

U.S. Environmental Protection Agency
One Congress Street, Suite 1100 (Mail Code SES)
Boston, MA 02114-2023

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February 16, 2007

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Suite 1100, Mail Code RCH
One Congress Street
Boston, Massachusetts 02114-2023

Re: Southeastern New England Shipbuilding Corporation, Docket No. CAA-01-2008-0104

Dear Ms. Santiago:

Please file the enclosed Administrative Complaint and Notice of Opportunity for Hearing in Docket No. CAA-01-2008-0104. I also enclose a copy.

I certify that this day I have served a copy of the Administrative Complaint and Notice of Opportunity for Hearing, with a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 and a copy of the Clean Air Act Penalty Policy, by certified mail, return receipt requested, on Robert Jarvis, President of Southeastern New England Shipbuilding Corporation.

Sincerely,



Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Robert Jarvis, President, Southeastern New England Shipbuilding Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

2008 SEP 24 P 11: 22

IN THE MATTER OF:

Southeastern New England
Shipbuilding Corporation
10 MacNaught Street
North Kingstown, RI 02852-7414

Proceeding under Section 113 of the
Clean Air Act, 42 U.S.C. § 7413.

Docket Number CAA-01-2008-0104

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING

COMPLAINT

1. The United States Environmental Protection Agency ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing under Section 113(d) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(d), to Southeastern New England Shipbuilding Corporation ("Respondent" or "Senesco"). The Complaint notifies Senesco that EPA intends to assess penalties for violations of the Rhode Island State Implementation Plan ("SIP"), of Title V operating permit requirements, and of the federal National Emission Standards for Hazardous Air Pollutants for Ship Building and Repair Facilities ("Ship NESHAP"). The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

STATUTORY AND REGULATORY BASIS

2. Sections 113(a) and (d) of the Act provide for the assessment of penalties for violations

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

3. The State of Rhode Island and Providence Plantations (“Rhode Island” or “RI”) has adopted a SIP within the meaning of Section 113(a)(1) of the Act. The RI 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 Rhode Island Air Pollution Control Regulations (“RI APC Regulations”).

GENERAL ALLEGATIONS

4. Senesco builds steel barges and boats at a facility in North Kingstown, Rhode Island. Senesco started operations at the facility in 1999, and began painting barges and boats on an unspecified date believed to be in 2000.

5. The paints that Senesco uses on its barges and boats contain volatile organic compounds (“VOCs”) and hazardous air pollutants (“HAPs”).

6. On August 3, 2005, EPA and the Rhode Island Department of Environmental Management (“DEM”) representatives inspected the Senesco facility.

7. On December 22, 2005, EPA issued a Reporting Requirement (“RR”) to Senesco.

8. On February 21, 2006, Senesco submitted a response to the RR. EPA subsequently obtained additional information from Senesco via telephone and email contacts with Senesco personnel.

9. On August 18, 2006, EPA issued a Notice of Violation and Administrative Order to

Senesco ("NOV and AO")

10. The term "major source" in Sections 112(a)(1) and 501 of the CAA, 42 U.S.C. §§ 7412(a)(1) and 7661, and in RI APC Regulation 29.1.20, is defined to include any source that has the potential to emit 10 tons per year or more of any HAP. The Senesco facility has the potential to emit greater than 10 tons per year of the HAP xylene. Therefore, the Senesco facility is a major source.

11. Respondent is a corporation, and therefore is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

12. The EPA Administrator and the Attorney General for the U.S. Department of Justice have jointly determined that this Complaint, which addresses certain violations that commenced more than 12 months ago and seeks more than \$270,000 in penalties, is an appropriate administrative penalty action under Section 113(d)(1) of the Act.

COUNT I

13. The NESHAP for Ship Building and Repair Facilities, 40 C.F.R. Part 63, Subpart II, identifies new sources as those for which construction or reconstruction is commenced after December 15, 1995. See 40 C.F.R. §§ 63.2 and 63.784(c). New sources are required to comply with the NESHAP requirements upon startup. See 40 C.F.R. § 63.6(b)(2).

