



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

December 21, 2018

In Reply Refer To Mail Code: 3AP10

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Carol F. McCabe, Esquire
Manko Gold Katcher Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

**Re: Whitford Corporation – Administrative Compliance Order
EPA No. CAA-003-2019-0022DA**

Dear Ms. McCabe:

Enclosed find a copy of the fully executed Administrative Compliance Order between the United States Environmental Protection Agency (EPA) and the Whitford Corporation. If you have any questions, please contact Dennis Abraham at 215-814-5214 or abraham.dennis@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Robert Stoltzfus".

J. Robert Stoltzfus
Acting Chief, Air Branch
Office of Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103

U.S. EPA-REGION 3-RHC
FILED-21DEC2018pm1:02

IN THE MATTER OF)
)
WHITFORD CORPORATION)
)
)
)
Respondent)
_____)

Docket No. CAA-03-2019-0022DA

ADMINISTRATIVE
COMPLIANCE ORDER ON CONSENT

ADMINISTRATIVE COMPLIANCE ORDER

A. PRELIMINARY STATEMENT

1. This Administrative Compliance Order (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(a)(3) and (4) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(a)(3) and (4).
2. On the EPA’s behalf, the Director of the EPA, Region III Air Protection Division is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Respondent is a corporation doing business in the Commonwealth of Pennsylvania. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Respondent signs this Order on consent.
5. This Order requires Respondent to comply with the requirements of Section 112 of the Act, 42 U.S.C. §7412, and the regulations promulgated thereunder found at: 40 C.F.R. Part 63, Subpart CCCCCC (National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing (“Subpart 7C”)); and 40 C.F.R. Part 63, Subpart ZZZZ (National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (“Subpart 4Z”)).

STATUTORY AND REGULATORY BACKGROUND

6. Section 112(d) in Title I of the Act, 42 U.S.C. §7412(d), provides that EPA must promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants (“HAPs”) and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the CAA directs EPA to establish national emission standards for hazardous air pollutants (“NESHAPS”) for sources in each category to limit the release of specified HAPs from specified industrial sectors.
7. 40 C.F.R. Part 63, Subpart 7C establishes national emission standards in the form of management practices and equipment standards for the control of HAPs for the Paints and Allied Products Manufacturing area source category. Subpart 7C applies to an owner or operator of a facility that performs paints and allied products manufacturing that is an area source of HAP emissions, and processes, uses or generates materials containing the following HAPs: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel. 40 C.F.R. §63.11599.
8. 40 C.F.R. Part 63, Subpart 4Z establishes national emission limitations and operating limitations for HAPs emitted from stationary reciprocating internal combustion engines (“RICE”) located at major and area sources of HAP emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations.
9. Subpart 4Z regulations apply to any person who owns or operates a stationary RICE at a major or area source of HAP emissions, except if the stationary RICE is being tested at a stationary RICE test cell/stand. 40 C.F.R. §63.6585(a).

DEFINITIONS

10. Section 302(e) of the Act, 42 U.S.C. §7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent or employee thereof.
11. The term owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source. 40 C.F.R §63.2.
12. The term “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. 40 C.F.R. §63.2.
13. The term “area source” as used in 40 C.F.R. Part 63 means any stationary source of HAPs that is not a major source as defined in 40 C.F.R. §63.2.
14. The term “stationary source” as used in 40 C.F.R. Part 63 means any building, structure, facility, or installation which emits or may emit any air pollutant. 40 C.F.R. §63.2.
15. The term “affected source” as used in 40 C.F.R. Part 63 means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. 40 C.F.R. §63.2.

