



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 17 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Willeford
Senior Environmental Engineer
AkzoNobel Surface Chemistry LLC
8005 N. Tabler Rd.
Morris, Illinois 60450

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves AkzoNobel Surface Chemistry LLC, docket no. CAA-05-2017-0012. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

FEB 17 2017

Pursuant to paragraph 27 of the CAFO, AkzoNobel Surface Chemistry LLC must pay the civil penalty within 30 days of the filing date. Your check or electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Robert H. Smith, Associate Region Counsel, at (312) 886-0765.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Branch (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Robert H. Smith/C-14J
Eric Jones/ Illinois Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) **Docket No.**
)
AkzoNobel Surface Chemistry LLC) **Proceeding to Assess a Civil Penalty**
Morris, Illinois) **Under Section 113(d) of the Clean Air Act,**
) **42 U.S.C. § 7413(d)**
Respondent.)
_____)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is AkzoNobel Surface Chemistry, LLC (AkzoNobel), a Delaware corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112 of the CAA, 42 U.S.C. § 7412, required EPA to promulgate national emission standards for certain categories of sources of hazardous air pollutants.

10. EPA promulgated the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing (Subpart FFFF), which is codified at 40 C.F.R. §§ 63.2430 – 63.2550, on November 10, 2003, 68 Fed. Reg. 63,888, as amended on July 1, 2005 at 70 Fed. Reg. 38,560, and July 14, 2006 at 71 Fed. Reg. 40,338.

11. NESHAP Subpart FFFF requires compliance with 40 C.F.R. § 63.11 of the NESHAP General Provisions (Subpart A), including the work practice requirements for flares found at 40 C.F.R. § 63.11(b), 40 C.F.R. § 63.2540, and Subpart FFFF Table 12.

12. NESHAP Subpart A codifies specific requirements for flares. Specifically, 40 C.F.R. § 63.11(b)(6)(ii) states “Flares shall be used only with . . . the net heating value [(NHV)] of the gas being combusted at 7.45 M/scm (200 Btu/scf) or greater if the flares is [sic] non-assisted.”

13. Equipment within batch hydrogenation processes at facilities are subject to Subpart FFFF.

14. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), states that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation

plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit, (B) issue an administrative penalty order, or (C) bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

15. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), states that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued or approved under those provisions or subchapters . . . the Administrator may (A) issue an administrative penalty order, (B) issue an order requiring such person to comply with such requirement or prohibition, (C) bring a civil action, or (D) request the Attorney General to commence a criminal action.

16. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), states whenever, on the basis of any information available to the Administrator of EPA, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of this subchapter, the Administrator may issue a penalty order in accordance with subsection (d). This authority has been delegated to the Regional Administrator. EPA Delegation 7-6-A, 8/9/94; Region 5 Delegation 7-6-A, 2/4/00.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 through December 6, 2013 under Section 113(d)(1) of the CAA,

42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19. The Civil Monetary Inflation Adjustment Rule, 78 Fed. Reg. 66643 (November 6, 2013), retains the Statutory Maximum Penalty at \$37,500 per day for each violation, but increases the total Statutory Maximum Penalty addressed through an Administrative action to \$320,000 for violations from December 6, 2013 through November 2, 2015. The Civil Monetary Inflation Adjustment Rule, 81 Fed. Reg. 43,091 (July 1, 2016) increases the Statutory Maximum Penalty to \$44,539 per day for each violation, and increases the total Statutory Maximum Penalty addressed through an Administrative action to \$356,312 for violations that occurred after November 2, 2015, and were assessed on or after August 1, 2016.

18. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

20. AkzoNobel owns and operates a surfactant manufacturing facility located at 8005 N. Tabler Rd., Morris, Illinois 60450 (the "Facility").

21. AkzoNobel uses a Flare to control emissions from its hydrogenation process. The Flare is non-assisted, which means that no steam or air is added to the waste or vent gas stream.

22. On August 13, 2014, AkzoNobel provided information to the EPA in response to an EPA information request. AkzoNobel provided subsequent additional and clarifying

information via email to EPA between September 5, 2014 and January 23, 2015. EPA reviewed all information provided by AkzoNobel.

23. AkzoNobel provided actual hourly NHV values for vent gas for the period January 1, 2011 through May 15, 2014. Some of the NHV values reported are below the requirement for non-assisted flares of 200 BTU/scf specified in 40 C.F.R. § 63.11(b)(6)(ii). Based on this information, the EPA determined that AkzoNobel violated this condition for approximately 1,000 hours for the period of January 1, 2011 through May 15, 2014.

24. On August 4, 2015, EPA issued to AkzoNobel a Finding of Violation (FOV) alleging the violation in Paragraph 23 above that AkzoNobel had operated the Flare below the heating value requirement for non-assisted flares of 200 BTU/scf specified in 40 C.F.R. § 63.11(b)(6)(ii).

