



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 5, 2004

Robert P. Cheney, Jr., Esq.
Sheehan Phinney Bass & Green, P.A.
143 North Main Street – Suite 103
Concord, NH 03301-5089

Re: Docket No. AF 04-006 – Northern Elastomeric, Inc.

Dear Attorney Cheney:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on May 4, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael Selafani
Michael Selafani,
Legal Assistant

cc: Robert R. Scott, Director, Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Pamela Monroe, DES ARD
Barbara Hoffman, DES ARD
James Martin, DES Public Information Officer
R. Kurowski, USEPA, Region I
Town of Brentwood Board of Selectmen



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Northern Elastomeric, Inc.
50 Pine Road
Brentwood, NH 03833

**ADMINISTRATIVE FINE
BY CONSENT
No. AF 04-006**

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division ("the Division"), and Northern Elastomeric, Inc. ("NEI"), 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 ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. NEI is a New Hampshire corporation having a mailing address of 50 Pine Road, Brentwood, NH 03833.

III. FINDINGS OF FACT

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. Code of 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. NEI manufactures asphalt roll roofing materials on two production lines at its facility located in Brentwood, NH ("the Facility"). The production lines are comprised of saturators, asphalt storage tanks, and a mineral handling and storage facility.
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. 40 CFR 60, Subpart UU ("Subpart UUP"), is a New Source Performance Standard that applies to any saturator, mineral handling and storage facility, or asphalt storage tank at an asphalt roofing plant that commences construction or modification after November 18, 1980. Subpart UU defines *saturator* to include coaters.

No Temporary Permit

6. NEI installed Production Line #1 in 1992 and Production Line #2 in 1994.

7. NEI is a stationary source that is subject to the New Source Performance Standard of Subpart UU.

8. Env-A 607.01 requires the owner or operator of any stationary source, area source, or device that is subject to a New Source Performance Standard contained in 40 CFR 60 to obtain a temporary permit prior to the construction or installation of the source or device.

9. NEI failed to apply for a temporary permit prior to the installation of either Production Line #1 or Production Line #2.

10. After a compliance inspection performed by the Division on October 20, 1997 revealed that NEI was operating the Production Lines without having first obtained a temporary permit, NEI applied for a temporary permit on February 13, 1998.

11. The Division issued Temporary Permit No. FP-T-0031 (the "Permit") to NEI on August 6, 1999.

Permit Expiration

12. Env-A 607.08 provides that a temporary permit expires after 18 months unless the permittee has applied for reissuance of the permit or has applied for a permit to operate at least 90 days prior to the expiration date.

13. The Permit expired on February 28, 2001.

14. NEI applied for reissuance of the Permit on February 26, 2001.

Testing

15. On April 7, 1998, the Division issued Letter of Deficiency No. ARD 98-033, requesting NEI to perform emissions testing by May 29, 1998, as required by Subpart UU.

16. Condition VII.A of the Permit also required NEI to perform emissions testing pursuant to Subpart UU by October 5, 1999.

17. NEI partially performed the emissions testing required by Subpart UU and the Permit during the period of October 21 through November 19, 1999.

18. On February 25, 2000, the Division issued Letter of Deficiency No. ARD 2000-003 to NEI for failing to complete all of the stack testing required by the Permit. The Letter of Deficiency requested that NEI complete the testing within 30 days.

19. On March 29, 2000, the Division received additional test results from NEI, some results demonstrating non-compliance, and some showing that only partial testing of emission points had been completed. NEI committed to completing corrective actions to comply with the emission standards of Subpart UU by August 1, 2000. NEI also stated that it would be requesting an exemption from the visible emission testing requirements for the five Mix Tanks.

Opacity Standards

20. The Flux Tank vent was tested for opacity on October 21, 1999, and was determined to be emitting at 5% opacity. The opacity standard in Subpart UU for asphalt storage facilities is 0%.

21. The Flux Tank only has emissions when it is being filled, which is an infrequent occurrence. To meet the opacity standard, NEI installed a coalescing filter on the Flux Tank vent in October of 2000.

22. The Flux Tank vent was retested on April 5, 2001, and met the Subpart UU opacity standard.

23. The Mineral Screw Conveyor was tested on March 15, 2000, and was determined to be emitting at 5% opacity. The opacity standard in Subpart UU for mineral handling facilities is 1%.

24. NEI replaced the Mineral Screw Conveyor with an enclosed material handling system in January of 2001.

25. The enclosed material handling system was tested in September of 2001 and met the Subpart UU opacity standard.

Annual Emissions Report

26. Condition X.A. of the Permit requires NEI to submit an annual emissions report pursuant to Env-A 907.01(c), beginning with calendar year 1999 emissions, to the Division by April 15 of the following calendar year.

27. NEI did not submit the annual emission report for calendar year 1999 until April 11, 2001.

Annual Emission-Based Fee

28. Env-A 704 requires any applicant, owner, or operator of a stationary source that requires a permit to pay annual emission-based fees. The fees must be submitted to the Division no later than October 15 for the previous calendar year, starting in calendar year 1995 for calendar year 1994 emissions.
29. NEI did not submit the 1999 emission-based fee until May 10, 2001.

