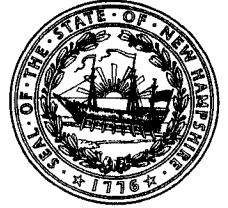




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 8, 2006

Novel Iron Works, Inc.
Attn: Thomas Heaney
250 Ocean Road
Greenland, NH 03840

Re: Docket No. AF 06-004 Administrative Fine by Consent Agreement

Dear Mr. Heaney:

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 H. Sclafani
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Robert R. Scott, Director, Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
J. Weeks, Town of Greenland
Robert Cheney, Jr., Esq.
R. Kurowski, EPA, Region I
P. Monroe, DES ARD



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Novel Iron Works, Inc.
250 Ocean Drive
Greenland, NH 03840

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 06-004

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Novel Iron Works, 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, New Hampshire.
2. Novel Iron Works, Inc., ("Novel") is a corporation registered to do business in New Hampshire having a principal office and mailing address of 250 Ocean Drive, Greenland, NH 03840.

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-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. Novel fabricates and erects structural metal components and supports which are used as a framework for building construction at its location in Greenland ("the Facility").

6. Approximately 40 to 60 percent of the structural steel I-beams and fabricated building supports produced by Novel are painted during the manufacturing process. The parts are painted in an open building using a hand-held spray gun. Paint fumes are vented from the building through 4 fans located in the upper walls of the building and, in the summer, through an open overhead bay door. The paint is allowed to air dry.

7. Prior to calendar year 1996, Novel used water-based paints. At the beginning of calendar year 1996, it switched to solvent-based paints. The solvent-based paints contain volatile organic compounds ("VOCs"), including xylene (Chemical Abstracts System # 1330-20-7), which are emitted to the ambient air. Accordingly, Novel is subject to N.H. Admin. Rules Env-A 100 *et seq.*

8. Env-A 101.225 defines a regulated air pollutant as, among other things, any pollutant listed in section 112(b) List of Hazardous Air Pollutants ("HAP") of the Clean Air Act.

9. Xylene is listed as a HAP in Section 112(b) of the Clean Air Act, and therefore, Novel emits a regulated air pollutant and is a stationary source.

10. 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 which has been listed pursuant to Section 112(b) of the Clean Air Act.

11. Novel increased its potential to emit VOCs to greater than 10 tons per year when it switched from water-based to solvent-based paints at the beginning of calendar year 1996. Since the beginning of calendar year 1997 and continuing through calendar year 2002, Novel's actual VOC emissions exceeded 10 tons per year. In addition, Novel emitted 14.1 tons of xylene in calendar year 1997, exceeding the 10-ton major source threshold for emissions of a single HAP. Since the end of 1997, its actual emissions of xylene have been under the 10-ton threshold. However, its potential to emit xylene still exceeds 10 tons.

12. Env-A 1204.15(a) requires a source that applies VOC-containing paints and coatings to miscellaneous metal parts and products to comply with the Reasonably Available Control Technology ("RACT") standards for VOCs if its theoretical potential emissions from the process are greater than 10 tons per year.

13. Env-A 607.01(x) requires a source to obtain a temporary permit if it is subject to the rules governing RACT as contained in Env-A 1204.

14. 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.

15. Env-A 607.01(aa) requires a source to obtain a temporary permit if it is a major source of HAPs subject to section 112(g) of the Act and 40 CFR 63.

16. Env-A 609.01(a) and Env-A 607.01(n) (effective 12-13-95) require a source to submit a permit application for a Title V permit or a State Permit to Operate that limits its potential

emissions, if the source's potential emissions exceed a major source threshold as defined in Env-A 101.168.

17. Env-A 609.07 requires a source that becomes subject to the Title V program after the effective date of the rule (12-13-95) to submit an application for a Title V permit no later than 12 months after the source becomes subject to the Title V program.

18. Novel became subject to the Title V program when it switched from water-based to solvent-based paints at the beginning of calendar year 1996, increasing its potential annual emissions of a single HAP above 10 tons.

