

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



**Robert R. Scott, Commissioner**

High Liner Foods (USA), Incorporated  
Attn: Assistant Corporate Secretary  
100 Battery Point  
PO Box 910  
Lunenburg, B0J 2C0, Canada  
  
Re: One High Liner Avenue, Portsmouth, NH  
AFS No. 3301590448

**ADMINISTRATIVE FINE  
BY CONSENT**

**NO. AF 19-043**

### **I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and High Liner Foods (USA), Incorporated under the authority of RSA 125-C:15. This Administrative Fine by Consent is effective upon signature by the 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 in Concord, New Hampshire.
2. High Liner Foods (USA), Incorporated ("High Liner Foods") is a corporation registered to do business in New Hampshire having a mailing address of Attn: Assistant Corporate Secretary, 100 Battery Point, PO Box 910, Lunenburg, B0J 2C0, CAN.

### **III. BACKGROUND**

1. RSA 125-C authorizes the New Hampshire Department of Environmental Services ("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. Under 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 for each offense upon any person who violates any provision of RSA 125-C, any rule promulgated thereunder, any permit, compliance schedule, stop use order, or order of abatement, issued under the authority of RSA 125-C; or upon any person who makes or certifies a material false statement relative to any document or information which is required to be submitted to DES in accordance with RSA 125-C or rules promulgated thereunder. The Commissioner may assess an additional fine for repeat violations.

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. Under this authority, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-A 600.

4. RSA 125-I authorizes DES to regulate the release of toxic chemicals into the ambient air in New Hampshire. RSA 125-I:3, II, authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of regulated toxic air pollutant ("RTAP") emissions. The Commissioner has adopted NH CODE ADMIN. RULES Env-A 1400, in accordance with RSA 125-I:3, II.

5. RSA 125-I:3-a authorizes the Commissioner of DES to impose, on any person, administrative fines up to \$2,000 per offense for violations of RSA 125-I, any rules promulgated thereunder, or any permit or order issued under the authority of RSA 125-I. RSA 125-I:3-a, II, requires the Commissioner to determine fines in accordance with RSA 125-C:15, I-b(b). RSA 125-I:3-a, III, authorizes the Commissioner to assess an additional fine for repeat violations.

6. High Liner Foods owns and operates a food processing and packaging facility located at One High Liner Avenue in Portsmouth, New Hampshire (the "Facility"). High Liner Foods operates three deep-fry production lines, a Quikwater water heater, and a regenerative thermal oxidizer (the "RTO"), which is pollution control equipment, at the Facility.

7. Per RSA 125-C:11, the construction, installation, operation, or modification of any device or non-Title V source as defined under RSA 125-C:2, and as further defined by rules adopted by the Commissioner of DES, shall be prohibited unless the source possesses a temporary permit or operating permit whether a permit-by-notification, general permit, or an individual operating permit issued by the Commissioner.

8. Env-A 603.01(a) prohibits the construction or installation of a new or modified stationary source, area source, or device as specified in Env-A 607.01, without having applied for and been issued a temporary permit.

9. Per Env-A 607.01, the owner or operator of a new or modified stationary source, area source, or device shall 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) An external combustion device with a design gross heat input greater than or equal to 10 million British thermal units (BTUs) per hour that combusts:

(1) Gaseous fuel, as defined in Env-A 1302.19;

[..]

(i) A stationary source, area source, or device where a permit is required under the rules governing [RTAPs] specified in Env-A 1400; [..]

10. RSA 125-I:5, I, states that no person shall operate any device or process at a stationary source that emits an RTAP without a permit issued by DES, unless the device or process is exempted under RSA 125-I:3, III, or whose uncontrolled emissions of RTAPs do not exceed ambient air limits ("AALs") at or beyond the compliance boundary and for which no other permit is required under RSA 125-C.

11. Env-A 1403.01 requires the owner or operator of a device or process subject to Env-A 1400 to obtain a temporary, state permit to operate, or title V operating permit in accordance with Env-A 600 unless exempted by Env-A 1403.02, or Env-A 1403.03, prior to operating the device or process.

12. RSA 125-I:5, V, and Env-A 1405.01(a), require the owner or operator of any device or process that emits an RTAP to determine compliance with the AALs by using one of the methods listed in Env-A 1405.01(a). Air dispersion modeling analysis is an authorized method to demonstrate compliance per Env-A 1405.01(a)(1).

13. Per RSA 125-I:4, II; and Env-A 1406.01, DES shall classify the toxicity of each RTAP as Class I, Class II, or Class III.

