



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

Forsheda Palmer-Chenard Incorporated
366 Route 108
Somersworth, NH 03878

ADMINISTRATIVE FINE
BY CONSENT

No. AF 03-010

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division ("DES"), and Forsheda Palmer-Chenard Incorporated ("Forsheda"), pursuant to RSA 125-C: 15, I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Forsheda Palmer-Chenard, Incorporated, a division of Polymer Sealing Solutions, is a New Hampshire Corporation that registered with the New Hampshire Secretary of State on January 1, 2000. Forsheda has a mailing address of 366 Route 108, Somersworth, NH 03878.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env- A 100 *et seq.*
2. Pursuant to RSA 125-C:15,I-b(b), the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C, and rules promulgated pursuant thereto.
3. Forsheda manufactures rubber diaphragms for the automotive, industrial and aircraft industries at its facility located at 366 Route 108 in Somersworth, NH ("the Facility"). In producing rubber diaphragms, Forsheda uses adhesive chemicals and other chemical compounds which result in emissions to the ambient air.
4. RSA-125-C:2, XI defines a stationary source as "any building, structure, facility, or installation which emits or which may emit any regulated air pollutant."

5. Env-A 101.225 defines a regulated air pollutant as, among other things, any pollutant listed in Section 112(b) List of Hazardous Pollutants of the Act, and any volatile organic compounds (“VOCs”).

6. Env-A 101.168 defines a major source as, among other things, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more on any hazardous air pollutant (“HAP”), which has been listed pursuant to Section 112(b) of the Act, 25 tons per year or more of any combination of such HAPs, or any source with the potential to emit VOCs in the quantity of 50 tons per year or more.

7. Env-A 609.01(a) (effective 12-13-95), requires the owner of a major stationary source unless otherwise exempt, to submit a Title V Permit application on or before June 30, 1996.

8. Env-A 603.02(g) (effective 12-27-90 to 09-28-96), required a source with total actual VOC replacement rate equal to or greater than 1,500 gallons to obtain a State Permit to Operate.

9. Env-A 608.01(a) (effective 06-30-95), requires the owner or operator of any stationary source, area source, or device which is specified in Env-A 607.01 to obtain a state permit to operate:

- (1) Prior to the operation or modification [if modification, explain] of a stationary source, area source, or device;
- (2) If a temporary permit was issued, prior to the expiration of a temporary permit; or
- (3) If a temporary permit was not issued, upon the determination by the director that a state permit to operate is required in accordance with Env-A 607.01.

10. Env-A 607.01 (effective 09-28-96) requires the owner of a new or modified stationary source or device to obtain a temporary permit prior to the construction or installation of the source or device if the source or device is any of the following:

- a. Env-A 607.01(g) (effective 09-28-96), a source with VOC emissions greater than 10 tons per year;
- b. Env-A 607.01(n) (effective 06-30-95), “a stationary source, area source or device choosing to limit its potential to emit by accepting enforceable permit conditions which restrict its hours of operation, type or amount of material combusted, stored or processed or level of production;” or
- c. Env-A 607.01(x) (effective 06-30-95), “a stationary source or device subject to the rules governing reasonably available control technology (RACT) as contained in Env-A 1200.”

11. Env-A 1204.10 (effective 12-31-02), formerly Env-A 1204.05 (effective 12-27-90), requires a source whose theoretical emissions equal or exceed 10 tons per year to comply with the VOC Reasonably Available Control Technology (“VOC RACT”) requirements of that section.

12. Specifically, Env-A 1204.10 (effective 12-31-02), formerly Env-A 1204.05 (effective 12-27-90), requires a source subject to VOC RACT to comply with the limit of 2.9 lb VOC per gallon of coating as applied.

13. Env-A 1204.28(a) (effective 08-31-95) requires a source subject to VOC RACT to comply by May 31, 1995.

14. On December 27, 2000, DES received an application for a State Permit to Operate ("the Application") on behalf of Forsheda from Haley and Aldrich and the law firm of McLane, Graf, Raulerson & Middleton ("McLane"). The Application stated that in January 2000, an internal environmental audit was conducted at the Facility. As a result of the audit, further analysis by Forsheda identified that in 1992, Forsheda should have applied for a State Permit to Operate because Forsheda's VOC usage and emissions of regulated air pollutants exceeded applicable permit thresholds.

15. In addition, the Application also stated that in calendar year 1999 and 2000 Forsheda's actual emissions of methanol, a HAP, exceeded the Title V threshold of 10 tons for any single HAP and that actual VOC emissions exceeded 10 tons per year. The Application also stated that subsequent to the internal environmental audit, Forsheda had made a number of production changes to reduce VOC emissions, and had replaced methanol with ethyl alcohol (not a HAP) resulting in actual and potential HAP emissions to less than 10 tons per year.