19. On August 31, 2000, DES conducted a compliance inspection of Novel. At that time, DES determined that Novel was operating without a permit, and DES requested that Novel provide annual emissions data since 1994. Novel had no emissions data for calendar years 1994 or 1995. Novel did provide emissions data for calendar years 1996 through 1999, and it projected emissions data for calendar year 2000.

20. On January 3, 2001, DES conducted a follow-up visit to the facility to discuss regulatory applicability and Novel's current compliance status. DES had determined that Novel's potential and actual emissions had exceeded the 10 ton major source threshold for emissions of a single HAP. On November 30, 2001, as a follow-up to the January meeting, DES sent a letter to Novel requesting that it submit, among other information, an application for a Title V permit. On December 17, 2001, Novel submitted to DES an application for a Title V permit. The application included the annual emissions data for calendar year 2000.

21. 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 May 8, 2001 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 by May 8, 2000, a compliance plan, with a permit application, demonstrating how it will comply with the AALs by May 8, 2001. Novel did not perform the compliance determination for its emissions of RTAPs as required by Env-A 1406.01 prior to May 8, 2001.

22. The air toxics compliance determination referred to in Paragraph 21 above was performed by DES for Novel on April 24, 2003, and it predicted an exceedance of the 24-hour AAL for xylene (1730 ug/m^3 vs. the limit of 1550 ug/m^3) in Env-A 1403.02 during Novel's operation in calendar year 1997 based on its reported annual paint usage and the xylene content of the paint.

23. On September 29, 2003, Novel submitted the annual emissions data for calendar years 2001 and 2002.

24. 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) require a source subject to the permitting requirements of Env-A 600 to keep records of process data and VOC usage and emissions. Novel first required a permit and became subject to the recordkeeping requirements of Env-A 900

when it switched from water-based to solvent-based paints at the beginning of calendar year 1996. Novel does not have all the records required by Env-A 900 for calendar years 1996 through 2002, but it does have sufficient records to calculate its overall annual emissions of VOCs and HAPs and to demonstrate to DES its actual and potential emissions with regard to the major source thresholds.

25. 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 to submit annual reports of process data and VOC usage and emissions by April 15 of the following calendar year. Novel became subject to the reporting requirements of Env-A 900 in 1996.

26. Novel did not report any annual emissions data for calendar years 1996 through 1999 until requested by DES during the inspection of August 31, 2000. Annual emissions data for calendar year 2000 was submitted to DES on December 17, 2001 in the Title V permit application. Novel submitted the annual emissions data for calendar years 2001 and 2002 on September 29, 2003, and it submitted the annual emissions data for calendar year 2003 on August 30, 2004.

27. Env-A 704.01 requires any applicant, owner or operator of a stationary source, area source, or device which requires a temporary permit, State Permit to Operate, Title V permit, or any combination of the foregoing permits pursuant to Env-A 600, to pay annual emission-based fees. The fees must be submitted to DES no later than October 15th for the previous calendar year, starting in calendar year 1995 for calendar year 1994 actual emissions.

28. On September 6, 2005, Novel submitted a check in the amount of \$3,826.37 for the past-due emission fees.

29. DES issued Title V Operating Permit No. TV-OP-049 to Novel on December 10, 2003.

IV. ALLEGATIONS

1. Novel violated RSA 125-C:11, I-a, and 609.05(e)(2) by operating without a Title V Permit from January 1997 through December 9, 2003.

2. Novel violated RSA 125-C:11, I-a, Env-A 607.01(n) and 609.05(e)(2) by operating without a Title V Permit or a State permit to Operate limiting its emissions to less than the major source thresholds, from January 1998 through December, 2001.

3. Novel violated RSA 125-C:11, I and Env-A 607.01(x) by operating without a Temporary Permit, or a State Permit to Operate, from January 1996 through December 2001.

4. Novel violated RSA 125-C:11, I and Env-A 607.01(g) by operating without a Temporary Permit, or a State Permit to Operate limiting emissions to less than major source threshold, from January 1997 through December 2001.

