



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square - Suite 100  
Boston, MA 02109-3912

RECEIVED

FEB 13 2015

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Office of Regional Hearing Clerk

**BY HAND**

**FEB 13 2015**

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

Re: In the Matter of Shelburne Shipyard, Incorporated, Docket No. CAA-01-2015-0025

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing.

Thank you for your attention to this matter,

Sincerely,

A handwritten signature in blue ink, appearing to be "John E. Hultgren".

John E. Hultgren  
Enforcement Counsel

Enclosures

cc: Mary Griswold, Shelburne Shipyard, Incorporated  
Ellen Mercer Fallon, Esq.  
Abdi Mohamoud, EPA Office of Environmental Stewardship  
John Wakefield, Vermont Department of Environmental Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA REGION 1  
BEFORE THE ADMINISTRATOR

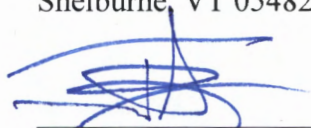
\_\_\_\_\_)  
In the Matter of: )  
)  
Shelburne Shipyard, Incorporated ) Docket No. CAA-01-2015-0025  
4584 Harbor Road )  
Shelburne, Vermont 05482 ) **CERTIFICATE OF SERVICE**  
)  
Proceeding under Section )  
113 of the Clean Air Act )  
\_\_\_\_\_)

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered): Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square - Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Copy, including 40 C.F.R. Part 22 (Certified Mail, Return Receipt Requested): Mary Griswold  
President and Owner  
Shelburne Shipyard, Incorporated  
4584 Harbor Road  
Shelburne, VT 05482

Dated: **FEB 13 2015**

  
\_\_\_\_\_  
John E. Hultgren  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square - Suite 100 (OES04-2)  
Boston, MA 02109-3912  
Tel. (617) 918-1761  
Fax. (617) 918-0761

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

\_\_\_\_\_) )  
IN THE MATTER OF ) )  
Shelburne Shipyard, Incorporated ) )  
4584 Harbor Road ) )  
Shelburne, VT 05482 ) )  
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Proceeding under Section ) )  
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\_\_\_\_\_)

Docket No. CAA-01-2015-0025



**COMPLAINT  
AND NOTICE OF OPPORTUNITY FOR HEARING**

**INTRODUCTION**

1. The United States Environmental Protection Agency, Region 1 (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing pursuant to Section 113(d) of the Clean Air Act (the “CAA”), 42 U.S.C. § 7413(d), to Shelburne Shipyard, Incorporated (“SSI” or “Respondent”). The Complaint notifies Respondent that EPA intends to assess penalties for violations of: (1) the National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating) found at 40 C.F.R. Part 63, Subpart II (“Shipbuilding NESHAP”); (2) CAA Title V operating permit requirements; and (3) Vermont state implementation plan (“SIP”) requirements. The Respondent may file an Answer to the Complaint and request a formal hearing.

**STATUTORY AND REGULATORY BASIS**

2. Sections 113(a) and (d) of the CAA, , 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of penalties for violations of any rule issued under subchapter I of the CAA

(including the Shipbuilding NESHAP promulgated under Section 112 of the CAA, 42 U.S.C § 7412), of subchapter V of the CAA (which includes the Title V operating permit requirements of Sections 502 and 503 of the CAA, 42 U.S.C §§ 7661a and 7661b), and of any provision of an “applicable state implementation plan or permit.”

3. The State of Vermont (“Vermont”) has adopted a SIP within the meaning of Section 113(a)(1) of the CAA, 42 U.S.C § 7413(a)(1). The Vermont SIP, which has been approved by EPA under Section 110 of the CAA, 42 U.S.C. § 7410, contains various federally-approved portions of the Vermont Air Pollution Control Regulations (“VT APC Regulations”). The EPA-approved Vermont SIP is available at [http://www.epa.gov/region1/topics/air/sips/sips\\_vt.html](http://www.epa.gov/region1/topics/air/sips/sips_vt.html).