14. As set forth in Env-A 1450.01, the 24-hour AAL of acrolein, an RTAP, is 0.82 micrograms per cubic meter, and Toxicity Class I.

15. High Liner Foods contracted with a consultant to determine compliance with the AALs of RTAPs emitted from the Facility. The consultant subcontracted with a stack testing company to conduct stack emission testing to measure emissions of acrolein, among other RTAPs, from one of the deep-fry production lines at the Facility. On September 20, 2016, the stack testing company conducted stack emission testing of RTAPs from one of the deep-fry production lines at the Facility.

16. On November 9, 2017, DES received an application from High Liner Foods for a permit to operate three deep-fry production lines.

17. With its application, High Liner Foods included a report, dated March 7, 2017, from its consultant summarizing the results of stack testing for emissions of RTAPs from one deep-fry production line at the Facility that was conducted on September 20, 2016. The report also included the consultant's air dispersion modeling analysis, which was based on the results of stack testing at the Facility.

18. In the March 2017 report, the consultant stated that it used air dispersion modeling analysis to demonstrate emissions of acrolein from the deep-fry production lines were in compliance with the AALs when High Liner Foods either used the RTO at the Facility to control emissions of acrolein, or when High Liner Foods limited processing fish at the Facility to 139,600 pounds per day, and 6,798,000 pounds per year when the RTO was bypassed. In addition, the consultant informed High Liner Foods that it must submit an application to and obtain a permit from DES for the production lines at the Facility.

19. During a review of the High Liner Foods application, DES determined that the production lines were installed prior to 2013 and required a permit under RSA 125-C:11, Env-A 603.01, and Env-A 607.01(t); a well as under RSA 125-I:5, I; and Env-A 1403.

20. With its application, High Liner Foods included a list of fuel burning devices located at the Facility. High Liner Foods listed the Quikwater water heater at the Facility as having a heat input of 10.02 million BTUs per hour. Based on that information, DES determined that the Quikwater water heater required a permit under RSA 125-C:11, Env-A 603.01, and Env-A 607.01(a)(1).

21. On November 28, 2017, DES requested that High Liner Foods amend its permit application to include the Quikwater water heater operated at the Facility.

22. On December 21, 2017, DES received from High Liner Foods an amendment to its permit application to include the Quikwater water heater operated at the Facility. In the amendment, High Liner Foods reported that the Quikwater water heater was installed in October 2013, and has a design gross heat input of 10.02 million BTUs per hour.

23. Env-A 907.02 requires the owner or operator of a stationary source, area source, or device requiring a permit to submit an annual emissions report to DES on or before April 15 of the year following the calendar year covered by the report.

24. Prior to October 24, 2018, Env-A 705 required the owner or operator of a stationary source, area source, or device requiring a permit to submit to DES the annual emission fees no later than April 15 for emissions from the previous calendar year.

25. During the review of the permit application submitted by High Liner Foods, as amended, DES determined that High Liner Foods operated the production lines and the Quikwater water heater at the Facility during each year from 2013 through 2017, dates inclusive.

26. During the review of the air dispersion modeling analysis submitted by High Liner Foods, DES determined that High Liner Foods should either use the RTO to control emissions of acrolein at the Facility, or limit the processing rate of the production lines to 115,700 pounds of fish per day, and 7,052,900 pounds of fish per year, when the RTO is not in operation.

27. On March 9, 2018, DES requested from High Liner Foods annual emission reports and annual emission-based fees for emissions from the production lines and the Quikwater water heater at the Facility for each year from 2013 through 2017, dates inclusive.

28. On March 23, 2018, DES received from a consultant for High Liner Foods annual emission reports for emissions from the production lines and the Quikwater water heater at the Facility for the years requested.

29. On March 27, 2018, DES received the annual emission-based fees for emissions from the production lines and the Quikwater water heater at the Facility for the years requested.

30. On May 29, 2018, DES issued Temporary Permit NO. TP-0218 (the "Permit") to High Liner Foods to operate the production lines, the Quikwater water heater, and the RTO at the Facility. In the Permit, DES assigned emission unit identification number "EU01" to the production lines, "EU02" to the Quikwater water heater, and "PCE01" to the RTO.

31. The Permit prohibits High Liner Foods from causing an exceedance of the 24-hour or annual AAL of RTAP emissions, as set forth in Env-A 1450.01, *The Table of All RTAPs*, at Item 1 in Table 4.