14. Senesco commenced construction of its facility in 1999. The NESHAP requires Senesco to submit to EPA a notification of intent to construct a new affected source, and a notification of the actual date of startup, in accordance with 40 C.F.R. §§ 63.787(a) and 63.9(b)(5). Senesco did not submit a notification of intent to construct, and did not submit a notification of actual startup date. On October 18, 2005, Senesco sent a letter to EPA officially notifying EPA that it was

subject to the NESHAP.

15. The NESHAP requires Senesco to create and submit an implementation plan within one year of startup (see 40 C.F.R. § 63.787(b)), to operate in accordance with the implementation plan (see, for example, 40 C.F.R. §§ 63.785(c)(2)(iii) and 63.785(c)(3)(iii)), and to keep records in accordance with the plan (see 40 C.F.R. §63.788(b)).

16. Senesco did not create or submit an implementation plan until February 2006.

17. During the August 3, 2005 inspection, EPA and DEM requested to see records of compliance with the NESHAP. Senesco personnel stated that no such records had been kept.

COUNT II

18. For every six-month period following startup of the facility, Senesco was required by 40 C.F.R. § 63.788(c) to submit a compliance report to EPA.

19. Senesco has failed to submit six-month compliance reports to EPA during the period from startup in 2000 through 2005.

COUNT III

20. Senesco is prohibited from using coatings that exceed the volatile organic HAP (“VOHAP”) limits in Table 2 to Subpart II of 40 C.F.R. Part 63. See 40 C.F.R. § 63.783(a).

21. In each year from 2001 through 2005, Senesco used one or more coatings with VOHAP content in excess of the limits in Table 2 (including, for example, Devoe 302, Sea Guard 5000, NC-500, and NC-960). The use of such coatings resulted in the emission of VOHAPs above the allowable limits.

COUNT IV

22. RI APC Regulation 9.2.1 requires a source to obtain a major or minor source permit (as

appropriate) prior to construction of a new facility. RI APC Regulation 9.3.1(f) requires a source to obtain a minor source permit if the potential to emit is greater than one hundred pounds per day or ten pounds per hour of any air contaminant. RI APC Regulation 9.4 details the major source permitting applicability criteria and requirements.

23. RI APC Regulation 9 has been approved by EPA as part of the SIP. See 40 C.F.R. §52.2081.

24. The Senesco facility has the potential to emit greater than one hundred pounds per day or ten pounds per hour of VOCs and other air contaminants. Senesco did not apply for a Regulation 9 permit before commencing construction.

25. Senesco submitted a Regulation 9 permit application in June 2006, and obtained a Regulation 9 permit on July 7, 2007. Accordingly, Senesco violated Regulation 9 by failing to obtain a Regulation 9 permit from 1999 until July 7, 2007. In addition, Senesco violated Regulation 9 by operating without the required permit from 1999 until July 7, 2007.

26. Furthermore, by emitting VOCs and HAPs from the Senesco facility without having applied for and obtained a Regulation 9 permit, from 1999 until July 7, 2007, Senesco violated RI APC Regulation 7.2, which provides:

No person shall emit any contaminant which either alone or in connection with other emissions, by reason of their concentration or duration, may be injurious to human, plant or animal life, or cause damage to property or which unreasonably interferes with the enjoyment of life and property.

RI APC Regulation 7 has been approved by EPA as part of the SIP. See 40 C.F.R. §52.2081.

COUNT V

27. Section 503(c) of the Act and EPA regulations at 40 C.F.R. §70.5(a) 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. RI APC Regulation 29.4 requires a major source of HAPs to apply for a Title V operating permit within 12 months of commencing operations. Therefore, Senesco was required to submit a Title V operating permit application within 12 months of commencing operations in the year 2000. Senesco did not submit a Title V operating permit application until December 2006, after being ordered to do so by EPA's NOV and AO.

28. Forty C.F.R. §70.7(b) provides that after the date a Title V source is required to submit a timely and complete Title V operating permit application, the Title V source may not operate except in compliance with a Title V operating permit program.

29. Senesco failed to submit a Title V operating permit application within 12 months of commencing operations, in violation of 40 C.F.R. §70.5(a), and has operated without a Title V operating permit in violation of 40 C.F.R. §70.7(c).

PROPOSED CIVIL PENALTY

30. Section 113(d)(1)(B) of the Act, together with the Civil Monetary Penalty Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), authorize the assessment of a civil administrative penalty of up to \$32,500 per day for each violation of the Clean Air Act. Based on the allegations above, and taking into consideration the penalty assessment criteria of Section 113(e), the Regional Administrator of EPA Region I proposes to assess Respondent a civil penalty of \$398,000.