4. Although the first alleged date of violation occurred more than 12 months prior to the initiation of this action, EPA has determined jointly with the United States Department of Justice that the matter is appropriate for administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C § 7413(d)(1).

### **GENERAL ALLEGATIONS**

5. SSI is a corporation incorporated under the laws of the Vermont with a principal place of business at 4584 Harbor Road, Shelburne, Vermont 05482 (the “Facility”).

6. SSI is a person as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

7. Among other services at the Facility, SSI has performed and continues to perform engine work, repainting and resurfacing, and general repairs, for owners of commercial and recreational vessels.

8. On February 1, 2012, EPA inspectors performed an inspection at the Facility.

9. On April 5, 2012, EPA issued a Reporting Requirement to SSI pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1).
10. On June 29, 2012, SSI submitted a response to the Reporting Requirement.
11. SSI applies various coatings to vessels, including paints, solvent thinners and fairing compounds (collectively referred to herein as “coatings”), containing volatile organic compounds (“VOCs”) and hazardous air pollutants (“HAPs”).
12. SSI purchased paint spray guns to apply coatings in 1998, 2000, 2004, and 2007, approximately.
13. SSI has used and continues to use paint spray guns to apply coatings to vessels at the Facility.
14. SSI has used and continues to use brushes and rollers to apply coatings to vessels at the Facility.
15. It has been and continues to be SSI’s practice to allow vessel owners who use the Facility to apply coatings to vessels at the Facility.
16. It has been and continues to be SSI’s practice to allow vessel owners who use the Facility to hire outside contractors to apply coatings to vessels at the Facility.

**VIOLATION OF SHIPBUILDING NESHAP**

17. The Shipbuilding NESHAP applies to shipbuilding and ship repair operations at any facility that is a “major source.” See 40 C.F.R. § 63.781(a).
18. The term “shipbuilding and ship repair operations” means “any building, repair, repainting, converting, or alteration of ships.” See 40 C.F.R. § 63.782.
19. The term “ship” means “any marine or freshwater vessel used for military or

commercial operations. . . .” See 40 C.F.R. § 63.782.

20. The term “major source” is defined by the Shipbuilding NESHAP as “any source that emits or has the potential to emit, in the aggregate, 9.1 megagrams per year (10 tons per year) or more of any HAP or 22.7 megagrams per year (25 tons per year) or more of any combination of HAP.” See 40 C.F.R. § 63.782.

21. An “affected source” means “any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (264 gallons) of annual marine coating usage that is subject to this subpart.” See 40 C.F.R. § 63.782.

22. The Facility is a “major source” of HAPs under 40 C.F.R. § 63.782 because the use of spray guns, brushes and rollers to apply coatings gives the Facility the potential to emit 10 tons per year or more of a HAP, or 25 tons per year or more of any combination of HAPs.

23. Ship repair operations are conducted or have been conducted at the Facility.

24. Based on records of coating usage submitted by SSI, it appears that the Facility was not operated as an “affected source” of HAPs under 40 C.F.R. § 63.782 in 2008, having recorded the use of fewer than 264 gallons of coatings.

25. As the owner and operator of a major source that claims to have used fewer than 264 gallons of marine coatings annually, Respondent was required to record the total volume of coatings applied to ships at the Facility, compile records monthly, and maintain such records for a minimum of five years. See 40 C.F.R. § 63.788(b)(1).

26. To date, Respondent has not recorded the total volume of coatings applied to ships at the Facility, compiled records monthly, and maintained such records for a minimum of five years.

27. Accordingly, Respondent has violated and continues to violate 40 C.F.R. § 63.788(b)(1).

### **VIOLATION OF TITLE V**

28. It is unlawful for any person to operate a major source, or any other source subject to standards or regulations under Section 112 of the CAA, 42 U.S.C § 7412, except in compliance with a Title V operating permit. See Section 502(a) of the CAA, 42 U.S.C § 7661a(a).

29. Under Section 503(c) of the CAA, 42 U.S.C § 7661b(c), a major source or any other source subject to standards or regulations under Section 112 of the CAA, 42 U.S.C § 7412, is required to apply for a Title V permit within 12 months of becoming subject to a state's operating permit program.

30. Sections 112(a)(1) and 501(2)(A) of the CAA, 42 U.S.C. §§ 7412(a)(1) and 7661(2)(A), define the term "major source" to include any stationary source that has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs.

31. At least since the installation of a Binks 2001 paint spray gun in 1998, and possibly before 1998, the Facility has been a "major source" of HAPs under Sections 112(a)(1) and 501(2)(A) of the CAA, 42 U.S.C. §§ 7412(a)(1) and 7661(2)(A), because the use of spray guns, brushes and rollers to apply coatings give the Facility the potential to emit 10 tons per year or more of a HAP, or 25 tons per year or more of any combination of HAPs.

32. Respondent was required to apply for and obtain a Title V operating permit for the Facility by the end of 1999, no more than 12 months after becoming a major source in 1998,

pursuant to Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c).

33. To date, Respondent has not applied for or obtained a Title V operating permit for the Facility. Respondent has operated and continues to operate the Facility without a Title V operating permit.

34. Accordingly, Respondent has violated and continues to violate Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c).

**VIOLATION OF VT APC REGULATION 5-253.20**

35. VT APC Regulation 5-253.20, requires sources with allowable emissions of 50 tons or more per year of VOCs to (1) install and operate emission capture and control techniques or use complying coatings that achieve an overall reduction in uncontrolled VOC emissions of at least 81 weight percent; (2) for each coating unit, limit the daily weighted average VOC content to 3.5 pounds of VOC per gallon or less of coating; or (3) comply with an approved alternative control plan.

36. The term “allowable emissions” means, in pertinent part, “the emissions rate calculated using the maximum rated capacity of the source.” See VT APC Regulation 5-101(8).

37. The Facility has allowable emissions above 50 tons per year of VOCs due to its maximum rated capacity based on the use of paint spray guns, brushes and rollers to apply coatings at the Facility.

38. To date, Respondent has not installed emission capture and control techniques, limited the VOC content of its coatings, nor requested an alternative control plan at/for the Facility.

39. Accordingly, Respondent has violated and continues to violate VT APC



Regulation 5-253.20.

**VIOLATION OF VT APC REGULATION 5-501**

40. VT APC Regulation 5-501 prohibits the “construction, installation, or modification” of any air contaminant source engaged in surface finishing and coating operations, as designated under VT APC Regulation 5-401(9), unless written notice is provided to the Secretary of the Vermont Agency of Environmental Conservation and the Secretary has issued an order approving the construction, installation, or modification (hereinafter referred to as the “permit”).

41. Respondent’s installation and use of new paint spray guns at the Facility in 1998 and at various times since 1998 constitute “construction[s], installation[s], or modification[s]” of that source.

42. To date, Respondent has not applied for or obtained a permit for the Facility under VT APC Regulation 5-501 for these installations.

43. Accordingly, Respondent has violated and continues to violate VT APC Regulation 5-501.

**VIOLATION OF VT APC REGULATION 5-502**

44. VT APC Regulation 5-502 prohibits construction of any “major stationary source” or “major modification” until the requirements of Section 5-502 (including application of the most stringent emission rate (“MSER”)) have been complied with and a permit approving construction has been issued in accordance with VT APC Regulation 5-501.

45. The term “major stationary source” means, in pertinent part, any stationary source or modification whose allowable emissions of any air contaminant . . . are equal to or greater

than 50 tons per year.” See VT APC Regulation 5-101(44).

46. The Facility has allowable emissions above 50 tons per year of VOCs due to its maximum rated capacity, based on the use of paint spray guns, brushes and rollers to apply coatings at the Facility. Therefore, Respondent has constructed and operated the Facility as a “major stationary source” as defined by VT APC Regulation 5-101(44).