32. The Permit requires High Liner Foods to limit the processing rate of EU01 to 115,700 pounds of fish per day when PCE01 is not in operation, at Item 3 in Table 4.

33. On January 22, 2019, High Liner Foods informed NHDES by telephone that a malfunction of a duct burner at the Facility caused a fire in the duct that exhausts emissions from EU01 to PCE01

on January 21, 2019. High Liner Foods stated that firefighting efforts on January 21, 2019 caused significant damage to that duct, and High Liner Foods shutdown PCE01 and bypassed PCE01 so that emissions from EU01 were vented to a stack at the Facility that did not have pollution control equipment.

34. On January 23, 2019 and January 24, 2019, DES received emails from a consultant of High Liner Foods that summarized the consultant's air dispersion modeling analyses of approximate acrolein emission concentrations from EU01 under certain operating conditions. In the email, the consultant stated that High Liner Foods could reduce the impacts of acrolein emissions even if High Liner Foods did not comply with the processing rate of EU01 to 115,700 pounds of fish per day while PCE01 was not in operation. Specifically, the consultant stated that its analyses showed that acrolein emissions from EU01 may exceed the 24-hour AAL of acrolein beyond the compliance boundary in limited areas if High Liner Foods operated under four conditions. High Liner Foods would (1) limit the processing rate of EU01 to 270,000 pounds of fish per day; (2) limit the processing rates of each of the three deep-fry production lines of EU01 to a certain combination of rates; (3) not operate PCE01; and (4) emit emissions of EU01 from three stacks at the Facility that are in different locations than the stack of PCE01. GZA asserted that High Liner Foods could minimize predicted impacts of emissions of acrolein from EU01 by operating under those conditions.

35. For a deviation of the Permit that causes excess emissions, the Permit requires High Liner Foods to notify and report to DES within 24 hours and 10 days, respectively, of discovery of the Permit deviation at Item 4 in Table 7, and at Condition IX.B.

36. On January 28, 2019; January 30, 2019, and January 31, 2019; High Liner Foods notified DES that it discovered that EU01 processed approximately 255,000 pounds of fish, 219,000 pounds of fish, and 157,000 pounds of fish on January 25, 2019; January 29, 2019; and January 30, 2019; respectively, while PCE01 was not in operation. With its notifications, High Liner Foods stated that it had limited its operation of EU01 to "minimize the extent of potential air quality impact to very isolated areas in the immediate vicinity of our property line." High Liner Foods also stated that it was working to return PCE01 to operation as soon as practicable.

37. On January 30, 2019, DES staff conducted a site visit of the Facility. During the site visit, DES staff observed the damaged duct and that PCE01 was not operating. During the site visit, DES staff met with staff of High Liner Foods. During the meeting, staff of High Liner Foods informed DES that its consultant had conducted air dispersion modeling analyses to show that High Liner Foods could reduce exceedances of the 24-hour AAL of acrolein if High Liner Foods operated under certain conditions, which included limiting the processing rate of EU01 to 270,000 pounds of fish per day. DES staff notified High Liner Foods that it is required to submit a report to DES for any deviation of the Permit that causes excess emissions.

38. On February 7, 2019, DES received permit deviation reports from High Liner Foods. In the reports, High Liner Foods reported that the Facility exceeded the 24-hour AAL for acrolein on the 25<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup> of January 2019. High Liner Foods reported that the cause of the excess emissions was failure to operate PCE01 to control emissions from EU01 because of damage to the Facility's ventilation exhaust system caused by a fire on January 21, 2019. High Liner Foods reported that it exceeded the daily processing limit of EU01 by 139,300 pounds, 103,300 pounds, and 41,300 pounds on the 25<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup>, respectively, of January 2019. High Liner Foods calculated that EU01 would emit 0.76 pounds of acrolein if EU01 processed 115,700 pounds of fish per day, which is the process rate limit of EU01 while PCE01 is not in operation at Item 3 in

Table 4 of the Permit. High Liner Foods reported that excess emissions of acrolein from EU01 were 0.89 pounds, 0.66 pounds, and 0.26 pounds on the 25<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup>, respectively, of January 2019.

39. On February 1, 2019, a consultant of High Liner Foods informed DES that High Liner Foods restarted operation of PCE01 on January 31, 2019.

40. On March 11, 2019, DES received an email from a consultant of High Liner Foods. In the email, the consultant stated impacts of emissions from EU01 that exceeded the 24-hour AAL of acrolein on January 25, 2019; January 29, 2018; and January 30, 2019; were limited to small, isolated areas. The consultant also stated that it contacted NHDES on behalf of High Liner Foods throughout the period from January 21, 2019 to January 31, 2019, when PCE01 was not in operation.

