



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

January 18, 2011

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square - Suite 100 (Mail Code ORA18-1)
Boston, Massachusetts 02109-3912

RECEIVED
JAN 18 2011
EPA ORC
Office of Regional Hearing Clerk

Re: Harbour Industries, LLC, Docket No. CAA-01-2011-0016

Dear Ms. Santiago:

Please file the enclosed Complaint and Notice of Opportunity for Hearing in Docket No. CAA-01-2011-0016. I enclose an extra copy.

I certify that this day I have served a copy by certified mail, return receipt requested on:

Dennis Dodd, President
Harbour Industries, LLC
4744 Shelburne Road
Shelburne, VT 05482

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas T. Olivier", is written over a horizontal line.

Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Dennis Dodd

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)

Docket No. CAA-01-2011-0016

Harbour Industries, LLC)
4744 Shelburne Road)
Shelburne, VT 05482)

Proceeding under Section)
113 of the Clean Air Act)

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**COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING**

NATURE OF THE ACTION

1. The United States Environmental Protection Agency ("EPA") issues this Complaint and Notice of Opportunity for Hearing pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d), to Harbour Industries, LLC ("Harbour" or "Respondent"). The Complaint notifies Respondent that EPA intends to assess penalties for violations of a federally-enforceable permit issued under the Vermont state implementation plan. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing. In support of its Complaint, EPA alleges the following:
2. Sections 113(a) and (d) of the CAA provide for the assessment of penalties for violations of any provision of an applicable state implementation plan ("SIP") or permit. The State of Vermont has adopted a SIP within the meaning of Section 113(a)(1) of the Act. The Vermont SIP, which has been approved by EPA under Section 110 of the Act, 42 U.S.C.

§ 7410, contains various federally-approved portions of the Vermont Air Pollution Control Regulations including Chapter V, Section 5-501, Review of Construction or Modification of Air Contaminant Sources.

3. Complainant has provided notice to Respondent of EPA's findings of violations described in this section, at least 30 days prior to the issuance of an administrative penalty order under Section 113(d) of the Act.
4. Although the violations alleged commenced more than 12 months prior to the initiation of this action, EPA has determined jointly with the Department of Justice that the matter is appropriate for administrative penalty action under Section 113(d)(1) of the CAA.

FACTUAL BASIS

5. Harbour operates a facility in Shelburne, Vermont that manufactures various kinds of insulated wire. In its manufacturing processes, Harbour generates emissions of volatile organic compounds ("VOCs"). To control its VOC emissions, Harbour operates a gas-fired regenerative thermal oxidizer ("RTO").
6. On June 11, 2007, the Vermont Department of Environmental Conservation ("VTDEC") issued Harbour an air permit. This permit, known as "Air Pollution Control Permit to Construct and Operate #AOP-06-051," was issued under authority of the federally-approved SIP version of Chapter V, Section 5-501, and is enforceable by EPA under Section 113 of the CAA.
7. Under permit condition #5, a determination of compliance with the permit's 50 tons per year (tpy) VOC limit must be based on procedures submitted within 30 days of permit issuance for review and approval by the VTDEC.

8. Under permit condition #12, prior to initial start-up of the system or within 180 days of permit issuance, Harbour was required to develop and implement an operation and maintenance plan for its RTO. This plan is required to be approved in writing by the VTDEC, and must be present at the facility at all times and made available for inspection upon request.
9. On January 27, 2010, EPA conducted an inspection at Harbour's Shelburne facility.

FINDINGS

10. Harbour failed to timely submit procedures to the VTDEC to establish compliance with the permit's 50 tpy VOC limit. From June 2007 to October 2010, Harbour failed to base its compliance with the permit's 50 tpy VOC limit on procedures approved by the VTDEC. Accordingly, Harbour violated condition #5 of the permit.
11. Harbour failed to timely develop and implement an operation and maintenance plan for its RTO prior to initial start-up of the system or within 180 days of permit issuance. In addition, Harbour failed to obtain approval from the VTDEC for this plan. Harbour has failed to maintain an approved operation and maintenance plan at the facility and make it available for inspection. Accordingly, Harbour violated and continues to violate condition #12 of the permit.

PROPOSED CIVIL PENALTY

Under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413, and the Civil Monetary Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19.4 (Table 1)), EPA may assess a civil administrative penalty of up to \$37,500 per day per violation of the

CAA. Based on the allegations above, the EPA proposes to assess the Respondent a civil administrative penalty of \$123,840.

In determining the amount of the penalty to be assessed under Section 113 of the CAA, EPA must take into consideration the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of penalties previously assessed for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require. See Section 113(e), 42 U.S.C. § 7413(e).

To implement the provisions of Section 113(e) of the CAA, EPA has calculated the proposed civil penalty using the "Clean Air Act Stationary Source Penalty Policy," dated October 25, 1991 ("Penalty Policy"), a copy of which is enclosed with this Complaint. The Penalty Policy assigns penalty components reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy also provides for a penalty component based on the estimated economic benefit Respondent derived from the violations. Adjustments to a proposed penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation. See Attachment 1 for a brief explanation of the calculation of the proposed penalty under the Penalty Policy.

