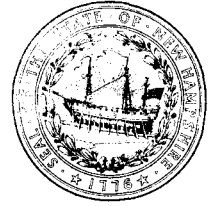




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

December 3, 2009

Ingersoll-Rand Energy Systems Corporation
Attn: Robert P. Mack, President
30 New Hampshire Avenue
Portsmouth, NH 03801

Re: Docket No. AF 09-061 - Administrative Fine by Consent Agreement

Dear Mr. Mack:


Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

Your payment of \$5,750 is due by December 30, 2009. All payments shall be made payable to "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Compliance Attorney
PO Box 95
Concord, NH 03302-0095

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter. This letter does not provide relief against any existing or future violations.

Sincerely,

COPY

Jane Murray
Executive Secretary
DES Legal Unit

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau Head, NH DOJ
DES Public Information Officer
Elizabeth Kudaruskas, EPA Region I
J. Bohenko, Portsmouth City Manager

cc: DES Legal Unit



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Ingersoll-Rand Energy Systems Corporation
Attn: Robert P. Mack, President
30 New Hampshire Avenue
Portsmouth, NH 03801

Re: AFS #3301500024

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 09-061

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Ingersoll-Rand Energy Systems Corporation, pursuant to RSA 125-C:15. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. Ingersoll-Rand Energy Systems Corporation ("IRES") is a corporation registered to do business in New Hampshire, having a principal mailing address of 30 New Hampshire Avenue, Portsmouth, NH 03801.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH CODE ADMIN. RULES Env-A 100 *et seq.*
2. RSA 125-C:15, I-b(b) authorizes the Commissioner of DES to impose administrative fines up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-C:6 and RSA 125-C:11, I authorize DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner of DES has adopted Env-A 600.
4. IRES owns and operates a facility located at 30 New Hampshire Avenue in Portsmouth, New Hampshire (the "Facility") that manufactures and conducts quality assurance testing of microturbines.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

5. On November 16, 2006, DES issued to IRES Temporary Permit No. TP-B-0515 (the "Permit") for 15 microturbine testing stations at the Facility. The Permit had an expiration date of May 31, 2008.
6. Condition IV of the Permit requires IRES to limit annual emissions of carbon monoxide ("CO") to 1.45 tons per year ("tpy"), and volatile organic compounds ("VOC") to 0.29 tpy.
7. In 2007, the Facility underwent a restructuring that involved personnel changes and the transfer of its 250kW microturbine manufacturing process from North Carolina to the Facility.
8. IRES contacted DES by telephone on May 7, 2008, and by letter dated May 9, 2008, received by DES on May 13, 2008, notifying DES of three potential permit violations.
9. In the letter dated May 9, 2008, IRES notified DES that the Facility:
 - (a) Would not be able to submit a timely permit renewal application;
 - (b) Had exceeded the annual CO limit by 32.3 tons in 2007; and
 - (c) Had exceeded the annual VOC emission limit by 3.5 tons in 2007.
10. Env-A 608.12 provides that if an applicant submits a timely application for a state permit to operate, the failure to have a current state permit to operate is not considered a violation unless DES takes a final action on the application by denying the requested permit.
11. Env-A 608.02 defines "timely application" as one that is received by DES at least 90 days prior to the designated expiration date of the temporary permit. Therefore, IRES should have submitted an application for reissuance of the Permit or an application for a state permit to operate no later than February 29, 2008.
12. On May 29, 2008, DES received an application for a state permit to operate 10 microturbine testing stations from IRES. The application was later withdrawn and replaced with an application that included 2 new flares, which was received by DES on July 30, 2008.
13. Because IRES did not submit a timely application for either reissuance of the Permit or a state permit to operate, IRES was not afforded the application shield as set forth in Env-A 608.12 and, therefore, has been operating without a permit since June 1, 2008.
14. In the letter dated May 9, 2008, IRES explained the emission exceedances by stating that the Facility operated an MT250 model microturbine from June 29, 2007 until September 27, 2007 at 50% power, which yields higher emissions than if the microturbine had been operated at 100% power.
15. The permit application received on July 30, 2008, also contained a modeling analysis prepared by AECOM, a consultant hired by IRES. Emissions were modeled under worst-case conditions.

