

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, PA 19103**

In the Matter of: :

:

Union Center Plaza Management Corp. : **U.S. EPA Docket No. CAA-03-2022-0016DA**
5301 Wisconsin Avenue, N.W., Suite 510 :
Washington, D.C. 20015 :

:

Respondent. : **Proceeding under Section 113(a)(1) and (4) of**
: **the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (4)**
:

ADMINISTRATIVE COMPLIANCE ORDER

A. PRELIMINARY STATEMENT

1. This Administrative Compliance Order (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(a)(1) and (4) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(a)(1) and (4).
2. The Director, Enforcement and Compliance Assurance Division, EPA Region III, has been delegated the authority to issue this Order under Section 113(a)(1)(A) and (4) of the CAA, 42 U.S.C. § 7413(a)(1)(A) and (4).
3. The Respondent is Union Center Plaza Management Corporation (“UCP Management”), incorporated in the District of Columbia, and doing business in the District of Columbia at the Federal Energy Regulatory Commission’s Headquarters Building at 888 First Street NE, Washington, D.C. 20426. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. In satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on June 26, 2020, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to the District of Columbia, providing notice to both that the EPA found that Respondent committed the alleged violations described in Section C of this Agreement and providing Respondent an opportunity to confer with the EPA. On July 27, 2020, representatives of the Respondent and the EPA discussed the June 26, 2020 NOV.

B. STATUTORY AND REGULATORY BACKGROUND

5. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), authorizes the EPA to issue administrative orders against any person that has violated or is in violation of any requirement or prohibition of an applicable state implementation plan or permit.
6. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the Administrator of EPA, or his or her delegee, has approved and/or promulgated the applicable District of Columbia State Implementation Plan (“DC SIP”). See 40 C.F.R. § 52.472.
7. The owner or operator of any stationary source operating in Washington, D.C. is subject to the D.C. Municipal Regulations (“DCMR”) general permitting requirements, codified under Title 20 of the DCMR. These requirements have been incorporated by reference in the federally approved DC SIP. See 40 C.F.R. § 52.472
8. The District of Columbia’s Department of Energy and the Environment (“DOEE”) is the permitting authority for stationary sources operating in D.C., including emergency generators that are not subject to 40 C.F.R. Part 63 Subpart ZZZZ. Pursuant to Title 20 DCMR § 200.1, a permit from DOEE must be obtained before any person shall “cause, suffer, or allow the construction of a new stationary source, or the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.” These requirements have been incorporated by reference in the federally approved DC SIP.
9. Title 20 DCMR 200.2 establishes the continued operating provision for the owner or operator of a stationary source: “An operating permit shall be obtained from the Department before any person shall cause, suffer, or allow the operation of the following:
 - (a) Any major stationary source, for which a construction or modification permit is required under § 200.1; or

(b) Any source for which a construction or modification permit is required under § 200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source.”

These requirements have been incorporated by reference in the federally approved DC SIP.

C. FINDINGS

10. At the commercial office space located at 888 First Street NE, Washington, D.C. 20426 (hereinafter “the Facility”), EPA finds Respondent owned and operated an emergency rooftop generator which is a stationary source at the Facility. According to information provided by Respondent, the emergency generator was put into service in September 1995. Respondent has owned and operated the generator from at least September 1995 through the present day. The Facility is located within Washington, D.C. and is subject to the applicable SIP under 40 C.F.R. § 52.472.
11. Based upon information collected on March 5, 2019 through a CAA inspection at the Facility to verify compliance with applicable state and federal regulations, EPA observed the emergency rooftop generator. The engine plate indicated it was rated for 1000 Kilowatts (“kW”) or 60 Hertz (“Hz”). A permit from DOEE was required before the emergency generator (a stationary source) was constructed pursuant to the General Permit Requirements under Title 20 of the D.C. Municipal Regulations § 200.1-2.
12. Respondent did not provide any current or past construction or operating permits to EPA at the time of the inspection.