25. On September 3, 2015, representatives of AkzoNobel and EPA discussed the August 4, 2015 FOV.

Civil Penalty

26. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and AkzoNobel's cooperation, efforts to promptly return to compliance, and agreement to perform a supplemental environmental project, and pursuant to the Clean Air Act Stationary Civil Penalty Policy, Complainant has determined that an appropriate civil penalty to settle this action is \$140,000. AkzoNobel will resolve this civil penalty by paying a cash civil penalty amount of \$35,000 and mitigating the remaining portion of the penalty by completing a supplemental environmental project costing AkzoNobel at least \$131,250.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$35,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) please use the following address instead:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

28. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not timely pay the civil penalty or any stipulated penalties due under Paragraph 44, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

32. AkzoNobel agrees to complete a SEP designed to further protect the environment and public health by reducing emissions of related air pollutants to the environment. In particular, the SEP will reduce greenhouse gas emissions and other air pollutants from diesel-fired bus engines.

33. AkzoNobel must complete the SEP as follows. AkzoNobel must purchase, in whole or in part, alternative fuel school buses for the Minooka School District #201 of Minooka, Illinois. In this case, an alternative fuel school bus shall mean a bus operated solely on propane. The new bus will be selected by MSD, and must be a replacement for a traditionally-fueled

school bus. The traditionally-fueled school bus must be destroyed once the alternative fuel school bus is put in service.

34. Respondent must spend at least \$131,250 on the SEP.

35. Respondent certifies as follows:

I certify that AkzoNobel is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that AkzoNobel has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that AkzoNobel is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

36. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

37. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

38. Respondent must complete the SEP by no later than June 29, 2017.

39. Respondent must submit a SEP completion report to EPA no later than September 29, 2017. This report must contain, at a minimum, the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. Certification from the recipients that the funds were spent in conformity with the SEP as described or, if the recipient school has not yet completed the project, certification from the recipient school that any unused funds are being held in an account earmarked for the specified purposes;
- d. Certification or documentation demonstrating that the replaced traditionally fueled school bus was destroyed or disassembled such that it will no longer be operated;
- e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

40. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch and Robert H. Smith at the addresses provided in Paragraph 28.

41. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

42. Following receipt of the SEP completion report described above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or

- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 44.

43. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 44, below.

44. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$105,000.
- b. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 34, Respondent must pay a penalty of \$30,000.
- c. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$1,500	31 st day and beyond

45. EPA's determinations that Respondent completed the SEP satisfactorily will bind Respondent.

46. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 27, above, and will pay interest and nonpayment penalties on any overdue amounts.

47. Any public statement that Respondent makes referring to the SEP must include the following language: "AkzoNobel undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against AkzoNobel for violations of the Clean Air Act."

48. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

49. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and katherine.rahill@akzonobel.com (Counsel for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

50. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

51. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

52. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in Paragraph 50 of this CAFO, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

53. Respondent certifies that it is complying fully with the Clean Air Act and Illinois SIP.

54. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

55. The terms of this CAFO bind Respondent, its successors, and its assigns.

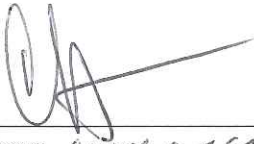
56. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

57. Each party agrees to bear its own costs and attorneys fees in this action.


58. This CAFO constitutes the entire agreement between the parties.

AkzoNobel, Respondent

Jan 23, 2017
Date

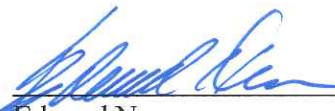

Name CHRIS SWIFT
Title DIRECTOR OPERATIONS
AkzoNobel Surface Chemistry LLC

JAN 23RD 2017
Date


Name JO SHEPHERD
Title BU DIRECTOR SUPPLY CHAIN & PROCUREMENT
AkzoNobel Surface Chemistry LLC

United States Environmental Protection Agency, Complainant

2/9/17
Date


Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: AkzoNobel
Docket No. CAA-05-2017-0012



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

February 15, 2017

A handwritten signature in blue ink, appearing to read "Ann L. Coyle", written over a horizontal line.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: AkzoNobel Surface Chemistry, LLC of Morris, Illinois
Docket Number: CAA-05-2017-0012



CERTIFICATE OF SERVICE

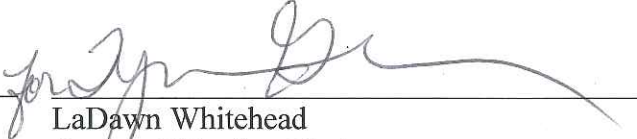
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [**CAA-05-2017-0012**], which was filed on [**FEB 17 2017**], in the following manner to the following addressees:

Copy by Certified Mail to Respondent: Thomas Willeford
Senior Environmental Engineer
AkzoNobel Surface Chemistry, LLC
Morris, Illinois 60450

Copy by E-mail to Attorney for Complainant: Robert H. Smith
smith.roberth@epa.gov

Copy by E-mail to Attorney for Respondent: Katherine Rahill
katherine.rahill@akzonobel.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: 2/17/2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7001 0320 0006 0188 0475