No penalty adjustments are proposed to reflect the violator's compliance history, good faith efforts to comply, or payment of penalties previously assessed for the same violations, since these factors do not appear applicable. Although Respondent may have derived an economic benefit operating in violation of permit conditions, the amount is not readily quantifiable and so is not included as a penalty component. Finally, EPA has calculated the proposed penalty based, in part, on its current knowledge of Respondent's size and financial condition. The proposed penalty may be adjusted if Respondent properly documents the size of its business, the economic impact of the penalty on its business, or other defenses relevant to the appropriate amount of the penalty.

If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, the Respondent need not file an Answer. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address below within thirty (30) days of receiving this Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receiving this Complaint. Failure to make such payment within sixty (60) days may subject the Respondent to a default action. See 40 C.F.R. § 22.18(a).

Payment of the proposed penalty of \$123,840 may be made by mailing a bank, cashiers, or certified check payable to the "Treasurer, United States of America" to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check must also be mailed to the Regional Hearing Clerk and to Thomas T. Olivier, Senior Enforcement Counsel, at the addresses provided below. The penalty check must reference the title of this proceeding (“In the Matter of Harbour Industries, LLC”) and EPA Docket No. CAA-01-2011-0016.

The Respondent has a continuing obligation to comply with the CAA, with the terms and conditions of any applicable permits, and with any order issued under Section 113 of the CAA, 42 U.S.C. § 7413.

OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

In accordance with Section 113 of the CAA and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the proposed penalty. **To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent’s receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code ORA18-1)
Boston, Massachusetts 02109-3912

Respondent shall serve copies of the Answer and any subsequent pleadings which Respondent files in this action to the following address:

Thomas T. Olivier, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code OES04-3)
Boston, Massachusetts 02109-3912

Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy enclosed). See 40 C.F.R. § 22.15 for the required contents of the Answer.

DEFAULT ORDER

Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings thirty (30) days after the default order became final under 40 C.F.R. § 22.27(c).

SETTLEMENT CONFERENCE

Respondent may confer informally with the EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter, Respondent should contact Abdi Mohamoud, Environmental Engineer, at (617) 918-1858, or have legal counsel contact Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737. Pursuant to 40 C.F.R. § 22.5(c)(4), Thomas T. Olivier is authorized to

receive service on behalf of EPA.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
Five Post Office Square, Suite 100
Boston, MA 02109-3912

01/14/11
Date

Harbour Industries

Attachment
1

Proposed Penalty \$123,840

Violator Size	\$20,000
Violator Size Inflation	\$8,328
Total Gravity	\$123,840
Final Penalty	\$123,840

Count	Violation Description	Regulation(s)	Violation Classification	Begin Date of Violation	Effective Begin Date of Violation	End Date of Violation	Total Duration of Violation (months)	Months of Violation BEFORE 1/12/09	Months of Violation AFTER 1/12/09	Importance to Regulatory Scheme	Penalty				Inflation	Total	Comments
											Actual or Possible Harm (includes level of violation and sensitivity to environment / toxicity of pollutant)	Duration Penalty	Manual Adjustment to Duration	Pre-Inflation Total			
1	Failure to timely submit procedures to VT DEC to establish compliance with the 50 tpy VOC limit.	#AOP-06-051 Permit Condition #5	Reporting	7/11/07	7/11/07	10/22/10	40	18	22	\$15,000		\$40,000	(\$35,000)	\$20,000	7,161	\$27,161	Permit was issued 6/11/07. Harbour failed to comply with Permit Condition #5. In response to NOV Harbour developed a VOC emissions tracking spreadsheet and submitted it to VT DEC. VT DEC approved the procedures on 10/22/10. Duration: Treat as a one-day violation
2	Failure to timely develop and implement an operation and maintenance plan for its RTO	#AOP-06-051 Permit Condition #12	Reporting	12/11/07	12/11/07	10/11/10	34	13	21	\$15,000		\$35,000		\$50,000	18,353	\$68,353	Permit was issued 6/11/07. Harbour failed to comply with Permit Condition #12. On 10/1/10 Harbour submitted a draft operation and operation and maintenance plan to VT DEC for approval. Treat as daily violation.
															Gravity	\$95,514	

Unless otherwise footnoted, all calculations are based on the Clean Air Act Stationary Source Civil Penalty Policy - October 25, 1991
* Clean Air Act (CAA) Inflation rate between 3/15/04 and 11/2/09 was 28.95%. After 11/2/09 the new CAA Inflation rate is 41.63%.

Violator Size:	In 2008, Harbour had gross sales of \$80 million. The Penalty Policy uses new worth. Estimating net worth as 1/10th of gross sales (as proposed in Appendix X of Penalty Policy) yields net worth of approximately \$8 million. The corresponding Penalty Policy size of violator component is \$20,000 plus inflation.
Economic Benefit:	Not calculated.

Notes:

