



U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND

5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

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HUGH W. MARTINEZ
direct: (617) 918-1867

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

BY HAND

May 19, 2010

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 - New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Re: *In the Matter of: Promet Marine Services Corporation, Docket Nos. CWA-01-2010-0033 and CAA-01-2010-0034; Administrative Complaint and Notice of Opportunity for Hearing*

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Complaint and Notice of Opportunity for Hearing to initiate the above-entitled case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the Complaint and Notice of Opportunity for Hearing was mailed to Respondent, Promet Marine Services Corporation, in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hugh W. Martinez".

Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: David Cohen, President, Promet Marine
Gregory L. Benik, Esquire, Attorney for Promet
Joan Jouzaitis, EPA Region 1
Joseph Canzano, EPA Region 1

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)**

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In the Matter of:)
)
Promet Marine Services Corporation)
242 Allens Avenue)
Providence, Rhode Island 02905,)
)
Respondent.)
)
_____)

Docket Numbers:
CWA-01-2010-0033
CAA-01-2010-0034

**ADMINISTRATIVE COMPLAINT and
NOTICE OF OPPORTUNITY FOR
HEARING**

Proceeding Under Section 309(g)(2)(B)
of the Clean Water Act and
Section 113 of the Clean Air Act

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency - Region 1 ("EPA") issues this Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Water Act"), 33 U.S.C. § 1319(g), and Section 113(d) of the Clean Air Act ("CAA" or "Air Act"), 42 U.S.C. § 7413(d). The Complainant is the Director of the Office of Environmental Stewardship, EPA Region 1.

2. The Complaint notifies the Respondent, Promet Marine Services Corporation ("Promet" or "Respondent"), that EPA intends to assess civil penalties for discharging pollutants into navigable waters of the United States, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and for: (a) failure to obtain and operate in compliance with a construction permit as required by the Rhode Island State Implementation Plan ("SIP"); (b) failure to obtain and operate in compliance with an operating permit as required under Title V of the Air Act; and, (c) failure to comply with the federal National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Ship Building and Repair Facilities, all in violation of CAA Section 113(b), 42 U.S.C. § 7413(b).

3. The Notice of Opportunity for a Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. APPLICABLE STATUTES AND REGULATIONS

Clean Water Act Statutory and Regulatory Authority

4. Section 301(a) of the Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 502(12) of the Water Act, 33 U.S.C. § 1362(12), defines "discharge of pollutants" to include "any addition of any pollutant to navigable waters from any point source." Section 502(14) of the Water Act, 33 U.S.C. § 1362(14), defines a "point source" as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

6. Section 308(a) of the Water Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the Water Act, including the issuance of NPDES permits pursuant to CWA Section 402, 33 U.S.C. § 1342.

7. Section 309(g) of the Water Act provides for the assessment of penalties for violations of CWA Section 301, 33 U.S.C. § 1311.

Clean Air Act Statutory and Regulatory Authority

8. Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), gives EPA the authority to require any person who owns or operates any emission source to establish and maintain records, make reports, sample emissions, and provide such other information as may reasonably be required to enable EPA to determine whether a facility is in compliance with the Air Act.

9. 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 subchapter I of the Air Act (which includes NESHAPs, promulgated under CAA Section 112, 42 U.S.C. § 7412), violations of subchapter V of the Air Act (which includes the Title V operating permit requirements of CAA Section 503, 42 U.S.C. § 7661b), and violations of any provision of an “applicable state implementation plan or permit.”

10. The State of Rhode Island and Providence Plantations (“Rhode Island” or “RI”) has adopted a SIP within the meaning of CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1). The RI SIP has been approved by EPA under CAA Section 110, 42 U.S.C. § 7410, and contains various federally-approved portions of the Rhode Island Air Pollution Control Regulations (“RI APC Regulations”).

11. The RI APC Regulations include, among others, RI APC Regulation 9 regarding the permitting of air emission sources. RI APC Regulation 9 was first approved by EPA and incorporated into the SIP, on May 31, 1972. Subsequent revisions to RI APC Regulation 9 also have been approved by EPA and incorporated into the SIP. *See* 40 C.F.R. § 52.2081.