16. After reviewing the modeling analysis submitted by IRES, DES determined that, under certain specified operating levels, CO emissions could cause an exceedance of the one-hour and eight-hour ambient air quality standards ("AAQS") for CO as set forth in Env-A 305.

17. DES further determined that the Facility will not cause an exceedance of the AAQS for CO if:

(a) In any one-hour period with Station 1 or 2 operating at 30% load, the other five Unit 1 test cells are not operated at less than 50% load;

(b) In any one-hour period with one of Stations 6, 8, 9, or 10 operating at 30% load, the other five Unit 1 test cells are not operated at less than 75% load; or

(c) In any eight-hour period, break-in testing of Unit 1 test cells is limited to the operation of any two of Stations 1, 2, 6, 8, 9, and 10, during which time the other four Unit 1 test stations:

(i) Are not operated at less than 75% load;

(ii) Are limited to one hour at 50% load, two hours at 75% load, and five hours at 100% load; or

(iii) Are limited to one hour and 20 minutes at 50% load, and five hours and 40 minutes at 100% load.

18. On April 1, 2009, DES received an affidavit from John H. Alday, Director of Engineering and Operations for IRES, in which he stated that, based on the nature of the Facility's business, operating records, and the modeling performed by AECOM and reviewed by DES, IRES did not operate the test stations in 2007 in such a manner as to exceed the AAQS for CO.

19. The affidavit from Mr. Alday also affirmed that operating records from 2008 show that IRES did not operate outside of the parameters cited in Paragraph 17, above.

20. Env-A 911.04(b)(1) requires IRES to notify DES within 24 hours after discovery of a permit deviation that causes excess emissions.

21. According to the letter dated May 9, 2008 from IRES to DES, IRES discovered the permit deviations of excess CO and VOC emissions while preparing its annual emissions report for calendar year 2007 emissions in late April of 2008 and notified DES by telephone on May 7, 2008.

22. On July 15, 2008, DES personnel conducted an on-site full compliance evaluation of the Facility.

23. Env-A 603.01 prohibits the construction, installation, or operation of a stationary source, area source, or device as specified in Env-A 607.01, without first having applied for and been issued a temporary permit.

24. Env-A 607.01(a) requires a facility to obtain a temporary permit for any device(s) using natural gas, liquefied petroleum gas, #2 fuel oil, diesel fuel oil, or any combination thereof, with a

design rating greater than or equal to 10 million BTUs per hour of gross heat input prior to the construction or installation of the device.

25. The July 15, 2008 DES inspection revealed that, in October of 2003 and in July of 2007, IRES installed Flare #1 and Flare #2, respectively, which combust gaseous fuel with a maximum gross heat input of 48.3 million BTU per hour each.

26. The Flares were installed to reduce odors from fuel releases while starting up and shutting down the fuel mixing skid and microturbines when operating the three outside test stations.

27. IRES did not apply for or obtain a temporary permit from DES prior to installing either flare.

28. On July 30, 2008, DES received an application for a temporary permit for Flares #1 and #2 from IRES.

29. Env-A 907.01 requires IRES to submit an annual emissions report by April 15 of the following year.

30. DES received IRES's annual emissions report for calendar year 2007 emissions on May 13, 2008.

31. On April 12, 2006, DES issued a Notice of Past Violation to IRES for failing to obtain a temporary permit before installing microturbine test stations in calendar year 2003 that caused the Facility to exceed the permit threshold for internal combustion engines.

IV. ALLEGATIONS

1. IRES violated Condition IV of the Permit by exceeding the CO emission limit of 1.45 tpy by 32.3 tons in 2007.

2. IRES violated Condition IV of the Permit by exceeding the VOC emission limit of 0.29 tpy by 3.3 tons in 2007.

3. IRES violated Env-A 603.01 by operating the microturbine testing stations without a permit from June 1, 2008 until the issuance of a state permit to operate.