13. In the subsequent information request correspondence, UCP Management did not provide any documentation to establish that it had received any permit from DOEE to construct or operate the rooftop generator at the Facility for any of the relevant period between at least September 1995 through present. DOEE has no record of any construction or operation permit for the emergency generator.
14. Because Title 20 DCMR 200.2 requires the owner or operator of a stationary source to obtain an operating permit from DOEE before any person shall allow the operation of any source for which a construction or modification permit is required under § 200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source, Respondent was required to have an operating permit before allowing the operation of the emergency generator as the generator was required to have a construction permit as mentioned in Paragraph 11 above.
15. On the basis of available information, Respondent allowed for the operation of a stationary source which required a permit in violation of the continued operating provision of Title 20 DCMR § 200.2.
16. By electronic correspondence dated June 26, 2020, EPA sent UCP Management an NOV letter describing the violation of the DCMR regulations found during EPA's inspection in satisfaction of the notice requirement of Section 113(a) of the Act, 42 U.S.C. § 7413(a). EPA met with Respondent for an NOV conference on July 27, 2020.
17. Upon information and belief, EPA determined that Respondent still has not obtained an operating permit for the rooftop generator and continues to operate the emergency generator at the Facility in violation of Title 20 DCMR § 200.2.

D. ORDER

18. Respondent is hereby ordered to conduct the compliance program described in paragraphs 19 through 20 below.
19. Respondent is hereby ordered to submit a permit application to DOEE for its emergency generator at the Facility within 30 days of the Effective Date of this Order to comply with permit requirements in Title 20 DCMR 200.1 and 200.2. Proof of such application(s) within 30 days of the Effective Date of this order shall be submitted simultaneously by electronic mail to laufenberg.kim@epa.gov, foley.patrick.j@epa.gov, and R3_ORC_Mailbox@epa.gov.
20. Respondent must comply fully with requirements of any permit issued by DOEE including monitoring and reporting requirements, after the effective date of any permit issued by DOEE.

E. GENERAL PROVISIONS

21. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$102,638 (as inflated under 40 CFR Part 19) per day per violation, or both, as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), or \$48,762 (as inflated under 40 CFR Part 19) per day per violation, or both, as provided in Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any written status reports, supporting documentation, or other information submitted under this Order in a civil administrative, civil judicial, or criminal action.
22. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to

be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it relieve Respondent of liability for civil or criminal sanctions, including civil penalties or criminal fines, for any violations of the CAA, including, but not limited to, the violations addressed by this Order.

23. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
24. Upon issuance of the Order, EPA will provide to DOEE a copy of the Order as provided in Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4).
25. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in paragraph 27 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. Such written notice to EPA shall be submitted simultaneously by electronic mail to laufenberg.kim@epa.gov, foley.patrick.j@epa.gov, and R3_ORC_Mailbox@epa.gov. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.
26. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will

disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

F. TERMINATION

27. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

28. Pursuant to Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), Respondent may request a conference with the EPA concerning the violations alleged in this Order to present evidence bearing on the finding of violation, on the nature of the violation, and on any efforts it may have taken or it proposes to take to achieve compliance. Respondent may have legal counsel at the conference.

29. Respondent’s request for a conference must be confirmed in writing within ten (10) days of receipt of this Order. If the requested conference is held, this Order shall become effective ten (10) days after the conference is held.

30. If Respondent does not request a meeting within ten (10) days of receipt of this Order, Respondent waives its right to a conference, and this Order shall become effective ten (10) days from its receipt.
31. Any request for a conference, or other inquiries concerning this Order, should be made in writing to:

Kim Laufenberg
Enforcement Compliance Assurance Division
U.S. EPA, Region III (3ED21)
laufenberg.kim@epa.gov

Or if represented by counsel:

Patrick J. Foley
Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
foley.patrick.j@epa.gov

H. JUDICIAL REVIEW

32. Respondent may seek federal judicial review of the Order pursuant to Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
BEFORE THE ADMINISTRATOR

In the Matter of:

Union Center Plaza Management Corp.
5301 Wisconsin Avenue, N.W., Suite 510
Washington, D.C. 20015

Administrative Compliance Order
EPA Docket No. CAA-003-2022-0016DA

Respondent.

For United States Environmental Protection Agency, Region 3:

Date

Karen Melvin, Director
Office of Enforcement and Compliance Assurance Division
U.S. EPA, Region III (3ED00)
1650 Arch Street
Philadelphia, PA 19103-2029

CERTIFICATE OF SERVICE

I certify that the foregoing “Administrative Compliance Order” in the Matter of Union Center Plaza Management Corp., Order No. CAA-003-2022-0016DA, was filed with the Regional Hearing Clerk and copies of the same administrative compliance order were mailed to the parties as indicated below.

Via UPS Overnight & Electronic Mail

Deborah Perry
Union Center Plaza Management Corp.
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dperry@ucpmanagement.com

Patrick J. Foley
Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
foley.patrick.j@epa.gov

Date

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III