16. The Application also stated that Forsheda was subject to VOC RACT but was unable to comply with the VOC RACT limit of 2.9 lbs of VOC per gallon of coating as applied. Forsheda further stated that compliance would be achieved by installing air pollution control equipment to reduce emissions below the VOC RACT limit.

17. On February 13, 2001, DES requested additional information from Forsheda regarding its operations and emissions. DES received the requested information on March 19, 2001 from McLane.

18. On March 26, 2001, DES attended a meeting at Forsheda to discuss its operations for the purpose of drafting terms and conditions for a Temporary Permit.

19. Env-A 3100 (effective 01-21-97), allows a source, upon approval by DES, to use discrete emissions reductions ("DERs") to comply with VOC RACT.

20. On April 5, 2001, DES received a letter from McLane on behalf of Forsheda. The letter was a Notice of Intent to Use DERs and included a compliance demonstration for regulated toxic air pollutants ("RTAP") emissions from the Facility not including the post curing ovens. McLane stated that Forsheda purchased 28 oxides of nitrogen ("NO_x") DERs (8 ozone season and 20 non-ozone season) to offset excess VOC emissions from the Facility.

21. On July 20, 2001, DES received additional information from McLane, regarding the VOC regenerative thermal oxidizer control device ("the RTO").

22. On August 7, 2001, McLane, notified DES that Forsheda purchased 5 ozone season DERs for the purpose of offsetting excess VOC emissions. Accordingly, as of that date, Forsheda had purchased 13 ozone season DERs and 20 non-ozone season DERs.

23. On August 8, 2001, DES issued Temporary Permit FP-T-0068 ("the Permit") to Specialty Polymer Products, Inc., who changed its name to Forsheda after the Permit was issued. Condition VI of the Permit required Forsheda to install an RTO to reduce VOC emissions, or to use VOC RACT compliant coatings. Condition VI also required stack testing to demonstrate compliance with the 90% VOC destruction efficiency requirements.

24. Env-A 1406.01 (effective 03-05-97), requires all stationary sources or devices that emit RTAPs into the ambient air to comply with the ambient air limits established in Env-A 1400 by performing a compliance determination by May 8, 2000, using one of the methods specified in Env-A 1406.02 through 1406.05.

25. On September 28, 2001, DES conducted a compliance inspection at Forsheda. During the inspection, DES personnel observed that the RTO was operating and confirmed the violations that were self-reported by Forsheda on December 27, 2000; as alleged in Section IV below.

26. Based upon a review of VOC emissions, Forsheda had excess VOC emissions totaling 75 tons, as follows:

- a. In calendar year 1995, 9.5 tons;
- b. In calendar year 1996, 8.7 tons;
- c. In calendar year 1997, 10.9 tons;
- d. In calendar year 1998, 11.5 tons;
- e. In calendar year 1999, 11.0 tons;
- f. In calendar year 2000, 16.9 tons; and
- g. In calendar year 2001, 6.1 tons.

27. On December 6, 2001, Forsheda conducted a compliance stack test on the RTO. The results demonstrated that the RTO had a VOC removal efficiency, less methane, of 90% and Forsheda was in compliance with Condition VI of the Permit.

28. On February 6, 2002, DES sent a letter to Forsheda requesting additional information on the chemicals used by Forsheda and its compliance status with Env-A 1400.

29. On March 18, 2002, DES received a Notice and Certification of Use of Discrete Emission Reductions from McLane on behalf of Forsheda. McLane stated that Forsheda retired 11 tons of ozone season DERs.

30. On March 19, 2002, DES received a letter from McLane, addressing DES's letter of February 6, 2002. The submittal contained revised estimates of Forsheda's emissions from calendar year 1992 through 2001. In addition, the submittal also evaluated Forsheda's emissions of RTAPs and stated that the RTO must be operated to achieve compliance with Env-A 1400.

31. On October 28, 2002, DES was notified in writing of the name change from Specialty Polymer Products, Incorporated to Forsheda.
32. Env-A 704.01 (effective 06-30-95), requires a stationary source which is required to have a Temporary Permit, State Permit to Operate, or Title V Permit to pay DES each year an emissions-based fee as calculated each calendar year.
33. On January 16, 2003, DES sent Forsheda an invoice for \$7,949.52 for emissions-based fees from calendar year 1994 through calendar year 2001.
34. On March 25, 2003, DES received payment from Forsheda in the amount of \$7,949.52 for the emissions-based fees for calendar years 1994 through 2001.

