



STATE OF CONNECTICUT

Vs.

O&G INDUSTRIES, INC.

)  
)  
)  
)  
)  
)

Order No. 2459

CONSENT ORDER

A. With the agreement of O&G Industries, Inc. (Respondent), the Commissioner of Energy and Environmental Protection (Commissioner) finds the following:

1. The Respondent owns and operates an H&B Model #1770 Hot Mix Asphalt Batch Plant (Batch Plant) subject to the conditions of Air Bureau Permit No. 015-0096 and a Gencor Drum Mix Asphalt Plant (Drum Plant) subject to the conditions of Air Bureau Permit No. 015-0124 at 260 Bostwick Avenue, Bridgeport (premises).
2. The premises is located in a severe nonattainment area for ozone as defined by section 22a-174-1(104) of the Regulations of Connecticut State Agencies (RCSA).
3. Pursuant to RCSA section 22a-174-22(b)(1)(B)(i) any fuel-burning equipment located in a severe nonattainment area for ozone that has potential emissions of NOx in excess one hundred thirty-seven (137) pounds during any day from May 1 to September 30, inclusive, of any year are subject to the requirements of RCSA section 22a-174-22.
4. The Batch Plant and the Drum Plant each have potential emissions of NOx in excess one hundred thirty-seven (137) pounds per day. Therefore, the Respondent is subject to RCSA section 22a-174-22.
5. Pursuant to RCSA section 22a-174-22(b)(2)(B), the provisions of RCSA 22a-174-22(d) through (k), inclusive, ... *shall not apply to a source if ... actual emissions of NOx after May 31, 1995 from the premises at which such source is located have not exceeded on any day from May 1 to September 30, inclusive, of any year: one hundred thirty-seven (137) pounds for a premises located in a severe nonattainment area for ozone...*
6. The Respondent submitted a compliance plan in August 1994 under RCSA section 22a-174-22(m). The Respondent completed Part J, *Application for Exemption as a Minor Source* of the compliance plan, indicating that they would conduct stack testing in 1995 as a measure to reduce NOx emissions to below the 137 pound threshold.
7. The Respondent reported in emission statements submitted to the Commissioner for calendar years 1995 and 1996 that the premises had peak NOx emissions of 199 pounds on August 10,

1995 and 192 pounds on September 24, 1996. Therefore, the premises does not qualify for the exemption provided by RCSA section 22a-174-22(b)(2)(B) and is subject to RCSA sections 22a-174-22(d) through (k), inclusive.

8. Pursuant to RCSA section 22a-174-22(k)(1) ... *Any owner or operator of a stationary source who has not installed and operated a continuous emissions monitor at such source shall conduct emission testing once every five years from the date of the previous test or five years from the date the previous test was due, whichever is earlier.*
  9. The Batch Plant and the Drum Plant do not have continuous emissions monitors installed. Therefore, the Respondent is required to conduct NOx emissions testing on these units once every five years.
  10. During an inspection conducted on August 8, 2014 (Log #2014-0017), the inspector determined that the Respondent last conducted NOx emissions testing of the Batch Plant and Drum Plant on June 21 through 23, 2006. NOx emissions testing of the Batch Plant and Drum Plant was, therefore, due on or before June 21, 2011.
  11. The Respondent did not conduct NOx emissions testing of the Batch Plant and Drum Plant on or before June 21, 2011. On September 26, 2014, the Commissioner issued Notice of Violation (NOV) #17472 to the Respondent for failure to conduct NOx RACT testing on the Batch Plant and the Drum Plant every five years as required by RCSA section 22a-174-22(k)(1).
  12. The Respondent conducted NOx RACT testing on the Batch Plant on July 14 and 15, 2015 and on the Drum Plant on July 22 and 23, 2015. The Commissioner accepted the results of the testing in a letter dated November 13, 2015. The test results demonstrated compliance with all regulatory and permitted NOx emissions limits.
  13. By agreeing to the issuance of this Consent Order, the Respondent makes no admission of fact or law with respect to the matters herein other than the facts asserted in paragraph A.1.
- B. With the agreement of Respondent, the Commissioner, acting under §22a-6 and §22a-174 of Connecticut General Statute, orders the Respondent as follows:
1. Civil penalty. On or before thirty (30) days after issuance of this Consent Order, the Respondent shall pay a penalty of \$15,700 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in Paragraph A.11 of this Consent Order.
  2. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the Department of Energy and 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 the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "Bureau of Air Management Civil Penalty, Air Engineering & Enforcement Division, Consent Order #2459."
  3. Statewide Supplemental Environmental Project (SEP) Account Payment.
    - a. In lieu of payment of a portion of the civil penalty referenced in Paragraph B.1, the Respondent may elect to pay \$7,800 to the Statewide SEP account.

- b. If the Respondent elects to make a payment to the Statewide SEP account, the Respondent shall make such payment within thirty (30) days after issuance of this Consent Order. The payment shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services--Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127. The payment shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "Statewide SEP Account" and "Consent Order #2459."
  - c. If the Respondent elects to make a payment of \$7,800 to the Statewide SEP account, the Respondent shall also pay a civil penalty of \$7,900 within thirty (30) days after issuance of this Consent Order. The payment shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services--Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127. The payment shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "Bureau of Air Management Civil Penalty, Air Engineering & Enforcement Division, Consent Order #2459."
  - d. The Respondent shall not claim or represent any SEP payment made pursuant to this Consent Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense. 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.
  - e. If the Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondent shall include a statement that such funding was made in settlement of an enforcement action brought by the Commissioner.
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. 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.
6. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
7. 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.

8. 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."
9. 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 the Respondent to an injunction and penalties.
10. 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.
11. Notice of transfer; liability of Respondent. Until the 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. 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.
12. 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.

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.

***O & G Industries, Inc.***

Signature: 

Type Name: Kenneth W. Merz

Type Title: Secretary

Date: September 30, 2016

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



Michael J. Sullivan  
Deputy Commissioner  
Department of Energy and Environmental Protection

October 11, 2016

Date

MAILED CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

13. Respondent's obligations under law. Nothing in this Consent Order shall relieve the Respondent of other obligations under applicable federal, state and local law.
14. 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.
15. 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 actions required or allowed by this Consent Order.
16. 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.
17. 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.
18. 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.
19. 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:

Robin Baena  
Department of Energy and Environmental Protection  
Air Engineering & Enforcement Division  
79 Elm Street  
Hartford, Connecticut 06106-5127