12. RI APC Regulation 9.2.1 requires a source to obtain a major or minor source permit (as appropriate) prior to construction, installation, or modification of a facility. RI APC Regulation 9.2.2 prohibits any person subject to major or minor source permit obligations under RI APC Regulation 9 from operating any emission units for which such permit is required without obtaining the required permit.

13. Ozone, a main ingredient in urban smog, forms when volatile organic compounds (“VOCs”) react with oxides of nitrogen in the presence of sunlight. EPA has designated ozone as an ambient air pollutant, and has developed a national ambient air quality standard (“NAAQS”) for ozone. *See* 40 C.F.R. § 50.9. To control ozone formation, the Rhode Island SIP regulates VOC emissions.

14. The term “major source” or “major stationary source” in Section 182(c) of the Air Act, 42 U.S.C. § 7511a(c), and the term “major stationary source” in RI APC Regulation 9.4.1, are defined to include, *inter alia*, any source that has the potential to emit 50 tons per year or more of VOCs.

15. The term “major source” in Sections 112(a)(1) and 501 of the Air Act, 42 U.S.C. §§ 7412(a)(1) and 7661, and in RI APC Regulation 29.1.14, is defined to include, *inter alia*, any source that has the potential to emit 10 tons per year or more of any hazardous air pollutant (“HAP”).

16. The term “modification” in Sections 111(a)(4) and 171 of the Air Act, 42 U.S.C. §§ 7411(a)(1) and 7501, and in RI APC Regulation 9.1.2, is defined to include, *inter alia*, any

physical or operational change to a facility which increases the amount of any air pollutant emitted by the source [CAA] or which may result in an increased emission rate to the atmosphere of any air pollutant [RI Regs]. The term “major modification” in RI APC Regulation 9.1.18 is defined to include any modification that would result in a significant net emission increase of any air pollutant. In RI APC Regulations 9.1.24 and 9.1.34, a “net emission increase” that is “significant” for VOCs is defined to include an emissions increase, or increased potential to emit, of at least 25 tons per year of VOCs.

17. Section 503(c) of the Air Act, 42 U.S.C. § 7661b(c), and EPA regulations at 40 C.F.R. § 70.5 require a major source to apply for a Title V operating permit within 12 months of becoming subject to a state’s operating permit program. Section 502(a) of the Air Act, 42 U.S.C. § 7661a(a), and EPA regulations at 40 C.F.R. § 70.7(b) prohibit any major source from operating except in compliance with a duly-issued Title V permit.

18. Pursuant to Section 112 of the Air Act, the Administrator of EPA is required to establish NESHAPs for listed HAPs. Under Section 112, EPA promulgated regulations known as the National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities, codified at 40 C.F.R. Part 63, Subpart II (“Subpart II” or the “Shipbuilding NESHAP”). EPA also promulgated general NESHAP provisions under Section 112 of the Air Act, codified at 40 C.F.R. Part 63, Subpart A (“Subpart A”), that are applicable to sources regulated by Shipbuilding NESHAP, as specified in Subpart II.

19. The Shipbuilding NESHAP identifies existing sources as those for which construction or reconstruction is commenced before December 15, 1995, the effective date of Subpart II. *See* 40 C.F.R. §§ 63.2 and 63.784. The Shipbuilding NESHAP requires existing sources to comply by December 16, 1997. *See* 40 C.F.R. § 63.784(a).

20. The Shipbuilding NESHAP defines an affected source, in pertinent part, as any shipbuilding or ship repair facility with surface coating operations that annually uses at least 264 gallons of marine coating subject to Subpart II. *See* 40 C.F.R. § 63.782.

21. Under the Shipbuilding NESHAP, within 180 calendar days of the effective date of Subpart II, owners or operators of an affected source are required to submit an initial notification to EPA indicating that they are subject to Subpart II. *See* 40 C.F.R. §§ 63.9(b)(2) and 63.787(a).

22. The Shipbuilding NESHAP requires owners or operators of an affected source to create and submit an implementation plan to EPA by December 16, 1996 (that is, within one year of the effective date of Subpart II). *See* 40 C.F.R. § 63.787(b).

