UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 13 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert McCune, President
Superior Marine Ways, Inc.
5852 County Road 1
South Point, Ohio, 45669

Re: Superior Marine Ways, Inc.
South Point and Proctorville, Ohio
Administrative Order EPA-5-15-113(a)-OH-04 and EPA-5-15-113(a)-OH-04

Dear Mr. McCune:

Enclosed is an executed original of the final Administrative Consent Order (ACO) pursuant to Section 113(a) and Section 114(a) of the Clean Air Act (the Act). This ACO addresses the violations regarding the Ohio State Implementation Plan, Title V of the Act, and the National Emission Standards of Hazardous Air Pollutants (NESHAP).

The ACO requires Superior Marine Ways, Inc.'s Proctorville and South Point facilities to apply for Title V Permits and comply with the NESHAP for Shipbuilding and Ship Repair.

Please direct any questions regarding this case to Mary Fulghum, Associate Regional Counsel at 312-886-4683.

Sincerely,

Brian Dickens

Brian Dickens
Chief
Minnesota/Ohio Air Enforcement and Compliance Assurance Section

Enclosures

Cc: Cindy Charles, PLAA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**EPA-5-15-113(a)-OH-04**
	)	**EPA-5-15-113(a)-OH-05**
	)	
Superior Marine Ways, Inc.	)	**Proceeding Under Sections 113(a)(1)(3) and**
Proctorville, Ohio	)	**114(a)(1) of the Clean Air Act, 42 U.S.C.**
South Point, Ohio	)	**§§ 7413(a)(1)(3) and 7414(a)(1)**
	)	
	)	

Administrative Consent Order

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Superior Marine Ways, Inc. (Superior) under Sections 113(a)(1) and (3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1) and (3) and 7414(a)(1).

Statutory and Regulatory Background

2. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

3. On October 31, 1980, EPA approved the Ohio Administrative Code (OAC) Rule 3745-31 Permit to Install New Sources provisions, as part of the federally enforceable Ohio State Implementation Plan (SIP). 45 Fed. Reg. 72119.

4. OAC Rule 3745-31-02(A) provides that no person shall cause, permit, or allow the installation of a new source of air contaminants without first obtaining a permit to install from Ohio EPA.

5. On June 10, 1982, EPA approved the OAC Rule 3745-35, Permits to Operate provisions, as part of the federally enforceable Ohio SIP. 47 Fed. Reg. 25144.

6. Former OAC Rule 3745-35-02(A), which was effective prior to June 30, 2008, set forth that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from Ohio EPA.

7. On June 30, 2008, OAC Rule 3745-35 was rescinded and all operating requirements for sources at facilities not subject to OAC Rule 3745-77 were incorporated into OAC Rule 3745-31.

8. On October 1, 2012, EPA approved the OAC Rule 3745-31, a Permits to Install and Operate Program, that combined Ohio EPA's permit to install and permit to operate into a single permit to install and operate, as part of the federally enforceable Ohio SIP. 77 Fed. Reg. 59751.

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that nationwide, all applicable requirements are included in a single operating permit.

10. EPA fully approved the Ohio Title V Permit Rules on August 15, 1995. 40 C.F.R. Part 70, Appendix A. Ohio's Title V Permit Rules became effective on October 1, 1995. 60 Fed. Reg. 42045.

11. The Ohio regulations governing the Title V Permit Rules are codified at OAC Rule 3745-77 and are federally enforceable pursuant to Section 113(a)(3) of the Act.

12. OAC Rule 3745-77-02 requires a Facility to apply for a Title V Permit within 12 months of becoming subject to the Title V permitting requirements.

13. OAC Rule 3745-77-02(A) prohibits the operation of a source subject to the Title V operating permit program after the date that a timely and complete Title V permit application is required to be submitted, except in compliance with a Title V operating permit.

