



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

MAR 30 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF.

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

Re: Notice and Finding of Violation  
Superior Marine Ways, Inc.  
Proctorville, Ohio Facility  
South Point, Ohio Facility

Dear Mr. McCune:

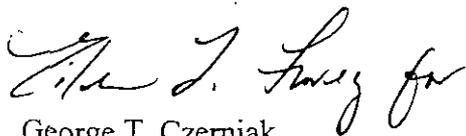
This is to advise you that the U.S. Environmental Protection Agency has determined that each of the Superior Marine Ways, Inc. (you or Superior) facilities located at 5852 County Road 1, South Point, Ohio and at 95 Private Drive, Proctorville, Ohio (Facility or Facilities) is in violation of the Clean Air Act and associated state or local pollution control requirements. Today we are issuing to you a Notice of Violation and Finding of Violation (NOV/FOV) for these violations. Documentary evidence gathered during our inspections on June 21 and June 22, 2010 and also from Superior's responses to EPA's initial Information Request mailed April 19, 2012 and EPA's follow-up Information Request mailed June 24, 2013, substantiates Superior's non-compliance with the regulations.

As explained in the NOV/FOV, EPA finds that you have and are violating the Clean Air Act, its implementing regulations, the Ohio State Implementation Plan, and the Ohio Title V Permit Program at your Proctorville and South Point Facilities. Section 113 of the Clean Air Act gives us several enforcement options to resolve these violations. These options include issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action and bringing a judicial criminal action.

We are offering you the opportunity to confer with us about the violations alleged in the NOV/FOV. A conference should be requested within 10 days following receipt of this notice. A conference should be held within 30 days following receipt of this notice. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The EPA contact in this matter is Shilpa Patel. You may call her at (312) 886-0120 if you wish to request a conference. EPA hopes that this NOV/FOV will encourage Superior's compliance with the requirements of the Clean Air Act, the Ohio State Implementation Plan, and the Ohio Title V Permitting Program.

Sincerely,



George T. Czerniak

Director

Air and Radiation Division

cc: Cindy Charles, Director  
Portsmouth Local Air Agency

Bob Hodanbosi, Chief  
Ohio EPA

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>Superior Marine Ways, Inc.</b>	)	<b>NOTICE OF VIOLATION and</b>
<b>Proctorville, Ohio</b>	)	<b>FINDING OF VIOLATION</b>
<b>South Point, Ohio</b>	)	
	)	<b>EPA-5-14-OH-04</b>
Proceedings Pursuant to	)	<b>EPA-5-14-OH-05</b>
the Clean Air Act	)	
42 U.S.C. §§ 7401 <i>et seq.</i>	)	

**NOTICE AND FINDING OF VIOLATION**

Superior Marine Ways, Inc. (you or Superior) owns and operates two separate shipbuilding and ship repair facilities at 95 Private Drive, Proctorville, Ohio and at 5852 County Road 1, South Point, Ohio (Facilities).

The U.S. Environmental Protection Agency is sending this Notice of Violation and Finding of Violation (NOV/FOV or Notice) under Section 113 of the Clean Air Act, 42 U.S.C. § 7413(a). EPA finds that Superior is violating the Clean Air Act (Act) 42 U.S.C. §§ 7401 *et seq.*; at its Proctorville and South Point, Ohio Facilities. We have found Superior to be operating two major sources without applying for any Title V air permits in violation of Ohio's Title V program. Superior is also violating permit to operate requirements and dust emission containment requirements of the Ohio State Implementation Plan (Ohio SIP). Further, Superior did not obtain any permits for either facility limiting its hazardous air pollutant (HAP) emissions below major source thresholds prior to the effective date of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair. Consequently, the Facilities became subject to the NESHAP. EPA finds that the Facilities did not implement the NESHAP once they became affected sources in violation of Section 112 of the Act, 42 U.S.C. § 7412.

This Notice is issued in accordance with Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a) which authorize the EPA Administrator to take certain enforcement actions after notifying a person that it is in violation of the Act. The authority to issue the NOV/FOV has been delegated by the EPA Administrator to the Regional Administrator and re-delegated to the Director of the Air and Radiation Division for EPA Region 5.

## STATUTORY AND REGULATORY BACKGROUND

### Ohio State Implementation Plan

1. 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 Act, 42 U.S.C. § 7410.
2. On October 31, 1980, EPA approved the Ohio Administrative Code (OAC) Rule 3745-31, permit to install new sources of pollution provisions, as part of the federally enforceable State Implementation Plan (SIP) for Ohio. 45 Fed. Reg. 72119 (1980).
3. OAC Rule 3745-31-02(A) provides that no person shall cause, permit, or allow the installation of a new source of air pollutants without first obtaining a permit to install from Ohio EPA.
4. On June 10, 1982, EPA approved the OAC Rule 3745-35, Permits to Operate provisions, as part of the federally enforceable SIP for Ohio. 47 Fed. Reg. 25144 (1982).
5. OAC Rule 3745-35-02(A) 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.
6. On June 27, 1994, EPA approved the OAC Rule 3745-17-08(B) as part of the federally enforceable SIP for Ohio. 59 Fed. Reg. 27464.
7. OAC Rule 3745-17-08(B) requires facilities to take reasonably available control measures to prevent dust from becoming airborne. OAC Rule 3745-17-08(B)(5) requires you to use adequate containment methods during sandblasting or similar operations.
8. 40 C.F.R. § 52.23 allows EPA to take enforcement action under Section 113 of the Act, 42 U.S.C. § 7413, when a person fails to comply with any provision of an EPA-approved SIP.

