



The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

September 20, 2005

New Hampshire Industries, Inc.  
Attn: J. Todd Miller  
115 Bloomingdale Avenue  
Wayne, PA 19087

Re: Docket No. AF 05-056 Administrative Fine by Consent Agreement

Dear Mr. Miler:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

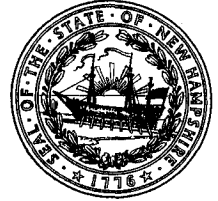
On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,  
**COPY**  
Michael P. Sclafani,  
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner  
Robert R. Scott, Director, DES Air Resources Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Jennifer J. Patterson, NH DOJ  
Pamela Monroe, DES ARD  
Raymond Walters, DES ARD  
R. Kurowski, EPA, Region I  
Kathleen Sullivan, Registered Agent  
M. Farrell, City Manager, City of Lebanon



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

New Hampshire Industries, Inc.  
115 Bloomingdale Avenue  
Wayne, PA 19087

Re: 68 Etna Road  
Lebanon, NH 03766-1090  
Temporary Permit FP-T-0096

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 05-056**

### I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and New Hampshire Industries, Incorporated 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, ("DES") 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. New Hampshire Industries, Incorporated ("NHI") is a foreign corporation registered to do business in the State of New Hampshire having a principal office address of 115 Bloomingdale Avenue, Wayne, PA 19087, and a local mailing address of 68 Etna Road, Lebanon, NH 03766.

### 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. RSA 125-C:15, I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
3. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 600.

4. RSA 125-J:2-a authorizes DES to establish a trading program regarding discrete emissions reductions ("DERs") to facilitate compliance with the requirements of the Clean Air Act.
5. 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".
6. At its facility located at 68 Etna Road in Lebanon, NH, NHI paints metal idler and drive pulleys in 2 spray paint booths in which it applies water-based paints and coatings. At the same location, it has a powder coating booth which it uses intermittently.
7. Prior to June 2001, NHI had 2 spray paint booths in which it applied solvent-based paints and coatings containing volatile organic compounds ("VOCs"). In addition, NHI also had 2 booths for the application of ultraviolet ("UV") cured coatings.
8. In June 2001, NHI converted one UV paint booth to apply water-based coatings, and removed one of the solvent-based paint spray booths. In March 2002, NHI converted the second UV paint booth to water-based coatings, and removed the second solvent-based paint spray booth.
9. The NHI painting operations result in emissions to the ambient air of a regulated air pollutant and, therefore, NHI is subject to N.H. Admin. Rules Env-A 100 *et seq.*
10. NHI's actual annual VOC emissions exceeded 10 tons during each calendar year from 1996 through 2001, and a maximum of 22.7 tons of actual VOCs were emitted during calendar year 2000. NHI's potential VOC emissions have exceeded 10 tons per year since it installed the original spray paint booths prior to calendar year 1994.
11. Env-A 607.01(g) requires a source to obtain a temporary permit if its actual emissions of VOCs are greater than 10 tons per year.
12. Env-A 607.01(x) requires a source to obtain a temporary permit if it is subject to the rules governing reasonably available control technology ("RACT") as contained in Env-A 1200.
13. Env-A 1204.15 *Applicability Criteria and Compliance Standards for Coating of Miscellaneous Metal Parts and Products* states that a source whose miscellaneous metal parts and products coating operations have combined theoretical potential emissions during any consecutive 12-month period after December 31, 1989 which equal or exceed 10 tons of VOCs shall be subject to VOC RACT.
14. DES issued Temporary Permit TP-BO-473 to NHI on February 16, 1994 for its VOC emissions from the paint spray booths. The temporary permit contained enforceable limits on NHI's daily and annual hours of operation and maximum allowable operating rates specified in

terms of daily and 30-days usages of VOC-containing coatings. The temporary permit had a designated expiration date of August 31, 1995.

15. Env-A 603.01 (effective 12-27-90 to 6-30-95) required that no source specified in one of the categories of Env-A 603.02 (effective 12-27-90 to 6-30-95) operate without a permit.

16. Env-A 603.02(n) (effective 12-27-90 to 6-30-95) required a source to have a permit if the source chose to limit its potential to emit by accepting enforceable permit conditions restricting its operation.

