



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

Nylon Corporation of America, Inc.
333 Sundial Avenue
Manchester, NH 03103

Re: AFS #3301100007

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 21-004

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the New Hampshire Department of Environmental Services, Air Resources Division, and Nylon Corporation of America, Inc. under the authority of NH RSA 125-C:15, and NH RSA 125-I:3-a. This Administrative Fine by Consent is effective upon signature by the parties, and acceptance by the Commissioner.

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. Nylon Corporation of America, Inc. ("NYCOA") is a corporation registered to do business in New Hampshire having a mailing address of 333 Sundial Avenue, Manchester, NH 03103.

III. BACKGROUND

1. NH RSA 125-C authorizes the New Hampshire Department of Environmental Services ("NHDES") to regulate sources of air pollution in New Hampshire. NH RSA 125-C:4 authorizes the Commissioner of NHDES 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.* (the "Air Program Rules").
2. NH RSA 125-C:15, I-b, authorizes the Commissioner of NHDES to impose, on any person, administrative fines up to \$4,000¹ for each offense upon any person who violates any provision of NH RSA 125-C, the Air Program Rules, any permit, compliance schedule, stop use order, or order of abatement, issued under the authority of NH 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 NHDES in accordance with NH RSA 125-C or the Air Program Rules. The Commissioner may assess an additional fine for repeat violations.

¹ The Commissioner's administrative fine authority for violations of NH RSA 125-C increased from \$2,000 to \$4,000 per violation effective January 1, 2020.

3. NH RSA 125-C:6 and NH RSA 125-C:11, I, authorize NHDES 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. In accordance with this authority, the Commissioner of NHDES has adopted NH CODE ADMIN. RULES Env-A 600 to regulate a statewide permit system.

4. NH RSA 125-I authorizes NHDES to regulate the release of toxic chemicals into the ambient air in New Hampshire. NH RSA 125-I:3, II, authorizes the Commissioner of NHDES 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 NH RSA 125-I:3, II (the "RTAP Rules"). Per Env-A 1401.02, the RTAP Rules apply to the owner or operator of any new, modified, or existing process or device located at a stationary source that emits an RTAP into ambient air, unless exempt. The RTAP Rules were updated and readopted effective on January 5, 2018.

5. NH RSA 125-I:3-a authorizes the Commissioner of NHDES to impose administrative fines up to \$4,000² per offense for violations of NH RSA 125-I, and rules promulgated thereunder, in accordance with NH RSA 125-C:15, I-b(b). NH RSA 125-I:3-a, II, requires the Commissioner to determine fines in accordance with NH RSA 125-C:15, I-b(b). NH RSA 125-I:3-a, III, authorizes the Commissioner to assess an additional fine for repeat violations.

6. Per NH RSA 125-I:5, I, no person shall operate any device or process at a stationary source that emits an RTAP without a temporary or operating permit issued by NHDES in accordance with NH RSA 125-I or NH RSA 125-C, provided, however, that no permit or permit application shall be required for any device or process at a stationary source exempted under NH 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 NH RSA 125-C.

7. Per NH RSA 125-C:11, the construction, installation, operation, or modification of any device or non-Title V source as defined under NH RSA 125-C:2, and as further defined by rules adopted by the Commissioner of NHDES, 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. NYCOA owns and operates a nylon manufacturing facility located at 333 Sundial Avenue in Manchester, New Hampshire (the "Facility"). NYCOA operates a batch polymerization process, continuous polymerization process, a secondary compounding process, and other devices and processes at the Facility. NYCOA operates two spray condensers, a packed-bed spray tower scrubber, and a carbon filter to control emissions at the Facility.

² The Commissioner's administrative fine authority for violations of NH RSA 125-I increased from \$2,000 to \$4,000 per violation effective January 1, 2020.

10. NHDES shall classify toxicity of each RTAP as a Class I, II, or III; per NH RSA 125-I:4, II, and Env-A 1406.01. As set out in the RTAP List at Table 1450-1 in the RTAP Rules, caprolactam – inhalable fraction and vapor, is an RTAP, Toxicity Class I.

11. Per Env-A 607.01(t), 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 a stationary source, area source, or device where a permit is required under the rules governing RTAPs specified in Env-A 1400; [..].

12. 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-1402.02 or Env-A 1403.03, prior to operating the device or process.

13. NH 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. Air dispersion modeling analysis is an authorized method to demonstrate compliance per Env-A 1405.01.

14. In July and September 2017, NYCOA conducted stack emission testing of the devices and processes at the Facility for RTAP emissions.

15. On November 7, 2018, NHDES received an application from NYCOA for a temporary permit to operate the batch polymerization process, the continuous polymerization process, and the secondary compounding process at the Facility. In its application, NYCOA reported that it started operating the batch polymerization and continuous polymerization processes at the Facility in 1988, and started operating the secondary compounding process at the Facility in 1979.

16. With its application, NYCOA enclosed a report from its consultant that summarized the results of stack emission testing conducted in July and September of 2017 at the Facility. In the report, the consultant stated that a former consultant of NYCOA used the results of the stack testing and air dispersion modeling analysis to determine that uncontrolled emissions of caprolactam from the Facility would exceed the AALs of caprolactam. In the report, the consultant provided the results of its air dispersion modeling analysis to demonstrate that NYCOA could demonstrate that emissions from the Facility would not exceed the AALs of caprolactam when controlled by pollution control equipment installed at the Facility.

17. During a review of the application from NYCOA, NHDES concurred that NYCOA had not demonstrated that uncontrolled emissions of the RTAP caprolactam, from the Facility would not exceed the AALs for caprolactam. Using air dispersion modeling, NHDES also agreed that NYCOA could demonstrate that emissions of caprolactam from the Facility would not exceed its AALs when those emissions were controlled by operating the pollution control equipment at the Facility.