IV. ALLEGATIONS

1. NEI violated RSA 125-C:11,I, and Env-A 607.01 by failing to apply for a temporary permit prior to construction or installation of a stationary source, area source or device.
2. NEI violated RSA 125-C:11,I, and Env-A 607.10(a) by continuing to operate after expiration of a temporary permit without making a timely application for reissuance of the temporary permit or obtaining a state permit to operate.
3. NEI violated Subpart UU by failing to perform all required testing by May 29, 1998, as specified in Letter of Deficiency No. ARD 98-033.
4. NEI violated Subpart UU by not completing all testing required by the Permit until March 21, 2000, as confirmed by a report received by DES on March 29, 2000.
5. NEI violated Subpart UU and the Permit by exceeding the opacity standard for the Flux Tank vent.
6. NEI violated Subpart UU and the Permit by exceeding the opacity standard for the Mineral Screw Conveyor.
7. NEI violated Env-A 907.01 by failing to report its 1999 emissions data by April 15, 2000.
8. NEI violated Env-A 704.04 by failing to pay its 1999 emissions based-fees by October 15, 2000.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. The Division is not seeking a fine for the violation identified in Paragraph IV.1 above, because the violation was addressed in Letter of Deficiency No. ARD 98-033 and resolved in a timely manner.
2. The Division has determined that the violation identified in Paragraph IV.2 above is a moderate deviation from the requirement with a moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$851-\$1,500. Accordingly, DES has calculated a penalty of \$1,000 for this violation.

3. The Division has determined that the violation identified in Paragraph IV.3 above, is a major deviation from the requirement with a minor potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$851-\$1,500. The violation began on May 29, 1998, and ended on October 21, 1999. The Division has determined a penalty of \$1,500 per month to be appropriate for this violation. Accordingly, the Division has calculated a total penalty of \$25,500 for this violation.

4. The Division has determined that the violation identified in Paragraph IV. 4 above is a moderate deviation from the requirement with a minor potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$601-\$1,250. The violation began on October 22, 1999, and ended on March 21, 2000. The Division has determined a penalty of \$925.50 per month to be appropriate for this violation. Accordingly, the Division has calculated a total penalty of \$4,627.50 for this violation.

5. The Division has determined that the violation identified in Paragraph IV.5 above to be a moderate deviation from the requirement with a minor potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$601-\$1,250. The Division has determined a penalty of \$625 per month to be appropriate for this violation. The violation began on October 21, 1999, and ended with the corrective action of installing the coalescing filter on the Flux Tank vent in October 2000. Accordingly, the Division has calculated a total penalty of \$7,500 for this violation.

6. The Division has determined that the violation identified in Paragraph IV.6 above to be a moderate deviation from the requirement with a minor potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$601-\$1,250. The Division has determined a penalty of \$1,000 per month to be appropriate for this violation. Although the violation continued for a period of 10 months, had NEI chosen a cheaper alternative to correct the opacity exceedances, the period of violation would have been shortened to 5 months. Accordingly, the Division is seeking a penalty of \$1,000 per month for five months, for a total penalty of \$5,000 for this violation.

7. The Division has determined that the violation identified in Paragraph IV.7 above is a moderate deviation from the requirement with a moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$851-\$1,500. Accordingly, the Division has calculated a penalty of \$1,000 for this violation.

8. The Division is not seeking a fine for the violation identified in Paragraph IV.8 above, because the violation was addressed by payment of the emission-based fees for calendar year 1999 emissions on May 10, 2001.

9. NEI agrees to pay \$44,627.50 in six payments, with the first payment of \$10,000 due upon execution of this Agreement by an authorized representative of NEI, and five subsequent monthly payments of \$6,925.50 due by the 15th of each month.

10. The payment under Paragraph V.9 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

11. 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.


12. The parties have entered into this Agreement to avoid the time and cost of litigation. The parties agree, without adjudication or admission of facts or law, that this Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by NEI; (ii) an admission by NEI or evidence that it violated any law, rule, regulation, policy, or regulatory interpretation; or (iii) a waiver of any defense NEI might raise in any third party proceeding.

13. By executing this Agreement, NEI agrees to waive its right to a hearing on or any appeal of the administrative fines identified in Section V. Paragraphs 1 through 9, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. In any proceeding before DES to enforce this Agreement, NEI agrees not to challenge the validity of any provision of this agreement. Also, in any future proceeding by DES assessing the compliance history of NEI and alleging violations of the New Hampshire Code of Admin. Rules or statutes identical to the gravamen of the violations alleged in Paragraphs IV, 1.-8., of this Administrative Fine by Consent, NEI agrees, without admission of fact or law, that it will not challenge any assertion by DES that such violation(s) constitute a repeat violation under RSA 125-C:5, I-b(c).

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

15. 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.

Northern Elastomeric, Inc.

COPY
By: 
C.F. MacDonald
Duly Authorized VP Manufacturing

Date: 4-29-04

Department of Environmental Services

COPY
Robert R. Scott

Date: 4 MAY 04

Robert R. Scott
Director, Air Resources Division

COPY
Michael P. Nolin

Date: 05 04 04

Michael P. Nolin, Commissioner

cc: M. Harbaugh, DES Legal Unit
Public Information Officer, DES PIP Office
R. Kurowski, EPA, Region I
Town of Brentwood – Board of Selectmen
File AFS# 3301590028