14. Under Section 112 of the CAA, U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair at 40 C.F.R. §§ 63.780 through 63.789. The NESHAP for Shipbuilding and Ship Repair applies to building, repair, repainting, converting, or alteration of ships.

15. The NESHAP, at 40 C.F.R. § 63.783, among other things, requires affected facilities to apply all coatings to a ship with an as-applied volatile organic hazardous air pollutants (VOHAP) content that does not exceed certain limits.

16. The NESHAP at 40 C.F.R. § 63.784 required each owner or operator of an existing source to comply within two years after the effective date of the subpart.

17. The NESHAP at 40 C.F.R. § 63.787, among other things, requires the affected facilities to submit various notifications to EPA.

18. The NESHAP at 40 C.F.R. § 63.788, among other things, requires the affected facilities to maintain and/or submit various records and reports to EPA.

19. Under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413 (a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP.

20. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

21. The Administrator of EPA may require any person who owns or operates an emission source to establish and maintain records, make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

22. Superior owns and operates a two separate shipbuilding and ship repair facilities at 95 Private Drive, Proctorville, Ohio and at 5852 County Road 1, South Point, Ohio (Facility or, collectively, Facilities).

23. On June 21 and June 22, 2010, EPA representatives inspected the Facilities.

24. During the June 21 and June 22, 2010 inspection, the Facilities' representative told the EPA inspectors that Superior did not apply for any air permits from Ohio EPA for either Facility, and that Superior did not have any air permits from the Ohio EPA for either Facility.

25. Superior conducted abrasive blasting operations at several exterior locations at the Facilities and continues to conduct abrasive blasting operations at the Proctorville Facility and, thus, Superior's abrasive blasting operations have emitted and emit particulate matter (PM) to the air.

26. Superior conducts welding and painting operations at the Facilities that emit or have the potential to emit hazardous air pollutants (HAPS).

27. Superior's shipbuilding and ship repair operations at both the Proctorville and South Point Facilities are affected facilities subject to the NESHAP for Shipbuilding and Ship Repair at 40 C.F.R. §§ 63.780 through 63.789.

28. Superior owns or operates "emission sources" within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, Superior is subject to the requirements of CAA Section 114(a)(1).

29. On March 30, 2014, EPA issued a Notice and Finding of Violation (NOV/FOV) to Superior regarding the Proctorville and South Point Facilities.

30. On May 5, 2014, representatives of Superior and EPA discussed the March 30, 2014 NOV/FOV.

31. Superior's Facilities each violated the Ohio SIP at OAC Rule 3745-31-02(A) by causing, permitting or allowing operation of air contaminant sources without applying for and obtaining from Ohio EPA, a permit to install and operate for air contaminant sources that emitted PM, HAPs and VOHAPS.

32. Superior's Facilities failed to submit any Title V permit application for either Facility within 12 months of becoming subject to the Ohio Title V permitting requirements in violation of OAC Rule 3745-77-02, Sections 502 and 503 of the Act, 42 U.S.C. §§7661a and 7661b and the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. § 70.1(b).

33. Superior's Facilities failed to submit timely and complete Ohio Title V permit applications with information concerning all applicable requirements, including, but not limited to, each Facility's major source statuses for HAPs in violation of OAC Rule 3745-77-02(A), Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b).

34. Superior's Facilities violated the NESHAP for Shipbuilding and Ship Repair by not submitting and/or maintaining various reports, records and notifications as required by NESHAP at 40 C.F.R. §§ 63.783, 63.787, and 63.788.

Compliance Program

35. Within 75 days of the effective date of this Order, Superior must achieve, demonstrate and maintain compliance with the Ohio SIP, the Ohio Title V permit requirements included in any Title V permit approved by the State of Ohio for the Proctorville and South Point Facilities and the NESHAP for shipbuilding and ship repair at its South Point and Proctorville, Ohio Facilities.

36. Within 30 days of the effective date of this Order, Superior must submit Permit to Install and Operate (PTIO) modification applications to Ohio EPA to include requirements of the NESHAP for shipbuilding and ship repair for the Proctorville and South Point Facilities.