31. The penalty assessment criteria of Section 113(e) include the size of the 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 violation, payment of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. To apply these criteria, where applicable, EPA has used the "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991 ("Penalty Policy"), a copy of which is enclosed with this Complaint.

32. For the details of the penalty calculation, see attached table. An adjustment for the economic impact of the penalty on Respondent's business will be considered if properly raised and documented by Respondent.

33. Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America," and mailed to:

US Environmental Protection Agency
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

34. Copies of the check must be sent to the Regional Hearing Clerk and to Thomas T. Olivier, Senior Enforcement Counsel, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

35. As provided by Section 113(d) of the Act, Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Suite 1100, Mail Code RCH
1 Congress Street
Boston, Massachusetts 02114-2023

with a copy to:

Thomas T. Olivier, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
Suite 1100, Mail Code SEL
1 Congress Street
Boston, Massachusetts 02114-2023

36. Proceedings will be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy enclosed). An Answer must be filed within thirty (30) days of receipt of the Complaint. See 40 C.F.R. § 22.15 for the required contents of an Answer.

37. Instead of filing an Answer requesting a hearing, Respondent may choose to pay the proposed penalty in accordance with the procedures set forth in 40 C.F.R. §22.18. If Respondent fails either to pay the proposed penalty or to file an Answer with the Regional Hearing Clerk within 30 days of receipt of the Complaint, such failure will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the Clean Air Act. In that event, the proposed penalty would become due and payable by Respondent 60 days after EPA issues a final order finding Respondent in default.

SETTLEMENT CONFERENCE

38. 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 by the issuance of a written Consent Agreement and Order by the Regional Judicial Officer of EPA Region I. To explore the possibility of settlement in this matter, contact Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737. Please note that a request for an informal settlement conference does not enlarge the 30-day period for the submission of a written Answer.

Susan Studlien
Susan Studlien
Director, Office of Environmental Stewardship
EPA Region I

Date: 09/23/08

Senseco Marine

Proposed Penalty:
\$398,000

Violator Size	\$35,000
Violator Size Inflation	\$10,133
Total Gravity	\$352,887
Economic Benefit	
Proposed Penalty	\$398,019

Count	Violation Description	Total Duration of Violation (months)	Actual or Possible Harm	Penalty			Inflation	Total	Comments
				Importance to Regulatory Scheme	Duration Penalty	Pre-Inflation Total			
I	Failure to submit MACT notifications and implementation plan, operate in accordance with the implementation plan, and keep records in accordance with the plan.	28	\$15,000	\$15,000	\$30,000	\$60,000	\$15,171	\$75,171	- Actual/Possible Harm: toxicity of pollutant = \$15k (xylene and other HAPs) - Import to Reg Scheme: reporting/notification violation = \$15k.
II	Failure to submit 6 month compliance reports.	27		\$15,000	\$30,000	\$27,000	\$6,788	\$33,788	- Import to Reg Scheme: reporting/notification violation = \$15k. - Duration - treat as 5 one-day violations = \$12k
III	Failure to comply with limits on the volatile organic HAP (VOHAP) content of coatings used	27	\$20,000	\$10,000	\$30,000	\$60,000	\$15,085	\$75,085	- Actual/Possible Harm: excess emissions < 30% above standard = \$5k + toxicity of pollutant = \$15k (xylene and other HAPs). - Import to Reg Scheme: work practice violation = \$10k.
IV	Failure to apply for and obtain, and to operate in accordance with, a Regulation 9 permit. Failure to operate in accordance with Regulation 7.	32	\$14,000	\$15,000	\$35,000	\$64,000	\$16,471	\$80,471	- Actual/Possible Harm: serious non-attainment for ozone \$14k (VOCs) - Import to Reg Scheme: permitting violation = \$15k.
V	Failure to apply for and obtain, and to operate in accordance with, a Title V permit.	39	\$15,000	\$15,000	\$40,000	\$70,000	\$18,372	\$88,372	- Actual/Possible Harm: toxicity of pollutant = \$15k (xylene > 10 tpy) - Import to Reg Scheme: permitting violation = \$15k.

Total Gravity
\$352,887