)(1)(D) of the Regulations of Connecticut State Agencies ("RCSA"), the owner or operator of a stationary source shall "*apply for and obtain a permit to construct and operate...any...new emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant*". However, pursuant to Section 22a-174-3(b)(1) of the RCSA, "*The owner or operator of a stationary source that is...an emergency engine...may construct and operate such source without obtaining a...permit for such source...*".

Date Issued: 6/1/11

6. On July 20, 2009, the facility was inspected by Air Pollution Control Engineer Phil Schnell, of the Department's Air Engineering & Enforcement Division. During said inspection, Mr. Schnell discovered that, on May 30, 2008, the five (5) older generators ("GEN1 through GEN5") were operated for 8.15 hours each. However, there was no "**emergency**" on May 30, 2008, as it is defined in Section 22a-174-22(a)(4) of the RCSA. Further the Respondent has admitted that these operations were not routine, scheduled testing or maintenance.
7. On October 13, 2009, an agent of the Respondent submitted records detailing the use of the Generators for calendar year 2008. A review of these records indicate that on May 21, 2008 GEN1 through GEN5 were each operated for 1.7 hours, resulting in more than 274 lbs of NO_x emissions. At the time that the engines were operating on May 21, 2008 there were no occurrences that meet the definition of "**emergency**", as it is defined in Section 22a-174-22(a)(4) of the RCSA, and the operations were not routine, scheduled testing or maintenance.
8. Since GEN1 through GEN5 were operated during times that do not constitute an "**emergency**" or routine, scheduled testing or maintenance; the units can no longer be classified as "**emergency engine(s)**."
9. The Respondent's use of GEN1 through GEN5 on May 21, 2008 for non-emergency purposes, constitutes a "**modification**" as that term is defined in Section 22a-174-1(71) of the RCSA. The "**modification**" caused each unit's potential NO_x emissions to increase by greater than fifteen (15) tons per year. As a result, GEN1 to GEN5 now require permits to operate.
10. Pursuant to Section 22a-174-3a(a)(1)(E) of the RCSA, "*Prior to beginning actual construction of any stationary source or modification...the owner or operator shall apply for and obtain a permit to construct and operate under this section for any...Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year*".
11. The Respondent was required to have applied for permits prior to the units' May 21, 2008 modifications. The failure to do so violates Section 22a-174-3a(a)(1)(E) of the RCSA. Notice of Violation ("NOV") No. 16587 was issued to the Respondent on August 19, 2010.
12. The State of Connecticut's "**ozone season**" is from May 1 to September 30, of any given year. During the "**ozone season**", GEN1 through GEN5 have the potential to emit greater than two-hundred seventy four (274) pounds per day of NO_x; the units are therefore also regulated under Section 22a-174-22 of the RCSA.
13. Pursuant to Section 22a-174-22(b)(2)(B) of the RCSA, non-emergency engines that are regulated under Section 22a-174-22 of the RCSA, must comply with

subsection (d) to (k) requirements; if actual emissions from the premise on which the unit(s) are located exceed 274 pounds, on any day, during the “*ozone season*”.

14. ESPN’s records indicate that the facility emitted greater than 274 pounds per day, several times during the 2008 and 2009, “*ozone season*”. One such occurrence was on May 21, 2008. GEN1 through GEN5 have been subject to the requirements of subsection (d) to (k) of Section 22a-174-22 of the RCSA, since at least May 21, 2008.
15. Pursuant to Section 22a-174-22(k)(1) of the RCSA, “*The owner or operator of a stationary source subject to an emission limitation under this section shall conduct an emission test...no later than one year after becoming subject to this section*”.
16. GEN1 through GEN5 have been subject to the emission limitations of Section 22a-174-22 of the RCSA, since at least May 21, 2008. The Respondent was therefore required to test the units to demonstrate that they comply with the emission limitations of Section 22a-174-22 of the RCSA. The Respondent was required to conduct these tests by no later than May 21, 2009. Respondent’s failure to do so violates Section 22a-174-22(k)(1) of the RCSA. NOV #16588 was issued to the Respondent on August 19, 2010.
17. Pursuant to Section 22a-174-22(m)(1) of the RCSA, “*The owner or operator of a stationary source subject to this section shall submit a compliance plan to the Commissioner...Such compliance plan shall document how such source will comply with all applicable requirements of this section*”.
18. GEN1 through GEN5 have been subject to the requirements of Section 22a-174-22(m)(1) of the RCSA since at least May 21, 2008. The Respondent was therefore required to submit a compliance plan for the units by no later than September 30, 2008. However, the Respondent failed to do so and thereby violated Section 22a-174-22(m)(1) of the RCSA. NOV #16437 was issued to the Respondent on November 5, 2009.
19. In response to NOV #16437, Respondent submitted a compliance plan to the Department. The compliance plan was submitted on December 1, 2009, approximately fourteen (14) months after the due date. Despite its submission the compliance plan is deficient and fails to indicate how GEN1 through GEN5 will comply with all applicable requirements of Section 22a-174-22 of the RCSA.
20. By virtue of the above conduct, the Respondent violated Section 22a-174-3a, Section 22a-174-22(k) of the RCSA; and Section 22a-174-22(m) of the RCSA.
21. The Respondent contests the statements made in paragraph A.3 through A.20. of this Consent Order. It is the Respondent’s contention that their use of GEN1 through GEN5 on May 21, 2008 were for an “*emergency*” as defined in Section