23. Under the Shipbuilding NESHAP, owners or operators of an affected source are prohibited from using coatings that exceed the volatile organic HAP (“VOHAP”) limits set forth in Table 2 of Subpart II. *See* 40 C.F.R. § 63.783(a). The Shipbuilding NESHAP exempts low-use coatings, defined as those for which a facility’s annual usage is less than 52.8 gallons per coating, from the limits in Table 2, provided the total combined volume of such low-use coatings is not greater than 264 gallons per year. *See* 40 C.F.R. § 63.781(b).

24. The Shipbuilding NESHAP requires owners or operators of an affected source to submit a semi-annual compliance report to EPA within 60 days after each six-month period following the applicable date of compliance (the date for existing sources is December 16, 1997) covering each six-month period. *See* 40 C.F.R. § 63.788(c).

III. GENERAL ALLEGATIONS

25. Promet is a Rhode Island corporation with its principal place of business 242 Allens Ave., Providence, Rhode Island 02905 (the “Site” or “Facility”). The Site consists of paved and unpaved areas totaling approximately nine acres bounded by industrial properties and by the Providence River (“River”). Promet began operations at the Facility in 1974.

26. The Facility is located in an ozone transport region under the CAA and is within an area designated as serious for ozone nonattainment.

27. Respondent operates the Site where it builds, repairs, and/or refits commercial, Coast Guard, military, and other marine vessels. Promet provides various services at the Facility, including pressure washing, painting, sandblasting, welding, machining, rigging, and electrical work.

28. Promet began pressure washing activities at the Facility during the mid-1980’s and it conducts all pressure washing outside. Prior to July 2008, discharge from pressure washing activities at the Site emptied into the River from specific points, including the point source identified by Respondent as outfall 003 (“Outfall 003”).

29. In or around August 2004, Promet installed a stormwater treatment tank (“Stormwater Tank”) at the Facility, across from a paved area mostly used for boat staging, pressure washing, and sandblasting. The Stormwater Tank is suspended above the River at Outfall 003 and consists of a four-compartment baffled tank with filter socks intended to trap solids and oils.

30. In or around July 2008, Promet began operating a pressure wash recycling system at the Facility intended to eliminate the discharge of pressure wash pollutants into the River. Before July 2008, Promet’s pressure wash liquid discharged to the River from Outfall 003 and/or the Stormwater Tank.

31. Respondent conducts the majority of the painting work outdoors at the Facility. Promet does not operate any emission control systems at the Facility to capture and eliminate air pollutants emitted during painting operations.

32. Coatings that Promet used, or uses, for painting ships at the Facility contain substances that are listed HAPs under Section 112 of the Air Act and are VOHAPs, as defined in Subpart II. *See* 40 C.F.R. § 63.782. Coatings that Promet used, or uses, for painting ships at the Facility also contain substances that are VOCs under the Air Act, as defined in Subpart II. *See* 40 C.F.R. §§ 63.782 and, by reference, 51.100(s).

33. In each of February 2003, November 2004, and August 2007, Promet installed airless sprayers (spray guns) used for painting operations at the Facility. Each of these three spray guns applies coatings that contain substances that are listed HAPs under CAA Section 112, are VOHAPs as defined in Section 63.782 of Subpart II, and are VOCs.

34. On or about October 24, 2007, February 11, 2008, and May 6, 2008, authorized representatives of EPA inspected the Facility to assess Promet's compliance with Federal environmental laws and regulations ("the Inspections"), including the CWA and CAA.

35. In or around November 20, 2007, EPA issued to Respondent a *Clean Air Act Reporting Requirement* [Docket No. AAA-08-0012] (the "CAA Request") under Section 114(a)(1) of the Air Act. Promet provided a response to the CAA Request, on or about January 18, 2008. Promet submitted additional information to supplement its response to the CAA Request, on or about April 18, 2008.

36. On or about June 26, 2008, EPA issued to Promet a non-penalty *Notice of Violation and Administrative Order* [Docket No. AAA-08-0039] ("NOV/AO") under Section 113 of the Air Act, 42 U.S.C. § 7413. Among other things, the NOV/AO included EPA findings that Respondent had violated various RI SIP, Title V, and Shipbuilding NESHAP requirements. The NOV/AO ordered Promet to address the alleged violations and comply within 120 days of receiving the AO/NOV. At or around the time EPA issued the NOV/AO, EPA also provided a copy to Rhode Island.