### Ohio Title V Permitting Program

9. Title V of the Act, 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 program on August 15, 1995. 40 C.F.R. Part 70, Appendix A; 60 Fed. Reg. 42045. Ohio's Title V program became effective on October 1, 1995. 60 Fed. Reg. 42045.

11. The Ohio regulations governing the Title V permitting program are codified at OAC Rule 3745-77 and are federally enforceable pursuant to Section 113(a)(3) of the Act.
12. OAC Rule 3745-77-01(W) states that hazardous air pollutant means any pollutant listed under Section 112(b) of the Act.
13. OAC Rule 3745-77-01(X)(1) defines "major source" to include any stationary source or group of stationary sources located on one of more contiguous or adjacent properties and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
14. OAC Rule 3745-77-01(X)(2) defines "major source" to include any major stationary source, any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant.
15. Pursuant to OAC Rule 3745-77-07(A), all sources subject to the Title V operating permit program, including major sources, shall have a permit to operate that assures compliance by the source with "all applicable requirements."
16. 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.
17. OAC Rule 3745-77-03(F) states that every owner or operator of a Part 70 source is required to timely submit an accurate and complete Title V permit application, including prompt submittal of any relevant facts and supplemental information required upon becoming aware of its failure to submit a complete or incorrect submittal.
18. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or a rule promulgated, issued, or approved under Title V of the Act.

#### NESHAP for Shipbuilding and Ship Repair

19. Section 112 of the Act, 42 U.S.C. § 7412(c), requires EPA to promulgate a list of all categories and subcategories of new and existing "major sources" of hazardous air pollutants (HAP), and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA codified these standards at 40 C.F.R. Parts 61 and 63.

20. Section 112(a)(1) of the Act, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 70.2 define "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants."
21. "Stationary source" is defined as "any building, structure, facility, or installation, which emits or may emit any air pollutant." 42 U.S.C. § 7412 (a)(3).
22. "Hazardous air pollutant" or "HAP" is defined as "any air pollutant listed in or pursuant to Section 112(b) of the Act 42 U.S.C. § 7412(a)(6).
23. 40 C.F.R. § 63.782 defines "Volatile organic hazardous air pollutants" or "VOHAP" to mean any compound listed in or pursuant to Section 112(b) of the Act that contains carbon, excluding metallic carbides and carbonates. This definition includes any volatile organic compound listed as HAP and exempt compounds listed as HAP.
24. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), 40 C.F.R. § 61.05 and § 63.4 prohibit any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date.
25. EPA promulgated the NESHAP for Shipbuilding and Ship Repair at 40 C.F.R. Part 63, Subpart II on December 15, 1995 (60 Fed. Reg. 64336) and amended it on June 18, 1996 (61 Fed. Reg. 30816). The NESHAP is codified at 40 C.F.R. §§ 63.780 through 63.789.
26. The NESHAP at 40 C.F.R. § 63.782 defines ships as any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (including barges), and navigational aids (including buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges.
27. The NESHAP at 40 C.F.R. § 63.782 defines shipbuilding and ship repair operations to mean any building, repair, repainting, converting, or alteration of ships.
28. The NESHAP at 40 C.F.R. § 63.783, among other things, requires that all coating application to a ship be with an as-applied VOHAP content that does not exceed certain limits.
29. The NESHAP at 40 C.F.R. § 63.784 requires each owner or operator of an existing source to comply within two years after the effective date of this subpart.
30. The NESHAP at 40 C.F.R. § 63.787, among other things, requires the submission of various notifications to EPA.
31. The NESHAP at 40 C.F.R. § 63.788, among other things, requires the maintenance and/or submittals of various records and reports to EPA.

32. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, a SIP or any other rule promulgated, issued or approved under the Act.