22a-174-22(a)(4) of the RCSA. The Department disagrees with the Respondent's assertion. Notwithstanding this dispute, the Commissioner and the Respondent have agreed to settle the matter through the issuance of this Consent Order. By agreeing to the issuance of this Consent Order, the Respondent makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1. and A.2. of this Consent Order.

- B. With the agreement of the Respondent, the Commissioner, acting under §22a-6, §22a-171, §22a-174, §22a-177, and §22a-178 of the Connecticut General Statutes, orders Respondent as follows:
1. The Respondent shall not operate GEN1 through GEN5, unless they are strictly operated as "*emergency engines*" during an "*emergency*"; as those terms are narrowly defined in Section 22a-174-22(a)(3) and Section 22a-174-22(a)(4) of the RCSA, respectively. The Respondent shall not operate GEN1 through GEN5 in response to lightening strikes or to any other foul weather conditions indicated in its responses to the Notice(s) of Violation, which responses were dated October 27, 2009, December 1, 2010 and February 15, 2011. Furthermore, Respondent shall not operate GEN1 through GEN5 as an immediate or direct response to any forecast or phenomena (natural or manmade) in anticipation of an emergency.
 2. The Respondent shall either:
 - (a) By December 31, 2014, remove or otherwise render as permanently inoperable, GEN1 through GEN5. The Respondent shall notify the Commissioner, in writing, that the generators have been rendered inoperable; or
 - (b) Achieve compliance with Subsections 22a-174-22 (d-e), and demonstrate such by means of emissions testing performed in accordance with Subsection 22a-174-22(k) and Section 22a-174-5 of the Regulations by no later than July 1, 2015.
 3. Within ninety (90) days after the date of issuance of this Consent Order, the Respondent shall submit a meaningful public participation plan to the Department in accordance with Section 22a-20a of the C.G.S. specific to submitting applications in accordance with Section 22a-174-3a of the Regulations for GEN6 through GEN13. Not less than 60 days after receiving approval of the meaningful public participation plan from the Department, the Respondent shall submit permit applications in accordance with Section 22a-174-3a of the RCSA for GEN6 through GEN13. The Respondent shall cooperatively provide any and all reasonably necessary information to complete the processing of the applications and issuance of the associated permits.
 4. Until June 1, 2013 or until the issuance of individual new source review permits, whichever occurs earlier; the Respondent may operate GEN6 through GEN13 in response to lightening strikes or to any other foul weather conditions indicated in

its responses to the Notice(s) of Violation, which responses were dated October 27, 2009, December 1, 2010 and February 15, 2011, or as an immediate or direct response to any forecast or phenomena (natural or manmade) in anticipation of an emergency; provided that within ninety (90) days after the end of the 2011, 2012 and 2013 ozone seasons, the Respondent must purchase and retire twice (2x) the Nitrogen Oxide Discrete Emission Reduction Credits (NOx DERCs) necessary to offset the NOx emissions (rounded up to the nearest whole ton) generated from such activities during the ozone season. Not more than 30 days from the end of the 2011, 2012, and 2013 ozone seasons, the Respondent shall submit a written report showing total NOx emissions during the ozone season and for each NOx DERC retired: Serial Number and source from which the Respondent obtained the NOx DERC.