18. During a review of the NYCOA application, NHDES determined that NYCOA installed the batch polymerization process, the continuous polymerization process, and the secondary compounding process prior to 2013; and that each process required a permit under NH RSA 125-C:11, Env-A 603.01, and Env-A 607.01(t); a well as under NH RSA 125-I:5, I; and Env-A 1403. NHDES determined that these processes were operated without a permit at the Facility from 2013 through 2017, dates inclusive.

19. Env-A 900 shall apply to each stationary source, area source, or device that discharges air pollutants into the ambient air and is regulated under NH RSA 125-C, NH RSA 125-I, or both.

20. 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 NHDES on or before April 15 of the year covered by the report.

21. 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 NHDES the annual emission fees no later than April 15 for emissions from the previous calendar year. Thereafter, the deadline is May 15 for emissions from the previous calendar year.

22. On February 28, 2019, NHDES requested from NYCOA annual emission reports, and annual emission-based fees, for the batch polymerization process, the continuous polymerization process, and the secondary compounding process at the Facility for calendar years 2013 through 2017, dates inclusive.

23. On March 15, 2019, NHDES received from NYCOA annual emission reports and annual emission-based fees for the batch polymerization process, the continuous polymerization process, and the secondary compounding process at the Facility for the years requested.

24. On May 9, 2019, NYCOA notified NHDES that a consultant of NYCOA used the results of stack emission testing conducted in July and September of 2017 at the Facility to conduct air dispersion modeling analysis of RTAPs emitted from the Facility. In its email correspondence, NYCOA stated that the consultant informed NYCOA in January of 2018 that it would need a permit for emissions of caprolactam from the Facility. NYCOA stated that it did not feel comfortable with the conclusions of that consultant and hired a new consultant in April 2018.

25. On August 12, 2019, NHDES issued Temporary Permit No. TP-0244 to NYCOA to operate devices and processes including the batch polymerization process, the continuous polymerization process, and the secondary compounding process at the Facility.

IV. ALLEGATIONS

1. NYCOA violated NH RSA 125-C:11; NH RSA 125-I:5, I; Env-A 603.01; Env-A 607(t); and Env-A 1403; by installing the batch polymerization process, the continuous polymerization process, and the secondary compounding process at the Facility, and operating these processes for years prior to 2018 without having applied for and been issued a temporary permit. The Air Resources Division ("ARD") has determined the violations to be major deviations from the requirement with moderate potential for harm, for which NH RSA 125-I:3-a, II; and NH RSA 125-C:15, I-b(b)(8); previously specified a potential fine range of \$1,251 to \$1,750. ARD proposes a fine of \$1,750 for each process for a total proposed fine of \$5,250 for these violations.

2. NYCOA violated Env-A 907.02 by failing to submit annual emissions reports to NHDES for emissions from the Facility during 2013 through 2017, dates inclusive, by April 15th of each year following the year covered by the report. ARD has determined these violations to be major deviations from the requirement with minor potential for harm, for which NH RSA 125-I:3-a, II; and NH RSA 125-C:15, I-b(b)(7); previously specified a potential fine range of \$851 to \$1,500 for each violation. For settlement purposes only, ARD proposes a single fine of \$1,500 for these violations.

3. NYCOA violated Env-A 705.01, and Env-A 705.04, in effect prior to October 24, 2018; by failing to submit annual emission-based fees to NHDES for the Facility during 2013 through 2017, dates inclusive, by April 15th of each year for emissions from the previous calendar year. ARD has determined the violations to be major deviations from the requirement with minor potential for harm, for which NH RSA 125-I:3-a, II; and NH RSA 125-C:15, I-b(b)(7); previously specified a potential fine range of \$851 to \$1,500 for each violation. For settlement purposes only, ARD does not propose a fine for these violations.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. NYCOA agrees to pay the proposed fine in the amount of \$6,750 to NHDES upon execution of this Administrative Fine by Consent ("Agreement") by an authorized representative of NYCOA.

2. Payment in accordance with the preceding paragraph shall be paid by certified check made payable to *Treasurer, State of New Hampshire* and mailed to:

NHDES Legal Unit
Attn: Compliance Attorney
P.O. Box 95, Concord, NH 03302-0095

3. If any payment is made by check or money order that is returned due to insufficient funds, in accordance with NH RSA 6:11-a, NHDES 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.

4. By executing this Agreement, NYCOA 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.


5. The effective date of this Agreement will be the date on which it is signed by an authorized representative of NYCOA and the Director of the Air Resources Division, and is accepted and approved by the Commissioner of NHDES.

6. Consistent with the Governor's declaration of emergency, and emergency orders, NHDES will take all necessary and feasible steps to assist companies and other entities affected by the outbreak of COVID-19, including those with employees who are unable to work because of illness or the need to care for a family member, those which have temporarily closed or reduced their hours, those unable to access necessary resources because of shortages, or any other company experiencing hardship because of the outbreak of COVID-19. All extension requests of any deadline set out in this Agreement, due to the COVID-19 pandemic, will be carefully considered. Approval of such requests will not be unreasonably withheld.

7. No failure by NHDES 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.

Nylon Corporation of America, Inc.


By: James Bizarro, President
Duly Authorized

February 23, 2021
Date

Department of Environmental Services


Craig A. Wright, Director
Air Resources Division

March 3, 2021
Date

The Agreement of the Parties is accepted and approved.


Robert R. Scott, Commissioner

3/3/21
Date

cc: NHDES Legal Unit
AFS #3301100007 (Stationary Source)

ec: Public Information Officer, NHDES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Manchester City Mayor and Health Officer
James Tilley, Enforcement Section Supervisor, ARD/NHDES
EPA Region 1