47. The term “major modification” means “any modification of a major stationary source that would result in a significant increase in actual emissions of any air contaminant.” See VT APC Regulation 5-101(43).

48. The term “modification” means, in pertinent part, “any physical change in, or change in the method of operation of, a stationary source which increases the actual emission rate of any air contaminant.” See VT APC Regulation 5-101(45).

49. The definition of “actual emissions” indicates that “for any source which has not begun normal operations on the particular date, actual emissions shall equal the allowable emissions of the source on that date.” See VT APC Regulation 5-101(2).

50. The term “significant,” means, in reference to a modification’s increase in actual emissions or a source’s allowable emissions of VOCs, a rate of emission that would equal or exceed 40 tons per year. See VT APC Regulation 5-101(71).

51. Respondent’s installations of new paint spray guns at the Facility at various times since 1998 increased its “actual emissions” (which equaled its “allowable emissions” because the new paint spray guns had not begun normal operations) of VOCs by 40 tons per year or more and therefore they were “major modifications” as those terms are defined under VT APC Regulation 5-101.

52. To date, Respondent has not installed MSER or met other applicable requirements of VT APC Regulation 5-502, nor has a permit been issued in accordance with VT APC Regulation 5-501 approving the construction of a major stationary source or of major modifications at the Facility.

53. Accordingly, Respondent has violated and continues to violate VT APC Regulation 5-502.

### **PROPOSED CIVIL PENALTY**

54. 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.

55. Based on the allegations above, the EPA proposes to assess Respondent a civil administrative penalty of up to \$37,500 per day for each of the five counts, for a period of five years up to the date of Respondent's compliance with the regulatory and statutory requirements cited in this Complaint. For many years, Respondent has failed to apply for and obtain a CAA Title V operating permit, and has failed to meet emissions, recordkeeping and permitting requirements under the Shipbuilding NESHAP and VT APC Regulations. These requirements are designed to protect human health and the environment from the harmful effects of air pollutants, including HAPs and VOCs. Coatings used by Respondent contain HAPs and VOCs. HAPs are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Included among HAPs are VOCs, which can lead to eye, nose, and throat irritation; headaches, loss of coordination, nausea; damage to liver, kidney, and central nervous system. Some VOCs are suspected or

known to cause cancer in humans. VOCs also contribute to the formation of ground-level ozone. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and ecosystems.

56. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the violations and explaining how the proposed penalty was calculated, as required by Part 22.

57. In determining the amount of the penalty to be assessed under Section 113 of the CAA, 42 U.S.C § 7413, 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 (as limited by the applicable statute of limitations), 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).

#### **OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

58. In accordance with Section 113 of the CAA, 42 U.S.C § 7413, 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:

John E. Hultgren, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100 (Mail Code OES04-2)  
Boston, Massachusetts 02109-3912

59. 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**

60. 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).

#### **OPPORTUNITY FOR ELECTRONIC FILING AND SERVICE**

61. Subject to certain conditions and limitations, the Region 1 Regional Judicial Officer has authorized, pursuant to at 40 C.F.R. § 22.5(b)(2), the use of electronic mail for filing or service in addition to those methods already authorized in the Consolidated Rules of Practice. See Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region

1 Regional Judicial Officer, dated October 9, 2014 and attached to this Complaint. According to the above-referenced Order, prior to utilizing electronic service, the parties shall confer and reach agreement regarding acceptable electronic addresses and other logistical issues.

### **CONTINUED COMPLIANCE OBLIGATION**

62. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with the CAA, Shipbuilding NESHAP and VT APC Regulations.

### **SETTLEMENT CONFERENCE**

63. 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 1.

64. 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 John E. Hultgren, Enforcement Counsel, at (617) 918-1761. Pursuant to 40 C.F.R. § 22.5(c)(4), John E. Hultgren is authorized to receive service on behalf of EPA.

Susan Studien

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

02/11/15  
Date