37. On or about December 12, 2008, EPA issued to Respondent a *Request for Information Pursuant to Section 308 of the Clean Water Act* [Docket No. 09-308-010] (the "CWA Request"). Promet provided a response to the CWA Request, on or about January 12, 2009.

38. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this Complaint, which addresses certain violations under the Air Act

that commenced more than 12 months ago and seeks to assess penalties in excess of the maximum amounts referenced in CAA Section 113(d)(1), as amended to adjust for inflation, is an appropriate administrative penalty action under Section 113(d)(1).

39. As a result of the Inspections and a review of documents and other information provided by Respondent, Complainant has identified the following CWA and CAA violations:

IV. VIOLATIONS

First Count

(Clean Water Act - Unpermitted Discharge)

40. Paragraphs 1 - 39 of the Complaint are incorporated herein by reference.

41. Promet is a “person” within the meaning of Sections 301(a) and 502(5) of the Water Act, 33 U.S.C. §§ 1311(a) and 1362(5).

42. The outfall identified by Respondent as Outfall 003, currently with the Stormwater Tank installed, discharges into the Providence River.

43. The Providence River flows into Narragansett Bay which flows into Rhode Island Sound which, in turn, flows into the Atlantic Ocean. The Providence River, Narragansett Bay, Rhode Island Sound, and the Atlantic Ocean are all “waters of the United States,” as defined in 40 C.F.R. § 122.2, and are, thereby, “navigable waters,” as defined in Section 502(7) of the Water Act, 33 U.S.C. § 1362(7).

44. Outfall 003 is a “point source” within the meaning of Section 502(14) of the Water Act, 33 U.S.C. § 1362(14).

45. Since the mid-1980's until July 2008, the discharges from Outfall 003 included used pressure wash water containing, among other things, copper, lead, zinc and total suspended solids ("TSS"). Copper, lead, zinc and TSS are each a "pollutant" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

46. Respondent's discharge of pressure wash pollutants from Outfall 003 without a permit under the CWA was in violation of Section 301(a) of the Water Act and was a violation for which penalties may be assessed pursuant to CWA Section 309(g).

Second Count

(Clean Air Act – Construction Permit)

47. Paragraphs 1 – 46 of the Complaint are incorporated herein by reference.

48. The Facility is a major source for VOCs in that Promet's surface coating operations at the Facility have the potential to emit 50 tons per year or more of VOCs.

49. Each of Promet's installations of airless sprayers (spray guns) in 2003, 2004, and 2007 constitutes a major modification in that each resulted in an increase of potential VOC emissions of 25 tons per year or more.

50. Promet did not obtain a permit under RI APC Regulation 9 before commencing construction or modification of the Facility and associated painting operations. On or about August 1, 2009, Promet submitted a Regulation 9 permit application to the Rhode Island Department of Environmental Management ("RIDEM"). To date, RIDEM has not issued a permit to Promet under RI APC Regulation 9 and, accordingly, Promet continues to operate the

Facility without an approved permit under RI APC Regulation 9 and without any VOC emission limits specified in such a permit.

51. Respondent's failure to obtain, and to operate with, a construction permit under RI APC Regulation 9 constitutes a violation of the CAA and the RI SIP for which penalties may be assessed pursuant to Section 113 of the Air Act for each day of operating without a permit.

Third Count
(CAA/Title V - Operating Permit)

52. Paragraphs 1 – 51 of the Complaint are incorporated herein by reference.

53. Respondent's Facility has the potential to emit greater than 10 tons per year of the HAP xylene and, therefore, the Facility is a "major source," as defined by CAA Sections 112(a)(1) and 501, 42 U.S.C. §§ 7412(a)(1) and 7661, and RI APC Regulation 29.1.14.

