

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED
NOV 28 2008
EPA ORC WJF
Office of Regional Hearing Clerk

In the Matter of:)
)
Southeastern New England)
Shipbuilding Corporation)
10 MacNaught St.)
North Kingstown, RI 02852-7414)
)
Proceeding under Section 113 of)
the Clean Air Act, 42 U.S.C. § 7413)
_____)

Docket No. CAA-01-2008-0104

SENE스코'S REQUEST FOR HEARING AND ANSWER TO COMPLAINT

Senesco Marine, LLC, by and through its attorneys, Beveridge & Diamond, P.C., hereby requests a hearing and Answers the Complaint of the United States Environmental Protection Agency ("EPA"), as follows:

Complaint

1. The Respondent identified in Paragraph 1, Southeastern New England Shipbuilding Corporation, no longer exists. In 2006, Southeastern New England Shipbuilding Corporation was purchased by RSRI Acquisition, LLC, which subsequently changed its name to Senesco Marine, LLC ("Senesco"). Senesco is the current owner of the facility that is the focus of this Complaint (the "Facility"). Many of the allegations in the Complaint relate to actions undertaken by the former owner and management of the Facility, and many of the records and personnel responsible for these activities are no longer available. Senesco's responses to these allegations are made to the best of its information and belief, based on the available information from these previous time periods. The remainder of the allegations in Paragraph 1 enumerate,

characterize, and describe the statutes under which EPA seeks relief and the relief sought, and as such, do not require a response.

Statutory and Regulatory Basis

2. Paragraph 2 involves legal conclusions that do not require a response.
3. Paragraph 3 involves legal conclusions that do not require a response.

General Allegations

4. Senesco admits that it currently builds steel barges and tugboats at the Facility in North Kingstown, Rhode Island. Senesco admits that the prior owner of the Facility began some operations on-site in 1999. Senesco denies that the prior owner of the Facility began painting barges and boats in 2000.
5. Senesco admits the allegations in Paragraph 5.
6. On information and belief, Senesco admits the allegations in Paragraph 6.
7. Senesco admits the allegations in Paragraph 7.
8. On information and belief, Senesco admits the allegations in Paragraph 8.
9. Senesco admits that EPA issued a Notice of Violation and Administrative Order.
10. Senesco admits that the Facility is currently a “major source.” On information and belief, Senesco denies that the Facility was a “major source” prior to approximately 2004. The remainder of Paragraph 10 involves legal conclusions that do not require a response.
11. Paragraph 11 involves legal conclusions that do not require a response.
12. Paragraph 12 involves legal conclusions that do not require a response.

Count I

13. Paragraph 13 involves legal conclusions that do not require a response.

14. Senesco admits that the prior owner commenced some on-site operations at the Facility in 1999. On information and belief, Senesco denies that the Facility was a “major source” subject to these requirements prior to approximately 2004. Senesco admits that notification was submitted on October 18, 2005.

15. Senesco denies that the prior owner was subject to the listed requirements prior to approximately 2005, because on information and belief, the Facility did not become a “major source” until approximately 2004. The remainder of Paragraph 15 involves legal conclusions that do not require a response.

16. Senesco admits that an implementation plan was submitted in February, 2006.

17. Senesco lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 17.

Count II

18. On information and belief, Senesco denies that the prior owner was required by 40 C.F.R. § 63.788(c) to submit reports to EPA until approximately 2004, because the Facility was not yet a “major source.” The remainder of Paragraph 18 involves legal conclusions that do not require a response.

19. On information and belief, Senesco admits that the initial semi-annual report was submitted in August, 2006, covering the period of January–June, 2006.

Count III

20. Paragraph 20 involves legal conclusions that do not require a response.

21. On information and belief, Senesco denies that the prior owner used all of the identified coatings in each year from 2001 through 2005 and denies that the use of any coatings resulted in the emission of VOHAPs above the allowable limits.