37. Within 30 days of the effective date of this Order, Superior's Facilities must submit an initial notification to EPA for the NESHAP as required by 40 C.F.R. § 63.787(a).

38. Within 30 days of the effective date of this Order, Superior must develop an inventory of all marine coatings used at the Facilities and document each coating's compliance with the NESHAP's requirement at 40 C.F.R. § 63.783(a).

39. Within 30 days of the effective date of this Order, Superior's Facilities must begin to keep monthly records, including coating usages and VOC content as required by 40 C.F.R. § 63.788(b).

40. Within 30 days of the effective date of this Order, Superior's Facilities must identify all applicable NESHAP work practice requirements and develop a written procedure to implement and maintain the applicable requirements as required by 40 C.F.R. § 63.783(b).

41. Within 45 days of the effective date of this Order, Superior's Facilities must implement the applicable requirements identified in paragraph 40, above, and complete the associated training of its employees.

42. Within 45 days of the effective date of this Order, Superior must develop a written implementation plan as required by 40 C.F.R. § 63.787(b).

43. Within 60 days after the first 6-month calendar period of the effective date of this Order, Superior's Facilities must submit the NESHAP semi-annual compliance reports as required by 40 C.F.R. § 63.788 (c).

44. Within 30 days after issuance of the final modified PTIOs by Ohio EPA, Superior must submit a complete Title V application to Ohio EPA for its Proctorville and South Point facilities meeting the requirements of the Ohio Title V permit program at OAC Rule 3745-77.

45. Superior must send all reports required by this Order to the following address unless otherwise noted:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

General Provisions

46. This Order does not affect Superior's responsibility to comply with other federal, state and local laws.

47. This Order does not restrict EPA's authority to enforce the Ohio SIP, the Ohio Title V Permit Rules or the NESHAP for Shipbuilding and Repair and any other section of the CAA.

48. Nothing in this Order limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the CAA, 42 U.S.C. § 7413, for Superior's violation of the Ohio SIP, Title V, or any applicable NESHAP requirement.

49. Failure to comply with this Order may subject Superior to penalties of up to $37,500 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

50. The terms of this Order are binding on Superior, its assignees and successors. Superior must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the address provided in paragraph 45, that it has given the notice.

51. Superior may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Superior fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

52. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic recordkeeping efforts, please furnish an electronic copy on physical media such as compact disk, flash drive or

other similar item. If it is not possible to submit the information electronically, submit the response to this Order without staples; paper clips and binder clips, however, are acceptable.

53. EPA may use any information submitted under this Order in an administrative, civil judicial or criminal action.

54. Without admission of the allegations contained herein, Superior agrees to the terms of this Order.

55. Superior waives any remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Administrative Consent Order, including any right of judicial review under Section 307(b) of the CAA.

56. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will terminate two years from the effective date, provided that Superior has complied with all terms of the Order throughout its duration.

Administrative Consent Order
Superior Marine Ways, Inc.

7-27-15
Date

Robert McCune
President
Superior Marine Ways, Inc.

Administrative Consent Order
Superior Marine Ways, Inc.

8/13/15
Date

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent the Administrative Consent Order, EPA-5-15-113(a)-OH-04 and EPA-5-15-113(a)-OH-05 by certified mail, return receipt requested, to:

Robert McCune, President
Superior Marine Ways, Inc.
5852 County Road 1
South Pont, Ohio 45669

I also certify that I sent a copy of the Administrative Consent Order, EPA-5-15-113(a)-OH-04 and EPA-5-15-113(a)-OH-05, by first-class mail to:

Cindy Charles, Director
Portsmouth Local Air Agency
605 Washington Street, Third Floor
Portsmouth, Ohio 45662

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 Watermark Drive
Columbus, Ohio 43266-1049

On the 17th day of August 2015.

Kathy Jones
for Loretta Shaffer
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7644 3524