### **FACTUAL BACKGROUND**

33. Superior owns and operates the Facilities including shipbuilding and ship repair operations at 95 Private Drive, Proctorville, Ohio and at 5852 County Road 1, South Point, Ohio. More specifically, Superior builds, services, sandblasts, paints, and repairs marine vessels, navigational aids and marine equipment at the above locations.
34. Superior has owned and operated the Facilities since 1984.
35. Superior conducts sandblasting operations at several exterior locations at 95 Private Drive, Proctorville, Ohio and at 5852 County Road 1, South Point, Ohio.
36. On June 21 and June 22, 2010, EPA representatives inspected the Facilities.
37. During the 2010 inspection, the Facilities' representatives told the EPA inspectors that Superior did not apply for or obtain any air permit from the Ohio EPA and did not have any air permits from the Ohio EPA.
38. On April 19, 2012, EPA mailed an Information Request to the Facilities.
39. EPA received Superior's responses to the April 19, 2012 Information Request on June 21, 2012 and a supplemental response on October 19, 2012.
40. On June 24, 2013, EPA mailed a follow-up Information Request to the Facilities.
41. On July 9, 2013, EPA received Superior's Response to the June 24, 2013 Information Request.
42. During the June 21 and June 22, 2010 inspection, the EPA inspectors observed sandblasting at both of the Facilities and noted that the Facilities did not make any reasonable effort to contain the sandblasting emissions.
43. Based on information collected during the June 21 and June 22, 2010 inspection, Superior's Information Request Responses received June 21, 2012, October 19, 2012, and July 9, 2013, EPA determined the particulate matter (PM) emissions at the Facilities from the sandblasting operations are uncontrolled; thus, all sandblasting material purchased for the Facilities was assumed to be emitted to the air.

44. Based on information collected during the June 21 and June 22, 2010 inspection, Superior's Information Request Responses received June 21, 2012, October 19, 2012, and July 9, 2013, EPA determined that the Facilities' PM emissions cross the major source thresholds.
45. The Facilities currently do not have any Ohio EPA air permits and, at the time of the 2010 Inspection, had not applied for any Ohio EPA air permits.
46. The Facilities did not submit any Title V permit application within 12 months of becoming subject to the Title V permitting requirements.
47. Based on information collected during the June 21 and June 22, 2010 inspection, Superior's Information Request Responses received June 21, 2012, October 19, 2012, and July 9, 2013, EPA has determined that the potential-to-emit (PTE) for each facility is over the major sources threshold of 25 tons of HAPs per year. The PTE for the Proctorville and South Point facilities was determined based on the following information:
  - a. A HAP content paint of 3.20 lbs of VOHAP per gallon;
  - b. the number of days, ranging from 3 to 5 days, based on the type of ship being painted; and,
  - c. the quantity of paint ranging, from 300 to 540 gallons, based on the type of ship being painted.
48. During the June 21 and June 22, 2010 inspection, the South Point and Proctorville Facilities stated no reports, records or notifications had been provided to EPA or the Ohio EPA regarding the NESHAP for Shipbuilding and Repair.
49. During all times relevant to this NOV/FOV, neither the Ohio EPA nor EPA received any reports, records or notifications from Superior provided regarding the NESHAP for Shipbuilding and Repair.

## VIOLATIONS

### Ohio SIP

50. During all times relevant to this Notice and Finding of Violation, Superior has failed to use reasonable efforts to contain sandblasting emissions at the locations and/or areas at each Facility where sandblasting of marine vessels, navigational aids and equipment occurred in violation of the Ohio SIP at 3745-17-08(B).

Ohio Title V Permitting Program

51. Superior failed to submit any Title V permit application for either Facility within 12 months of becoming subject to the Title V permitting requirements in violation of 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).
52. Superior has failed to submit timely and complete Title V permit applications with information concerning all applicable requirements, including, but not limited to, the sandblasting emission sources and the Facility's major source status for HAPs and PM in violation of 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).

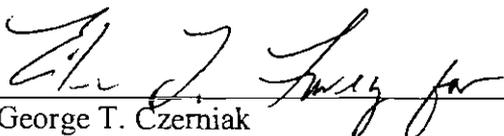
NESHAP for Shipbuilding and Ship Repair

53. Superior's shipbuilding and ship repair operations at the Proctorville and South Point locations are major sources of HAPs that are subject to the NESHAP for Shipbuilding and Ship Repair.
54. Superior has not submitted and/or maintained various reports, records and notifications for either the Proctorville or South Point Facility. This constitutes violations of the NESHAP at 40 C.F.R. §§ 63.783, 63.787, and 63.788.

**ENVIRONMENTAL IMPACT OF VIOLATIONS**

55. Violation of the PM standards increases public exposure to unhealthy particulate matter. Particulate matter, especially fine particulate, contributes to respiratory problems, lung damage and premature deaths.
56. Violations of the HAP standards may increase public exposure to suspected human carcinogens. HAP exposure may cause serious health effects, such as birth defects and cancer, and harmful environmental and ecological effects.

8/30/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
George T. Czerniak  
Director  
Air and Radiation Division

## CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, Nos. EPA-5-14-OH-04 and EPA-5-14-OH-05, by Certified Mail, Return Receipt Requested, to:

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

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first-class mail to:

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

Robert Hodanbosi  
Chief  
Ohio Environmental Protection Agency  
Division of Air Pollution Control  
50 W. Town Street, Suite 700  
Columbus, Ohio 43215

On the 31 day of March 2014

  
\_\_\_\_\_  
Loretta Shaffer  
APA  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7670 0665