17. Prior to June 30, 1995, DES sent a permit renewal invoice to a source prior to the expiration of its permit. The source was not required to submit an application for renewal of a permit. On June 30, 1995, Env-A 600 was modified to require a source to submit to DES an application for renewal of a State Permit to Operate at least 90 days prior to the designated expiration date. A source with an expiring Temporary Permit is required to submit an application for a State Permit to Operate at least 90 days prior to the designated expiration date of the Temporary Permit.

18. Env-A 607.08(c) (effective 6-30-95) states that the expiration of a temporary permit shall terminate the right to operate unless a timely and complete application for a state permit to operate has been received by DES.

19. NHI did not request an extension of the expiration date of the Temporary Permit prior to its expiration on August 31, 1995 and did not submit an application for renewal of the Temporary Permit after June 30, 1995. Therefore, NHI was operating without a valid permit after August 31, 1995.

20. On March 11, 1996, NHI submitted an application for a permit for its 2 paint spray booths. NHI calculated its potential VOC emissions as 21 tons per year, and its actual emissions as 14 tons per year. DES drafted the permit, but did not issue it to NHI due to the fact that NHI was in violation of VOC RACT by failing to achieve the emission reductions and to have a compliance plan required by Env-A 1204.

21. The paints and coatings used by NHI contain toluene (Chemical Abstracts Service #108-88-3). In calendar year 2000, NHI emitted 10.8 tons of toluene from the air drying of the paints and coatings.

22. Env-A 101.168(b)(1)a 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 of any hazardous air pollutant ("HAP") which has been listed pursuant to Section 112(b) of the Clean Air Act.

23. Toluene is listed as a HAP in Section 112(b) of the Clean Air Act and, therefore, NHI is a major source pursuant to Env-A 101.168(b)(1)a.
24. NHI's potential emissions for toluene have exceeded the 10 ton threshold since it installed the original spray paint booths prior to calendar year 1994.
25. Env-A 609.01(a) and Env-A 607.01(n) (effective 12-13-95) require sources to submit a permit application, on or before June 30, 1996, for a Title V permit or a State Permit to Operate limiting potential emissions, if the facility's potential emissions exceed a major source threshold as defined in Env-A 101.
26. Env-A 1204.15(c)(2) requires NHI to comply with the VOC RACT emission standard of 3.5 pounds of VOC per gallon of coating, as applied, excluding water and exempt compounds, for its air-dried paints and coatings.
27. On February 2, 1998, DES staff met with NHI representatives who informed DES that it intended to comply with VOC RACT by converting all the paint spray operations to UV-cured coating processes by the end of April 1998.
28. On April 21, 1998, DES sent a letter to NHI requesting a revised permit application package which incorporated the process modifications it planned to make.
29. On December 16, 1999, NHI submitted an application for a permit for its 2 paint spray booths. NHI calculated its potential VOC emissions as 29.7 tons per year, and actual VOC emissions as 19.8 tons per year.
30. On June 23, 2000, NHI informed DES that it had reformulated its coatings in order to eliminate emissions of an air toxic and to reduce toluene emissions.
31. On September 28, 2000, NHI sent a letter to DES to explain a multi-year program it was implementing to comply with VOC RACT. The program included using electrostatic powder coating, UV-cured low-VOC coatings, and more efficient spray guns to reduce coating usage.
32. On July 11, 2002, DES performed a compliance inspection of NHI's facility and a follow-up file review.
33. DES reviewed the annual emissions reports submitted by NHI each calendar year for the previous year's emissions and determined that during the period of 1995 through 2001, NHI exceeded the VOC RACT emission limit specified in Env-A 1204.15(c)(2). DES calculated, based on NHI's non-compliance with the VOC RACT emission limit, that NHI emitted 41.29 tons of excess VOC's during the period of 1995 through 2001.

34. Env-A 901.03(b) and Env-A 901.04 (effective 11-15-92), and Env-A 903.02, Env-A 904.02 and Env-A 904.03 (effective 4-23-99) require a source subject to the permitting requirements of Env-A 600 that has actual VOC emissions greater than or equal to 10 tons per year, or a source subject to Env-A 1204, to keep required records of process data and VOC usage and emissions.

35. As a result of DES' analysis of NHI's annual emission reports and the compliance inspection on July 11, 2002, DES discovered that NHI does not keep records of the monthly coating usage and VOC emissions required by Env-A 903.02 (effective 4-23-99), formerly Env-A 901.03(b). Instead, NHI takes the annual coating usage from its supplier and divides by 12 months to determine its average monthly coating usage. In addition, NHI does not keep records of the individual process data required by Env-A 904.02 and Env-A 904.03 (effective 4-23-99), formerly Env-A 901.04 (effective 11-15-92). NHI did maintain enough of the required records to show that it exceeded the major source threshold only in calendar year 2000. NHI does not have all the records required by Env-A 900 for calendar years 1994 through 2002, but it does have sufficient records to show its overall annual emissions of VOCs and HAPs.