54. Promet did not submit a Title V operating permit application within 12 months of becoming subject to Rhode Island's Title V Permit Program, as required by Section 503(c) of the Air Act and EPA regulations at 40 C.F.R. § 70.5. Specifically, Promet failed to submit a Title V operating permit application either within 12 months of July 5, 1996 (the date of EPA's interim approval of RI's Title V program) or within 12 months of November 30, 2001 (the date of EPA's full approval of RI's Title V program), as required by CAA Section 503(c) and 40 C.F.R. § 70.5. *See* 66 Fed. Reg. 49839 (October 1, 2001).

55. On or about June 15, 2009, Promet submitted a Title V operating permit application to RIDEM. To date, RIDEM has not issued a Title V operating permit to Promet and, accordingly,

Promet continues to operate the Facility without an approved permit under the RI Title V Permit Program.

56. Under Sections 502(a) and 503(c) of the CAA, 40 C.F.R. §§ 70.5 and 70.7(b), and RI APC Regulations 29.3.9, 29.4.1, and 29.4.2(a), Respondent's failure to submit, or timely submit, a Title V operating permit application and Respondent's operation of the Facility without such Title V permit constitute violations for which penalties may be assessed for each day of violation pursuant to Section 113 of the Air Act.

Fourth Count

(CAA/NESHAP – Initial Notification and Implementation Plan)

57. Paragraphs 1 – 56 of the Complaint are incorporated herein by reference.

58. As an existing source under the Shipbuilding NESHAP, Promet was required to comply with Subpart II, by December 16, 1997. *See* 40 C.F.R. § 63.784(a).

59. Promet is an owner or operator of an affected source under the Shipbuilding NESHAP since it uses at least 264 gallons of subject (non-exempt) marine coatings annually at the Facility.

60. Under the Shipbuilding NESHAP, Promet was required to submit an initial notification to EPA, within 180 calendar days of the effective date of Subpart II (that is, by June 13, 1996), indicating that Promet is subject to Subpart II. *See* 40 C.F.R. §§ 63.9(b)(2) and 63.787(a).

61. Promet failed to submit an initial notification to EPA by June 13, 1996 but, instead, submitted an initial notification under the Shipbuilding NESHAP, on or about April 16, 2009.

62. Under the Shipbuilding NESHAP, Promet was also required to create and submit an implementation plan to EPA, by December 16, 1996. *See* 40 C.F.R. § 63.787(b).

63. Promet failed to submit an implementation plan to EPA by December 16, 1996 but, instead, submitted an implementation plan on or about May 29, 2009. After EPA input, Promet submitted a revised version of that implementation plan to EPA, on or about July 1, 2009.

64. Respondent's failure to submit, or timely submit, the initial notification and the implementation plan under the Shipbuilding NESHAP and Section 112 of the CAA constitutes a violation of the Air Act and Subpart II for which penalties may be assessed pursuant to CAA Section 113 for each day of violation.

Fifth Count

(CAA/NESHAP – Noncompliant Coatings)

65. Paragraphs 1 – 64 of the Complaint are incorporated herein by reference.

66. The Shipbuilding NESHAP prohibits Promet, as the owner or operator of an affected source, from using coatings that exceed the VOHAP limits set forth in Table 2 to Subpart II. *See* 40 C.F.R. § 63.783(a). To determine compliance with Subpart II, Promet uses the compliance procedures at 40 C.F.R. § 63.785(c)(1) (known as “Option 1” for coatings to which no thinning solvent is added) and at 40 C.F.R. § 63.785(c)(2) (known as “Option 2” relating to coating-by-coating compliance for coatings to which thinning solvent is added). Pursuant to 40 C.F.R. § 63.783(a) of the Shipbuilding NESHAP, to determine compliance, affected sources using the compliance procedures of Option 1 or Option 2 shall use VOCs as a surrogate for VOHAPs.

67. In at least 2007 and 2008, Promet used coatings at the Facility that had a VOC content exceeding the limits set forth in Table 2 of Subpart II and did not qualify for a low-use exemption under the Shipbuilding NESHAP. *See* 40 C.F.R. § 63.781(b). In particular, Promet

used the following subject (non-exempt) coatings that exceeded applicable VOHAP limits specified in Subpart II: (a) Intershield 300, a general use coating, in calendar year 2007; and, (b) Interzinc 042, a general use coating, in calendar years 2007 and 2008.