IV. ALLEGATIONS

1. Forsheda violated RSA 125-C:11,I-a, Env-A 609.01(a) (effective 06-30-95), from 1995 through 2000, by failing to obtain a Title V Permit.
2. Forsheda violated RSA 125-C:11,I, Env-A 603.02(g) (effective 12-27-90 to 09-28-96), from 1992 through September 28, 1996, by failing to obtain a State Permit to Operate.
3. Forsheda violated RSA 125-C:11,I, Env-A 608.01(a) (effective 06-30-95), by failing to obtain a State Permit to Operate as follows:
 - a. Env- A 607.01(g) (effective 09-28-96), by exceeding 10 tons per year of actual VOC emissions from December 13, 1995 through December 27, 2000; and
 - b. Env-A 607.01(x) (effective 12-13-95) due to Env-A 1204.10 (effective 08-31-95) formerly Env-A 1204.05 (effective 12-27-90) applicability.
4. Forsheda violated RSA 125-C:11,I, Env-A 1204.10 (effective 12-31-02), formerly Env-A 1204.05 (effective 12-27-90) by exceeding the VOC RACT limit of 2.9 lb VOC/gal. as applied.
5. Forsheda violated RSA 125-C:12, and Env-A 704.01 (effective 06-30-95), by failing to submit emissions based-fees for actual emissions for each calendar year beginning with calendar year 1994 and payable on or before October 15th of the following year.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. Pursuant to RSA 125-C, DES has determined that the violation identified in Paragraph IV. 1 above is a major deviation from the requirements with a major potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$1,501-\$2,000. DES is seeking a fine of \$1,501 per month for each month of the 43 months that Forsheda's potential to emit exceeded the major source threshold, and \$2,000 for each month of the 11 months that Forsheda's actual emissions exceeded major source threshold, for a total penalty of \$86,543.

2. DES is not seeking a fine for the violation identified in Paragraph IV.2 above, as it is addressed by the fine sought in Paragraph V.1.
3. DES is not seeking a fine for the violation identified in Paragraph IV.3 above, as it is addressed by the fine sought in Paragraph V.1.
4. To resolve the allegations identified in Paragraph IV.4 above, Forsheda agrees to purchase and retire DERs to offset the excess VOC emissions described herein. Specifically, Forsheda shall purchase and retire 36 tons of ozone season DERs and 48 tons of non-ozone season DERs as follows:
 - a. Within seven (7) days of the effective date of this Administrative Fine by Consent, Forsheda shall retire its 20 tons of non-ozone season DERs, purchased on April 16, 2001, by filing a Notice and Certification of Use pursuant to Env-A 3104.09;
 - b. Within thirty (30) days of the effective date of this Administrative Fine by Consent, Forsheda shall purchase and retire (pursuant to Env-A 3104.09) 28 tons of non-ozone season DERs;
 - c. Within seven (7) days of the effective date of this Administrative Fine by Consent, Forsheda shall retire its remaining 2 tons of ozone season DERs, purchased on July 19, 2001, by filing a Notice and Certification of Use pursuant to Env-A 3104.09; and
 - d. On March 18, 2002, McLane stated that Forsheda retired 11 tons of ozone season DERs. Accordingly, within thirty (30) days of the effective date of this Administrative Fine by Consent, Forsheda shall purchase and retire (pursuant to Env-A 3104.09) 23 tons of ozone season DERs.
5. DES has determined that the violation identified in Paragraph IV.5 above to be a minor deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$100-\$1000. DES is not seeking a fine for this violation.
6. DES agrees to waive \$47,599 of the total potential fine as a result of Forsheda self-reporting the violations and for its timeliness in resolving the violations.
7. Forsheda agrees to pay the remaining \$38,944 of the fine upon execution of this Administrative Fine by Consent by Forsheda. DES agrees to hold the payment until the agreement has been signed by the Director of the Air Resources Division and the Commissioner of DES.

8. The payment under Paragraph V.7 above shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

9. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

10. By executing this Administrative Fine by Consent, Forsheda waives its right to a hearing on or any appeal of the administrative fines identified in Section V. Paragraphs 1 through 7, and agrees that this agreement may be entered into and enforced by a court of competent jurisdiction. Forsheda shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Forsheda and alleging violations of the New Hampshire Code of Admin. Rules enumerated herein, or in any proceeding before DES to enforce this agreement. Other than such enforcement action, DES shall pursue no further administrative action against Forsheda relative to the allegations contained herein.

11. The parties have entered into this Administrative Fine by Consent to avoid the time and cost of litigation. Except as described in Paragraph 10 above, this agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Forsheda; (ii) an admission by Forsheda or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Forsheda might raise in any third party proceeding.

12. The effective date of this Administrative Fine by Consent shall be the date on which it has been signed by an authorized representative of Forsheda, the Director of the Air Resources Division and the Commissioner of DES.

13. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

Forsheda Palmer-Chenard

By: _____
Duly Authorized

COPY
[Handwritten Signature]

Date: _____

Oct. 27/2003

Department of Environmental Services

COPY
Robert P. Scott
Director, Air Resources Division

Date: Nov 6, 2003

COPY
Michael P. Nolan, Commissioner

Date: Nov. 6, 2003

- cc: M. Harbaugh, DES Legal Unit
- Public Information Officer, DES PIP Office
- R. Kurowski, EPA, Region I
- J. McLin, Mayor, City of Somersworth
- File AFS# 330150776