36. Env-A 901.05 (effective 11-15-92) and Env-A 907.01 and Env-A 908 (effective 4-23-99) require a source subject to the permitting requirements of Env-A 600 that has actual VOC emissions greater than or equal to 10 tons per year, or a source subject to Env-A 1204, to submit reports of process data, and VOC usage and emissions.

37. NHI did not submit reports of process data, and VOC usage and emissions, for calendar years 1993 and 1994.

38. In its annual emission reports to DES for calendar years 1996 through 2002, NHI did not report the actual monthly process and emissions information required to be submitted in accordance with Env-A 901.05 (effective 11-15-92) and Env-A 907.01 and Env-A 908 (effective 4-23-99). For calendar years 1997, 1998, 1999 and 2002, NHI did not report the individual coating usage, either by month or by year. However, it did report the total annual VOC usage and individual annual VOC usage for those years. For calendar years 1996, 2000 and 2001, NHI did report individual annual coating usage.

39. Env-A 1406.01 (effective 05-08-98) requires all stationary sources or devices that emit a regulated toxic air pollutant ("RTAP") into the ambient air to comply with the ambient air limits established in Env-A 1400 by performing a compliance determination using one of the methods specified in Env-A 1406.02 through 1406.05. If the compliance determination demonstrated any exceedance of an ambient air limit ("AAL"), then the source was required to submit a compliance plan with a permit application demonstrating how it will comply with the AAL's prior to 5/8/01.

40. NHI submitted a compliance determination to DES on July 22, 2002 for its emissions of RTAPs that showed compliance with the ambient air limits established in Env-A 1405.01.

41. DES issued Temporary Permit FP-T-0096 to NHI on January 8, 2004 for the operation of 2 spray booths.

#### **IV. ALLEGATIONS**

1. NHI violated RSA 125-C:11,I-a, Env-A 607.01(n) and 609.01(a) by operating without a Title V Permit during calendar year 2000.
2. NHI violated RSA 125-C:11,I-a, Env-A 607.01(n) and 609.01(a) by operating without a Title V Permit or a State Permit to Operate limiting its emissions to less than the major source thresholds, from June 31, 1996 until January 1, 2000, and from December 31, 2000 until March 2002.
3. NHI violated RSA 125-C:11,I, Env-A 607.01(g) and Env-A 607.01(x) by operating without a Temporary Permit from August 31, 1995 until March 11, 1996.
4. NHI violated Env-A 1204.15(c)(2) by using VOC-containing coatings that exceeded the VOC RACT limit of 3.5 lb VOC/gallon of coating for its air-dried coatings from May 31, 1995 through December 31, 2001.
5. NHI violated Env-A 901.03(b) and (c) and Env-A 901.04 (effective 11-15-92), and Env-A 903.02, Env-A 904.02 and Env-A 904.03 (effective 4-23-99) by failing to keep the required process and emissions records for calendar years 1992 through 2002.
6. NHI violated Env-A 901.05 (effective 11-15-92) and Env-A 907.01 and Env-A 908 (effective 4-23-99) by failing to submit to DES annual reports which included the monthly process data, and monthly VOC and coating usage for calendar years 1992 through 2002.
7. NHI violated Env-A 1406.01 (effective 05-08-98), by failing to perform a compliance determination for its emissions of regulated toxic air pollutants into the ambient air from May 8, 2001 until completion of a compliance determination demonstrating compliance on July 22, 2002.

#### **V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. DES has determined the violation identified in Paragraph IV.1 to be 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 per violation. Since NHI's actual emissions of the HAP toluene exceeded the 10 ton major source threshold in calendar year 2000, DES is choosing to use the upper end of the range, or \$2,000. DES is assessing this administrative fine for each month of the 12 month period that NHI was an actual major source operating without a Title V permit. Based upon the above, DES is seeking a fine of \$24,000.

2. For the violation identified in Paragraph IV.2, DES is choosing to not seek a fine. For the periods of June 31, 1996 until January 1, 2000, and from December 31, 2000 until March 2002, NHI had potential emissions above the major source threshold and was operating without a Title V Permit or a State Permit to Operate that limited its emissions to less than the major source thresholds. However, since NHI submitted to DES on March 11, 1996 an application for a permit that identified its potential emissions of toluene to be greater than 10 tons, DES is choosing to not assess a fine.