68. Promet's use of coatings subject to the Shipbuilding NESHAP and containing VOC content in excess of the limits set forth in Table 2 of Subpart II constitutes a violation of Section 112 of the CAA and Subpart II for which penalties may be assessed pursuant to Section 113 of the Air Act for each day of violation.

Sixth Count
(CAA/NESHAP – Semi-Annual Reports)

69. Paragraphs 1 – 68 of the Complaint are incorporated herein by reference.

70. Under the Shipbuilding NESHAP, Promet is required to submit semi-annual compliance reports to EPA within 60 days after each six-month period following the applicable compliance date of December 16, 1997, with each report covering the prior six-month period. *See* 40 C.F.R. § 63.788(c).

71. Promet failed to submit semi-annual compliance reports to EPA within 60 days of the six-month period following December 16, 1997 and, up until February 2, 2010, failed to submit the semi-annual compliance reports within 60 days of each six-month period thereafter, as required by 40 C.F.R. § 63.788(c) of the Shipbuilding NESHAP.

72. Respondent's failure to submit semi-annual reports required under the Shipbuilding NESHAP and Section 112 of the CAA constitutes a violation of the Air Act and Subpart II for which penalties may be assessed pursuant to CAA Section 113 for each violation.

V. PROPOSED CIVIL PENALTIES

Clean Water Act Penalties

73. Section 309(g) of the Water Act, 33 U.S.C. § 1319(g), authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after January 30, 1997 through March 15, 2004 are subject to a penalty of up to \$11,000 per day of violation up to a maximum penalty of \$137,500, violations that occurred after March 15, 2004 through January 12, 2009 are subject to a penalty of up to \$11,000 per day of violation up to a maximum penalty of \$157,500, and violations that occurred after January 12, 2009 are subject to a penalty of up to \$16,000 per day of violation up to a maximum penalty of \$177,500.

74. In light of the above, EPA seeks to assess civil penalties of up to \$11,000 per day, up to a maximum of \$157,500 for the Water Act violations alleged in the First Count of the Complaint. Based on the Inspections and information obtained by EPA through its investigation of the facts and circumstances underlying those Water Act violations, EPA seeks penalties for approximately 100 days of violation alleged in the First Count.

75. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the Water Act, 33 U.S.C. § 1319(g)(2)(B), EPA will take into account the statutory factors listed in Section 309(g)(3) of the Water Act, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability

to pay, history of prior violations, degree of culpability, any economic benefit or savings resulting from the violations, and other such factors as justice may require.

76. The unauthorized discharge of pollutants alleged in the First Count is significant because failure to obtain an approved NPDES permit containing specified effluent limits and monitoring requirements prevents the Respondent and EPA from determining the precise nature and quantity of pollutants being discharged into the River. In addition, the discharge of pollutants such as copper, lead, zinc and TSS is significant since these pollutants can cause significant harm to human health and the environment and will contribute to the impairment of water quality.

77. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the CWA violations and explaining how the proposed penalty was calculated, as required by the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (the “Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint.

Clean Air Act Penalties

78. Section 113(d)(1)(B) of the Air Act, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to assess an administrative civil penalty of up to \$25,000 per day of violation of, *inter alia*, the RI SIP, CAA Section 112 and Title V of the Air Act. Pursuant to the DCIA and 40 C.F.R. Part 19, violations that occurred after January 30, 1997 through March 15, 2004 are subject to a penalty of up to \$27,500 per day of violation, violations that occurred after March 15, 2004 through

January 12, 2009 are subject to a penalty of up to \$32,500 per day, and violations that occurred after January 12, 2009 are subject to a penalty of up to \$37,500 per day.

79. In light of the above, EPA seeks to assess civil penalties of up to \$32,500 per day or \$37,500 per day, as applicable, for the CAA violations alleged in the Second, Third, Fourth, Fifth, and Sixth Counts of the Complaint.

80. In determining the amount of the penalty to be assessed under Section 113(d) of the Air Act, 42 U.S.C. § 7413(d), EPA will take into account the statutory factors listed in CAA Section 113(e), 42 U.S.C. § 7413(e). These factors include the size of Promet's business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations, payment of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations. To apply these criteria, EPA will use the appropriate Clean Air Act penalty policies and guidance applicable to the type of violations at issue. An adjustment for the economic impact of the penalty on Promet's business will be considered if Respondent establishes, with adequate documentation, *bona fide* issues or defenses relevant to the appropriate penalty amount.