4. IRES violated Env-A 607.01(a) by installing Flare #1 in October of 2003, which combusts gaseous fuel with a design rated gross heat input of 48.3 MMBtu/hr, without first obtaining a temporary permit.

5. IRES violated Env-A 607.01(a) by installing Flare #2 in July of 2007, which combusts gaseous fuel with a design rated gross heat input of 48.3 MMBtu/hr, without first obtaining a temporary permit.

6. IRES violated Env-A 911.04(b)(1) by failing to notify DES within 24 hours after discovery of the CO emission limit deviation referenced in Section III, Paragraph 9.

7. IRES violated Env-A 911.04(b)(1) by failing to notify DES within 24 hours after discovery of the VOC emission limit deviation referenced in Section III, Paragraph 9.

8. IRES violated Env-A 907.01 by failing to submit the Facility's annual emissions report for calendar year 2007 emissions by April 15, 2008.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES has determined the violation identified in Allegation #1 to be a major deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. DES proposes a fine of \$1,500 for the CO exceedance, because the deviation was more than 20 times the annual permit limit of 1.45 tpy.

2. DES has determined the violation identified in Allegation #2 to be a major deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. DES is proposing a fine of \$1,250 for the VOC exceedance because the deviation was more than 12 times the annual permit limit of 0.29 tpy.

3. DES has determined the violation identified in Allegation #3 to be a minor deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$100 to \$1,000. DES proposes a fine of \$500 because IRES submitted an application before the expiration date of the Permit and has cooperated throughout the enforcement and permitting process.

4. DES has determined the violation identified in Allegation #4 to be a major deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. DES proposes a fine of \$1,000 because IRES has cooperated throughout the enforcement and permitting process.

5. DES has determined the violation identified in Allegation #5 to be a major deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. DES proposes a fine of \$1,000 because IRES has cooperated throughout the enforcement and permitting process.

6. DES has determined the violation identified in Allegation #6 to be a minor deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$100 to \$1,000. DES proposes a fine of \$200 because IRES made a good faith effort to promptly notify DES of the permit deviation.

7. DES has determined the violation identified in Allegation #7 to be a minor deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$100 to \$1,000. DES proposes a fine of \$200 because IRES made a good faith effort to promptly notify DES of the permit deviation.

8. DES has determined the violation identified in Allegation #8 to be a minor deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$100 to \$1,000. DES proposes a fine of \$100 because IRES made a good faith effort to submit the annual emission report by the April 15th deadline.

9. IRES agrees to pay the fine of \$5,750 within 30 days of the effective date of the Administrative Fine by Consent.

10. Payment due pursuant to the preceding paragraph shall be paid by certified or corporate check made payable to "Treasurer, State of New Hampshire" and mailed to: **DES Legal Unit, Attn: Legal Assistant, P.O. Box 95, Concord, NH 03302-0095.**

11. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

12. The parties have entered into this agreement to avoid the time and cost of litigation. By executing this Agreement, IRES waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. Other than this enforcement action or any action that may be necessary to enforce this Agreement, DES shall pursue no further administrative action against IRES relative to the allegations contained herein. In any proceeding to enforce this Agreement, IRES agrees not to challenge the validity of any provision of this Agreement.

13. In any future proceeding by DES seeking administrative fines based on alleged violations of RSA 125-C and/or NH CODE ADMIN. RULES Env-A 100 *et seq*, IRES agrees that it will not seek a reduction in the fine based on Env-C 601.10(c). This Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by IRES; (ii) an admission by IRES or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense IRES might raise in any third party proceeding.

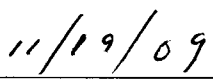
14. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of IRES, the Director of the Air Resources Division, and the Commissioner of DES.

15. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

Ingersoll-Rand Energy Systems Corporation


By: Robert P. Mack, President
Duly Authorized


Date

Department of Environmental Services

COPY
Robert R. Scott, Director
Air Resources Division

11/25/09
Date

COPY
Thomas S. Burack, Commissioner

11/30/09
Date

cc: DES Legal Unit
File AFS #3301500024

cc: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
J. Bohenko, Portsmouth City Manager
Beth Kudarauskas, EPA Region I