3. For the violation identified in Paragraph IV.3, DES is choosing to not seek a fine. For the period beginning with the expiration of Temporary Permit TP-BO-473 on August 31, 1995 until its submittal of a new application on March 11, 1996, NHI was operating without a Temporary Permit. For this 6-month period prior to NHI becoming an actual major source, and prior to the deadline of June 30, 1996 for submittal of a Title V permit or synthetic minor permit for NHI's potential emissions above the major source threshold, DES is choosing to not assess a fine.

4. For the violation identified in Paragraph IV.4, pursuant to Env-A 3100, NHI agrees to purchase 45 Discrete Emission Reduction Credits ("DERs") (26 non-ozone season and 19 ozone season DERs) within 3 years of execution of this Administrative Fine by Consent.

In accordance with Env-A 3104.08, NHI shall file a notice of intent to use Discrete Emission Reduction Credits, including "Exhibit B" from the purchase contract with PSNH showing the serial numbers and price of the DERs, for at least 9 ozone season DERs by December 31, 2005 and at least 12 DERs by December 31<sup>st</sup> of each year thereafter, until all 45 credits are purchased. In accordance with Env-A 3104.09 a notice and certification of use of DERs will be filed for at least 9 ozone season DERs by December 31, 2005 and at least 12 DERs by December 31<sup>st</sup> of each year thereafter, until all 45 credits are purchased.

5. DES has determined the violation identified in Paragraph IV.5 to be a major deviation from the requirement with a moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,251-\$1,750. However, DES considers this recordkeeping activity to be part of maintaining a permit and as such has been addressed in Paragraphs V.1 and V.2 above.

6. DES has determined the violation identified in Paragraph IV.6 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. However, DES considers this recordkeeping activity to be part of maintaining a permit and as such has been addressed in Paragraphs V.1 and V.2 above.

7. For the violation identified in Paragraph IV.7, DES is choosing to not seek a fine. DES has determined this violation to be a major deviation from the requirement with a moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,251-\$1,750. However, since NHI did ultimately perform the determination which demonstrated compliance with the ambient air



limits for air toxics, DES is choosing to not seek a penalty.

8. In exchange for credit towards the administrative fine set forth in paragraph V.1, NHI shall incur \$15,000 in capital expenses to install OSHA approved fume hood extractors and internally discharged filters at the remaining welders that currently vent to the atmosphere. Within 6 months of the effective date of this AFC, NHI shall submit documentation, including relevant invoices, showing that at least \$15,000 was incurred. If less than \$15,000 is incurred, the balance shall be paid to the State as set forth in Paragraph V.9 herein.

Based on the level of cooperation and good faith effort to return the facility to compliance demonstrated by NHI, 12.5% or \$3,000 of the proposed fine is waived. NHI agrees to pay the remaining \$6,000 of the fine specified in paragraph V.1 upon execution of this Administrative Fine by Consent ("Agreement") by NHI.

9. Payments due under Paragraph V.8 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

10. Notices filed under Paragraph V.4. above shall be addressed to:

NH Dept. of Environmental Services Air Resources Division  
Attn: Joseph T. Fontaine, Trading Programs Manager  
P.O. 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. By executing this Agreement, NHI waives its right to a hearing on or any appeal of the administrative fines identified in Section V, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. NHI shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of NHI 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 NHI relative to the allegations contained herein.

13. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in Paragraphs V.4 and V. 8, this agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by NHI; (ii) an admission by NHI or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense NHI might raise in any third party proceeding.

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

15. No failure by the DES to enforce any provision of this Agreement 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.

New Hampshire Industries, Inc.

**COPY**

By: J. Todd Miller, President  
Duly Authorized

Date: 8-29-05

Department of Environmental Services

**COPY**

Robert R. Scott, Director  
Air Resources Division

Date: 16 Sept 05

**COPY**

Michael P. Nolan, Commissioner  
Department of Environmental Services

Date: 09 20 05

- cc: G. Rule, Administrator, DES Legal Unit
- Public Information Officer, DES PIP Office
- cc: R. Kurowski, EPA, Region I
- M. Farrell, City Manager, City of Lebanon
- K. Sullivan, Registered Agent
- File AFS# 3300900040