81. The violations alleged in the Second and Third Counts for failure to obtain and operate under appropriate air permits and the emission limits and other requirements established or specified therein are significant because they prevent Respondent and EPA from determining the nature and quantity of pollutants being discharged into the ambient air and represent Promet's continued operation of the Facility without appropriate limits. As a major stationary source of

VOCs, Promet is required to obtain a Regulation 9 Permit requiring "lowest achievable emission reductions" ("LAER"). The emission limits and other requirements at issue in the Second and Third Counts are important because, *inter alia*, any excess emissions of VOCs by Promet above lawful limits will contribute to the continuing problem of complying with the NAAQS for ozone in Rhode Island and a worsening of the overall air quality in New England.

82. The violations alleged in the Fourth through Sixth Counts for failure to comply with notification, reporting, and emission requirements of the Shipbuilding NESHAP are significant because they prevent Respondent and EPA from documenting compliance with the Shipbuilding NESHAP, including Maximum Achievable Control Technology ("MACT") limits intended to control HAP emissions. MACT limits for marine coatings used at the Facility are important because the HAPs emitted by such coating operations may include, without limitation, benzene, 2-butoxyethanol, methylene bisphenyl isocyanate, ethyl benzene, hexamethylene diisocyanate, isopropyl benzene, methanol, naphthalene, toluene and xylenes, each of which may be associated with reversible or irreversible toxic effects such as irritation of the eye, nose, throat and skin, as well as damage to the blood cells, heart, liver, and kidneys. Many such HAPs are VOCs and, thus, any excess HAP emissions by Promet above regulatory limits also will contribute to the problem of complying with the NAAQS for ozone in Rhode Island and an overall worsening of New England's air quality.

83. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the CAA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules of Practice (enclosed).

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

84. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

85. In its Answer, Respondent may also: (a) dispute any material fact in the Complaint; (b) contend that the proposed penalties are inappropriate; or (c) contend that Respondent is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

86. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109-3912

87. Respondent must also send a copy of the Answer as well as a copy of all other documents that Respondent files in this action, to Hugh W. Martinez, the attorney assigned to represent EPA and authorized to receive service in this matter, at:

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA - Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, Massachusetts 02109-3912
Tel: (617) 918-1867

88. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. SETTLEMENT CONFERENCE

89. Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized in a written Consent Agreement and Final Order entered into by EPA and Promet. To explore the possibility of settlement in this matter, you or your attorney should contact Mr. Martinez, at 617-918-1867. Please note that a request for an informal settlement conference does not enlarge the 30-day period for the submission of a written Answer.

PROMET MARINE SERVICES CORP.

ADMINISTRATIVE COMPLAINT
Docket Nos. CWA-01-2010-0033
CAA-01-2010-0034

VIII. CONTINUED COMPLIANCE OBLIGATION

90. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with applicable requirements of the CWA, the CAA, the RI SIP, and other laws and regulations.

Sam Silverman, acting for
Susan Studien, Director
Office of Environmental Stewardship
U.S. EPA - Region 1

Date: 5-17-10

In re: Promet Marine Services Corp.

CWA-01-2010-0033

CAA-01-2010-0034

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for Hearing and Cover Letter to the Regional Hearing Clerk have been provided to the following persons on the date noted below:

*Original and one copy,
hand-delivered:*

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 - New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

*One copy (with Part 22 Rules
enclosed), by Certified Mail,
Return Receipt Requested:*

David Cohen, President
Promet Marine Services Corporation
242 Allens Avenue
Providence, Rhode Island 02905

*One copy (with Part 22 Rules),
by overnight delivery:*

Gregory L. Benik, Esquire
Benik & Associates, P.C.
Attorneys for Promet Marine
931 Jefferson Boulevard, Suite 2008
Warwick, RI 02886

Dated: _____

5-19-10



Hugh W. Martinez
Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone (dir.): 617-918-1867
Fax: 617-918-0867
E-mail: martinez.hugh@epa.gov