



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



Worthen Industries, Inc.
3 East Spit Brook Road
Nashua, NH 03060

Re: Worthen Industries, Inc. – Nylco Division
34 Cellu Drive, Nashua, NH
State Permit No. SP-0064
AFS #3301191265

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 12-039

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Worthen Industries, Inc., pursuant to RSA 125-C:15. 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 in Concord, New Hampshire.
2. Worthen Industries, Inc. (“Worthen”) is a New Hampshire corporation having a mailing address of 3 East Spit Brook Road, Nashua, NH 03060.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES 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 NH Code Admin. Rules Env-A 100 et seq.
2. RSA 125-C:15, I-b authorizes the Commissioner of DES to impose, on any person, administrative fines up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-C:6 and RSA 125-C:11, I, authorize 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 of DES has adopted NH Code Admin. Rules Env-A 600.

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4. Worthen owns and operates a process that uses a web coating device with a curing oven to coat fabric, paper and film substrates located at 34 Cellu Drive in Nashua, NH (the "Facility"). Among other things, the Facility emits toluene, a Regulated Toxic Air Pollutant ("RTAP") listed in Env-A 1450.01.
5. On January 29, 2010, DES issued State Permit to Operate No. SP-0064 (the "Permit") to Worthen, authorizing the operation of the process at the Facility.
6. Condition III., Table 2, Item 4 of the Permit provides that Worthen shall not cause an exceedance of a 24-hour or annual ambient air limit ("AAL"), as set forth in Env-A 1450.01.
7. Env-A 1405.01 and Condition III., Table 2, Item 4d of the Permit require Worthen to update its compliance demonstration, using one of the methods described in Env-A 1405, if stack conditions change.
8. Based upon information provided by Worthen in a permit application submitted on July 2, 2009, the exhaust stack configuration was 30 feet above ground surface, 2.5 feet in diameter and discharge vertically.
9. On March 10, 2011, DES conducted an on-site full compliance evaluation at the Facility.
10. During the compliance evaluation, DES determined that the stack configuration had been changed from a vertical discharge to horizontal discharge. DES informed Worthen that the regulated toxic air pollutant ("RTAP") compliance demonstration that it submitted with its permit application was no longer valid due to the changed stack exhaust configuration.
11. On March 31, 2011, MacMillan & Donnelly Environmental Engineering and Consulting, submitted to DES on behalf of Worthen, emission modeling results and coating usage. The emission modeling results showed that Worthen exceeded the 24-hour AAL for toluene when its average daily emission rate was greater than 323.04 pounds per day.
12. In the March 31, 2011 submittal, MacMillan & Donnelly stated that on March 23, 2011, Worthen changed its stack exhaust configuration back to vertical to ensure that its RTAP emissions do not exceed the AALs.
13. Based on the daily coating usage, Worthen exceeded an average daily emission rate of 323.04 pounds per day for toluene on June 10th and October 13th in 2010; January 12th, January 13th, January 20th, February 8th and February 9th in 2011. Therefore, Worthen exceeded the 24-hour AAL for toluene on those dates.
14. Env-A 705.01, Env-A 705.04(a) and Condition VI., Table 5, Item 3 of the Permit require Worthen to annually submit emission-based fees, by April 15, for emissions from the previous calendar year.
15. On May 17, 2011, Worthen submitted the annual emission-based fee for calendar year 2010.

IV. ALLEGATIONS

1. Worthen violated Condition III., Table 2, Item 4 of the Permit by causing an exceedance of the 24-hour AAL for toluene at the Facility on June 10th and October 13th in 2010; January 12th, January 13th, January 20th, February 8th and February 9th in 2011.
2. Worthen violated Condition III., Table 2, Item 4d. of the Permit by not updating its RTAP compliance demonstration for the Facility when the stack configuration was changed from vertical to horizontal on June 2, 2010.
3. Worthen violated Env-A 705.01, Env-A 705.04(a) and Condition VI., Table 5, Item 3 of the Permit by not submitting timely annual emission-based fees for the Facility for calendar year 2010.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES has determined the violation of Condition III., Table 2, Item 4 of the Permit to be a major deviation from the requirements with a minor potential for harm, for the two days in 2010, for which RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. DES is proposing a fine of \$1,000 per day of violation, in 2010, for a total proposed fine of \$2,000 for this violation.
2. DES has determined the violation of Condition III., Table 2, Item 4 of the Permit to be a major deviation from the requirements with a major potential for harm, for the five days in 2011, for which RSA 125-C:15, I-b(b) specifies a fine range of \$1,501 to \$2,000. DES is proposing a fine of \$1,501 per day of violation, in 2011, for a total proposed fine of \$7,505 for this violation.
3. DES has determined the violation of Condition III., Table 2 Item 4d. of the Permit to be a major deviation from the requirements with a major potential for harm for which RSA 125-C:15, I-b(b) specifies a fine range of \$1,501 to \$2,000. For settlement purposes only, DES is not proposing a fine for this violation.
4. DES has determined the violation of Env-A 705.01, Env-A 705.04(a) and Condition VI., Table 5, Item 3 of the Permit to be a major deviation from the requirements with a minor potential for harm for which RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. For settlement purposes only, DES is not proposing a fine for this violation.
5. Worthen agrees to pay the proposed fine in the amount of \$9,505 to DES upon execution of this Administrative Fine by Consent by an authorized representative of Worthen.
6. Payment pursuant to preceding paragraph shall be paid by certified check made payable to "Treasurer, State of New Hampshire" and mailed to: **DES Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095.**
7. 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.

8. By executing this Administrative Fine by Consent, Worthen waives its right to a hearing on or any appeal of the administrative fines identified herein, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
9. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Worthen and the Commissioner of DES.
10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

Worthen Industries, Inc.

COPY

By: Jeffrey Gagnon, Director of Manufacturing
Duly Authorized

Date

1-04-2013

Department of Environmental Services

COPY

Thomas S. Burack, Commissioner

Date

1/8/2013

cc: DES Legal Unit
File AFS #3301191265
(Stationary Source)

cc: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
E. Kudarauskas, EPA Region 1