5. Novel 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 required records for calendar years 1996 through 2002.
6. Novel 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 of process data and VOC usage and emissions for calendar years 1996 through 2002.
7. Novel violated Env-A 1406.01 (effective 05-08-98), by failing to perform a compliance determination for its emissions of regulated toxic air pollutants prior to May 8, 2001.
8. Novel violated Env-A 1403.02 (effective 3-5-97 to 4-11-03), by exceeding the 24-hour AAL for xylene during its operation in calendar year 1997.
9. Novel violated Env-A 704.01 by failing to pay the annual emission-based fee to DES for calendar years 1994 through 2002, due no later than October 15th of each following calendar year.

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. Based on Novel's conduct before and after this violation, DES is choosing to seek fines at the lower end of the range, or \$1,501 per violation. DES is assessing this administrative fine for each month of the 12-month period that Novel operated without a Title V permit. Based upon the above, DES is seeking a fine of \$18,012.
2. For the violation identified in Paragraph IV.2, DES is choosing to not seek a fine. For the period of January 1998 through December, 2001, although its actual emissions of a single HAP were less than 10 tons per year, Novel had the potential to emit greater than 10 tons per year of a single HAP, and was operating without a Title V Permit or a State permit to Operate limiting its emissions to less than the major source threshold. However, since Novel submitted to DES on December 17, 2001 an application for a Title V permit, which DES issued to Novel on December 10, 2003, 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 of January through December of 1996, Novel's potential emissions, but not its actual emissions, were above the VOC RACT threshold of 10 tons per year specified in Env-A 1204.15(a). DES has typically not assessed a penalty from a source when the actual emissions do not exceed the applicable VOC RACT threshold. For the period of January 1997 through December 2001, the violation identified in Paragraph IV.3 occurred during the same period as the violations identified in Paragraphs IV.1 and IV.2, the penalties for which are addressed in Paragraphs V.1 and V.2 above.
4. For the violation identified in Paragraph IV.4, DES is choosing to not seek a fine, since this violation occurred during the same periods of time as the violations identified in Paragraphs IV.1 and IV.2, the penalties for which are addressed in Paragraphs V.1 and V.2 above.

5. For the violation identified in Paragraph IV.5, DES is choosing to not seek a fine. DES has determined this violation to be 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. However, DES considers this recordkeeping activity to be part of maintaining a permit and as such has been addressed in Paragraph V.1 through V.4 above.

6. For the violation identified in Paragraph IV.6, DES is choosing to not seek a fine. DES has determined this violation to be 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. However, DES considers this reporting activity to be part of maintaining a permit and as such has been addressed in Paragraphs V.1 through V.4 above.

7. DES has determined the violation identified in Paragraph IV.7 to be major deviation from the requirements with a moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,251-\$1,750. DES is seeking the minimum fine of \$1,251.

8. DES has determined the violation identified in Paragraph IV.8 to be major deviation from the requirements with a moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,251-\$1,750. The air quality modeling performed by DES predicted an exceedance of the 24-hour AAL for xylene during Novel's operating in calendar year 1997. Since Novel switched to paints with a lower xylene content in March 2003, DES is seeking the minimum fine of \$1,251 for this violation.

9. For the violation identified in Paragraph IV.9, DES is not seeking a fine.

10. Novel agrees to pay \$20,514 to DES within 30 days of the execution of this Agreement by all parties.

11. Payment due under Paragraph "V.10" 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

12. 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.

13. By executing this Agreement, Novel 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. Novel shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance

history of Novel 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 Novel relative to the allegations contained herein.

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

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

16. No failure by the Division 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.

Novel Corporation

COPY
By: Thomas Heaney, Vice President
Duly Authorized

Date: 3/1/06

Department of Environmental Services

COPY
Robert R. Scott, Director
Air Resources Division

Date: 3/7/06

COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Date: 03 07 06

- cc: Thomas Heaney, 250 Ocean Rd., Greenland, NH 03840 [Registered Agent]
- Robert Cheney, Jr., Esq., SPB+G PA, 143 North Main Street, Suite 103, Concord, NH 03301-5089
- P. Monroe, DES-ARD Compliance Bureau Administrator
- K. Barnsley, DES Legal Unit
- R. Kurowski, EPA, Region I
- J. Weeks, Chairman of Selectmen, Town of Greenland
- File AFS# 3301590778