

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Senesco Marine, LLC

FILE NO.: AIR 10 – 18

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The subject facility is located at 10 MacNaught Avenue, North Kingstown, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (3) On 3 July 2007, the DEM Office of Air Resources (“OAR”) issued Approval Nos. 1991-1993 to the Respondent (the “Permit”).
- (4) The Permit requires the Respondent to comply with an emission limit of three pounds of volatile organic compound (“VOC”) per gallon of coating minus water for all coatings (other than clear coatings, air dried coatings, and extreme performance coatings) applied to miscellaneous metal parts.
- (5) On 6 April 2010, OAR inspected the Facility. The inspection revealed that the Respondent used a coating called *Interplate 937 A-B Primer* containing 5.41 pounds of VOC per gallon of coating minus water from calendar years 2007 through 2010. *Interplate 937 A-B Primer* is not a clear coating, air dried coating or extreme performance coating.
- (6) The Respondent discontinued use of *Interplate 937 A-B Primer* and replaced it with a compliant coating.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have

violated the following statutes and/or regulations:

- (1) **APC Regulation No. 9, Section 9.6.8** – requiring any person who receives a permit to comply with all conditions in the permit.

D. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby **ASSESSED**, jointly and severally, against each named respondent:

Five Thousand Dollars (\$ 5,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Water & Air Protection Program Account,” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D above. All requests for hearing **MUST**:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:
- Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
 - (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7032.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Senesco Marine, LLC
c/o Gayle A. Corrigan, Registered Agent
10 MacNaught Street
North Kingstown, RI 02852

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 10 – 18

Respondent: Senesco Marine

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Failure to use compliant coatings as required by permit	Type (\$ 10,000 Max. Penalty)*	Minor	\$ 1,250	4 years	\$5,000
SUB-TOTAL					\$5,000.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

PENALTY MATRIX WORKSHEET

CITATION: Failure to use compliant coatings as required by the permit
 VIOLATION NO.: C (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to use a compliant surface coating for coating miscellaneous metal parts as required by its permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with emission related requirements of the permit is of major importance to the regulatory program</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: OAR determined that the annual excess VOC emissions from the <i>Interplate 937 A-B Primer</i> coating were 84.35 pounds, 359.09 pounds, 388.01 pounds and 301.25 pounds from 2007 to 2010, respectively.</p> <p>(D) Toxicity or nature of the pollutant: VOC's, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone.</p> <p>(E) Duration of the violation: Data shows that <i>Interplate 937 A-B Primer</i> was used from July 2007 up to May 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent mitigated the violation by replacing the non-compliant coating after issuance of a Notice of Alleged Violations by DEM to the Respondent on 12 May 2010.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** The Respondent has previously failed to comply with other APC regulations and DEM issued a Notice of Violation and assessed an administrative penalty to the Respondent in September 2008 for the previous noncompliance.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the operator of the Facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,250	\$500 to \$1,000	\$100 to \$500