41. On March 19, 2019, High Liner Foods submitted a document to DES titled *High Liner RTO Failure Timeline*. In the document, High Liner Foods summarized the operation of EU01 and PCE01, and bypassing PCE01, at the Facility from January 21, 2019 to January 31, 2019. High Liner Foods also described the costs and impacts to employees of High Liner Foods that were caused by the fire at the Facility on January 21, 2019.

#### IV. ALLEGATIONS

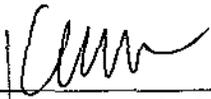
1. High Liner Foods violated RSA 125-C:11; Env-A 603.01; Env-A 607.01(t); RSA 125-I:5, I; and Env-A 1403, by installing and operating the production lines at the Facility from 2013 to May 29, 2018 without having applied for and been issued a temporary permit ("Violation #1").
2. High Liner Foods violated RSA 125-C:11, Env-A 603.01, and Env-A 607.01(a)(1) by installing and operating the Quikwater water heater at the Facility from 2013 to May 29, 2018 without having applied for and been issued a temporary permit ("Violation #2").
3. High Liner Foods violated Env-A 907.02 by failing to submit annual emissions reports to DES for the production lines and the Quikwater water heater at the Facility for emissions during 2013 through 2016, dates inclusive, by April 15 of the year following the year covered by each report ("Violation #3").
4. High Liner Foods violated Env-A 705.05, prior to October 24, 2018 by failing to submit annual emission-based fees to DES for the production lines and the Quikwater water heater at the Facility for emissions during 2013 through 2016, dates inclusive, by April 15 for emissions from the previous calendar year ("Violation #4").
5. High Liner Foods violated the Permit at Item 1 in Table 4 by exceeding the 24-hour AAL for acrolein on the 25<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup> of January 2019 ("Violation #5").
6. High Liner Foods violated the Permit at Item 3 in Table 4 by failing to limit the processing rate of EU01 to 115,700 pounds of fish per day when PCE01 is not in operation on the 25<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup> of January 2019 ("Violation #6").

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

1. DES has determined Violation #1 to be a major deviation from the requirements with a moderate potential for harm for which RSA 125-I:3-a, II, and RSA 125-C:15, I-b(b)(8), specify a fine range of \$1,251 to \$1,750. DES proposes a fine of \$1,750 for this violation.
2. DES has determined Violations #2-#4 to be major deviations from the requirements with minor potential for harm for which RSA 125-C:15, I-b(b)(7), specifies a fine range of \$851 to \$1,500. DES proposes a fine of \$1,500 for Violation #2. For settlement purposes only, DES is not proposing fines for Violation #3, or Violation #4.
3. DES has determined Violations #5 and #6 to be major deviations from the requirements with minor potential for harm for which RSA 125-I:3-a, II, and RSA 125-C:15-b(b)(7), specify a fine range of \$851 to \$1500 for each deviation. DES proposes a fine of \$3,000 for these violations.
4. High Liner Foods agrees to pay the proposed fines in the amount of \$6,250 upon execution of this Administrative Fine by Consent ("Agreement") by an authorized representative of High Liner Foods.
5. Payment in accordance with the preceding paragraph shall be paid by certified check or money order 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 USA.
6. If any payment is made by check or money order that is returned due to insufficient funds, in accordance with 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.
7. By executing this Agreement, High Liner Foods waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
8. The effective date of this Agreement will be the date on which it is signed by an authorized representative of High Liner Foods, the Director of the Air Resources Division, and the Commissioner of DES.
9. No failure by DES to enforce any provision of this Agreement 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.

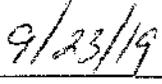
**High Liner Foods (USA), Incorporated**

  
\_\_\_\_\_  
By: Karl McHugh, General Manager/Portsmouth  
Duly Authorized

9-3-19  
\_\_\_\_\_  
Date

**Department of Environmental Services**

  
\_\_\_\_\_  
Craig A. Wright, Director  
Air Resources Division

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert R. Scott, Commissioner

  
\_\_\_\_\_  
Date

cc: DES Legal Unit  
High Liner Foods (USA), Incorporated, 1 Highliner Avenue, Portsmouth, NH 03801  
File AFS #3301590448 (Stationary Source)

ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Portsmouth City Manager  
EPA, Region 1