Count IV

22. Paragraph 22 involves legal conclusions that do not require a response.

23. Paragraph 23 involves legal conclusions that do not require a response.

24. Senesco admits that the Facility currently has the potential to emit above the listed threshold. On information and belief, Senesco denies that the Facility exceeded this threshold at the time that the prior owner commenced construction. The remainder of Paragraph 24 involves legal conclusions that do not require a response.

25. Senesco admits that the prior owner submitted a Regulation 9 permit application in June, 2006, and that a Regulation 9 permit was issued on July 7, 2007. The remainder of Paragraph 25 involves legal conclusions that do not require a response.

26. Senesco denies that emissions from the Facility posed any threat to health, property, or the environment. The remainder of Paragraph 26 involves legal conclusions that do not require a response.

Count V

27. Senesco admits that a Title V permit application was submitted in December, 2006. Senesco denies the remainder of the allegations in Paragraph 27, because on information and belief, the Facility did not become a major source until approximately 2004.

28. Paragraph 28 involves legal conclusions that do not require a response.

29. See response to Paragraph 27.

Proposed Civil Penalty

30. Paragraph 30 involves legal conclusions that do not require a response. To the extent a response is required, Senesco denies that the proposed penalty is appropriate.

31. Paragraph 31 characterizes an EPA guidance document, which speaks for itself, and so no response is required. To the extent a response is required, Senesco denies that the proposed penalty properly applies the Clean Air Act Stationary Source Civil Penalty Policy.

32. Paragraph 32 characterizes EPA's penalty assessment, which speaks for itself, and so no response is required.

33. Paragraph 33 does not require a response.

34. Paragraph 34 does not require a response.

Opportunity to Request a Hearing

35. Senesco requests a hearing on the issues raised in the Complaint.

36. Paragraph 36 involves legal conclusions that do not require a response.

37. Senesco has elected to file an Answer and request a hearing.

Settlement Conference

38. Senesco has requested a settlement conference.

Affirmative Defenses

First Defense

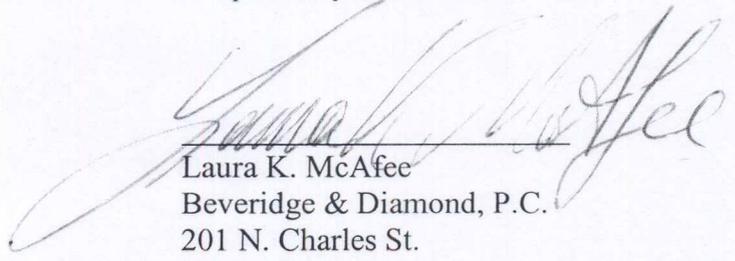
39. Applicable statutes of limitations bar EPA's claims.

Second Defense

40. The proposed civil penalty was incorrectly calculated under the Clean Air Act Stationary Source Civil Penalty Policy.

Date: November 26, 2008

Respectfully submitted,

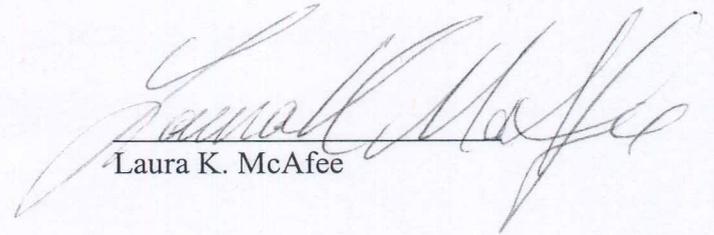
A handwritten signature in cursive script, appearing to read "Laura K. McAfee", written over a horizontal line.

Laura K. McAfee
Beveridge & Diamond, P.C.
201 N. Charles St.
Suite 2210
Baltimore, MD 21201
410-230-1330 (tel)
410-230-1389 (fax)

Attorney for Senesco Marine, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 2008, a copy of the foregoing Senesco's Request for Hearing and Answer to Complaint was mailed, postage pre-paid, to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 1, Suite 1100, Mail Code RCH, 1 Congress St., Boston, MA 02214; and to Thomas T. Olivier, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, Suite 1100, Mail Code SEI, 1 Congress St., Boston, MA 02114.



Laura K. McAfee