

# MID ATLANTIC REAL ESTATE JOURNAL

NEW JERSEY-PENNSYLVANIA-DELAWARE-MARYLAND-VIRGINIA

Friday, April 10, 2009

Volume 21, Issue 4

## ENVIRONMENTAL LAW

By Carol F. McCabe, Manko, Gold, Katcher & Fox, LLP

### Emergency generator requirements – Not so simple anymore

Summer is coming, and commercial facility owners and developers may be concerned about navigating the season's peak electrical demand periods and possible power outages. Many properties are equipped with emergency generation systems, the size and complexity of which may vary according to property use. Whereas some commercial buildings may be equipped with emergency generators that provide only safety lighting in power outages, large data centers, medical facilities, or facilities at which other critical functions are performed may be served by very large and relatively complex emergency generation systems.

Although emergency generators of all sizes have the potential to emit air pollutants in significant amounts they have only recently become a focus for air regulatory permitting and emission standards. Traditionally, these units were assumed to be exempt



Carol F. McCabe

from air permitting and emission control requirements, if their operation was kept below 500 hours per year. In recent years, regulatory agencies regard these units as fair game for achieving reductions of criteria air pollutants such as nitrogen oxides ("NOx"), carbon monoxide ("CO"), particulate matter ("PM") and sulfur dioxide ("SO<sub>2</sub>"). In some cases, such requirements apply regardless of the annual hours of operation.

Regulatory agencies have narrowed the permitting

exemptions available for emergency generators, and now impose NOx and/or CO control requirements on units above a certain size. Both Pennsylvania and New Jersey require air permits for emergency generators, with limited exemptions available for very small or low-emitting units. In both states, general permits are available for certain non-exempt emergency generator units, but do require owners and operators of those units to follow specified work practice, recordkeeping and emission control requirements. For example, NJ authorizes maintenance testing only on days for which the forecasted air quality is moderate or good. In Pennsylvania, the Department of Environmental Protection typically requires emergency generators to meet a NOx emission rate of 6.9 grams per brake horsepower hour, defined as the "Best Available Technology" for these units. In many cases, emer-

gency generators manufactured as recently as ten years ago may not be able to meet the standard without add-on emission controls.

For large emergency generators, with a rating of 1,000 horsepower or greater, PA has enacted allowable ozone season NOx emission levels that apply in the five-county Philadelphia region. For units which exceed the allowable levels, NOx allowances representing the amount of "excess" emissions must be purchased and surrendered to PADEP at the end of the ozone season. Failure to comply with these requirements has led to strict enforcement and substantial penalties. At the federal level, EPA has promulgated New Source Performance Standards and Maximum Achievable Control Technology Standards governing emergency generators, generally requiring owners and operators of model year 2007 or later engines to meet strict certification criteria and emission limits, as

well as recordkeeping and reporting requirements. These federal standards may also apply to pre-2007 model year engines that were recently modified or reconstructed.

How should facility owners and developers ensure compliance? For existing facilities, evaluate whether air regulatory requirements may apply to emergency generation equipment. If requirements are not being met, achieve compliance quickly, and evaluate whether self-disclosure to the state agency may be appropriate. For new facilities, become familiar with applicable requirements before purchasing or installing generator units. Ensuring up front that new units will meet applicable emissions standards, and securing necessary permits, will prevent time delays and potential enforcement actions.

**Carol F. McCabe is a partner with Manko, Gold, Katcher & Fox, LLP. ■**