5. Civil penalty. On or before sixty (60) days after issuance of this consent order, Respondent shall pay a penalty of thirty three thousand, three hundred and sixty one dollars (\$33,361) as the civil penalty sought by the Commissioner for those, and only those, violations described in Paragraph A.20 of this consent order.
6. Supplemental Environmental Project. In addition to the thirty three thousand, three hundred and sixty one dollars (\$33,361) civil penalty referenced in Paragraph B.4 of this Consent Order, Respondent has agreed to undertake supplemental projects totaling no less than two-hundred and sixty four thousand, six hundred and forty eight dollars (\$264,648) in net costs to the Respondent or to pay an additional amount outlined below:
 - a. On or before September 30, 2011 the Respondent shall, in Building 12, remove and replace no less than 891 parabolic 2' x 4' fluorescent fixtures and replace them with energy efficient 2-lamp Cooper type 2RDI-228TRP fluorescent fixtures or the functional equivalent thereof, install dimming controls in those fixtures that serve those areas of the building where "daylight harvesting" is appropriate, install no less than 143 electronic occupancy sensors will be installed to automatically turn-off light fixtures when physical movement in the area has ceased, and install day light sensors in the 76 exterior offices.
 - b. On or before December 31, 2011, the Respondent shall, in the Parking Lot #1 East, remove thirty-eight (38) 400 watt metal-halide fixtures and replace them with (27) Cooper VTS-A12-LED fixtures or the functional equivalent thereof.
 - c. If the Respondent fails to fully perform the SEP(s) in accordance with Subparagraphs B.6.a. – B.6.b., then the Respondent shall immediately pay the sum of two-hundred and sixty four thousand, six hundred and forty eight dollars (\$264,648). The Respondent shall pay such amount in accordance with the provisions of paragraph B.7. of this Consent Order.
 - d. On or before January 15, 2012, the Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that

certifies completion of the SEPs. Such final report shall include, at a minimum, a narrative history of the project, detailed explanation of its design and implementation and complete final accounting of actual project costs including receipts for out-of-pocket costs.

- e. Should the Respondent fail to demonstrate to the Commissioner's satisfaction that the actual cost to the Respondent of any fully completed SEP is less than the estimated cost, of such SEP, as determined by the Commissioner and presented to the Respondent with reasonable supporting documentation, the Respondent shall pay the difference between such actual cost and the estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify the Respondent in writing of the amount of any such unexpended SEP funds that are due. Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut" and the check shall state on its face "Statewide SEP Account, Consent Order No. 2196." The Respondent shall mail or personally deliver such payment to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.
- f. If the Respondent disseminates any publicity regarding funding a SEP, the Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

The Respondent shall not claim or represent that the SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and the Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.

7. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face, "Bureau of Air Management Civil Penalty, Consent Order No. 2196."
8. Full compliance. 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.
9. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is

deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and 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.

10. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
11. 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.
12. 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 Respondent or, if Respondent is not an individual, by Respondent's duly authorized representative, 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 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 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 may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."

13. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
14. 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.
15. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, 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. 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.
16. 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 Respondent 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 Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
17. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
18. 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 Respondent pursuant to this consent order will result in compliance [or prevent or abate pollution].
19. Access to site. Any representative of the Department of Environmental Protection may enter the facility subject to the Respondent's security protocols and practices for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
20. 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.

21. Notice to Commissioner of changes. Within 15 days of the date 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, Respondent shall submit the correct or omitted information to the Commissioner.


22. Notification of noncompliance. In the event that 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, 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, 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 Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by 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.

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


Ms. Lakisha Stephenson
Department of Environmental Protection
Bureau of Air Management
Engineering & Enforcement Division
79 Elm Street, 5th Floor
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. The undersigned further certifies that the Supplemental Environmental Projects described in Paragraphs B. 6.a-B.6.b of this Consent Order are not any of the following: 1.) projects that the Respondent has already completed; 2.) projects which the Respondent already intended to do or is likely to do for reasons other than the settlement of the matters described above; 3.) projects that are required by statute, regulation, permit or another order; or 4.) projects which the Department has the legal authority to require the Respondent to do.

ESPN, INC.

Signature: Type Name: RICK ABBOTTType Title: VP - GLOBAL Security & FacilitiesDate: MAY 31, 2011

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


Amey Martella
Deputy Commissioner

June 1, 2011
Date

CITY OF BRISTOL LANDRECORDS

MAILED CERTIFIED MAIL,
RETURN RECEIPT REQUESTED