16. Pursuant to 40 C.F.R. §63.2, “hazardous air pollutant” (HAP) is defined as “any air pollutant listed in or pursuant to section 112(b) of the Act.”
17. Pursuant to 40 C.F.R. §63.11607, “material containing HAP” means a material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight for carcinogens, as defined by the Occupational Safety and Health Administration at 29 C.F.R. §1910.1200(d)(4), or 1.0 percent by weight for non-carcinogens, as shown in formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material. Benzene and methylene chloride are volatile HAP. Compounds of cadmium, chromium, lead and/or nickel are metal HAP.
18. Pursuant to 40 C.F.R. §63.11607, “paints and allied products” are defined as materials such as paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials that are intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives.
19. Pursuant to 40 C.F.R. §63.11607, “deviation” means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:
- (1) Fails to meet any requirement or management practice established by this subpart;
 - (2) Fails to meet any term or condition that is adopted to implement a requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or
 - (3) Fails to meet any emissions limit.
20. Pursuant to 40 C.F.R. §63.6675, the term emergency stationary RICE means any stationary RICE that meets all of the criteria in paragraphs (1) through (3) of this

definition including that the stationary RICE is operated to provide electrical power or mechanical work during an emergency situation and operates during limited circumstances otherwise. All emergency stationary RICE must comply with the requirements specified in § 63.6640(f) in order to be considered emergency stationary RICE. If the engine does not comply with the requirements specified in § 63.6640(f), then it is not considered to be an emergency stationary RICE under this subpart.

FINDINGS

21. Respondent Whitford Corporation (“Whitford”) is a privately held Pennsylvania corporation, located at 47 Park Avenue, Elverson, Pennsylvania, 19520 (the “Facility”). Respondent shares office space with “Polymeric Systems, Inc.” and together both companies occupy approximately 50,000 squares feet of the manufacturing area within the Facility.
22. Respondent is a wholly-owned subsidiary of the parent company “Whitford Worldwide Company”, a privately held company and global enterprise that manufactures coatings. Respondent performs “paint and allied products manufacturing” as it produces paints and allied products with intended use to leave a dried film of solid material on a substrate.
23. Upon information and belief, the Facility is an existing affected source (as that term is used in 40 C.F.R. §63.2) because it commenced construction or reconstruction before June 1, 2009 (as indicated in Respondent’s September 14, 2006 Request for Determination of Requirements for Plan Approval/Operating Permit application to the Pennsylvania Department of Environmental Protection (“PADEP”) (hereafter, the “Request for Determination”). The Facility also became an affected source when, using a collection of equipment, it commenced processing, using, or generating materials

containing a HAP (as that term is defined in 40 C.F.R §63.11607) in order to manufacture nonstick and medical coatings, as part of its paints and allied products manufacturing. 40 C.F.R. §63.11599(b)(3).

24. Pursuant to 40 C.F.R. §63.11600, existing affected sources must achieve compliance by December 3, 2012.
25. On November 17, 2015, a compliance inspection was conducted at the Facility by fully-credential EPA inspectors. During the compliance inspection, EPA learned that the Respondent manufactures nonstick and medical device coatings, which are produced by means of blending, using materials containing HAP (as that term is used in 40 C.F.R. §63.11607). The intended use of Respondent's production of these coatings is to leave a dry film of solid material (nonstick coating) on the substrate of the nonstick and medical devices. Raw materials used by Respondent in its manufacturing process include pigments, fluoropolymers, resins, and liquids.
26. Upon information and belief, the raw materials used by Respondent in the manufacture of nonstick and medical device coatings contain the following HAPs in amounts greater than or equal 0.1 percent by weight for carcinogens (as defined by Occupational Safety and Health Administration at 29 C.F.R. §1910.1200(d)(4)), or 1.0 percent by weight for non-carcinogens: cadmium, chromium, lead and nickel compounds, which are listed HAPs under Subpart 7C.
27. Upon information and belief, Respondent emits or has the potential to emit HAPs including cadmium, chromium, lead, and/or nickel, because it uses dry pigments containing such compounds as raw material which can or may be emitted to the atmosphere from the Facility.

28. The Facility is an area source subject to Subpart 7C, per 40 C.F.R. §63.11599, because paint and allied products manufacturing operations are performed there by processing or using raw materials that contain heavy metals compounds (in dry pigment) that have cadmium, chromium, lead and nickel (which are HAPs), to manufacture nonstick and medical device coatings. The Facility is not a major source of HAPs as its potential to emit is less than 10 tons per year of a single HAP, and less than 25 tons per year of a combination of HAP
29. During the November 17, 2015 compliance inspection, EPA inspectors also observed that there were two (2) stationary emergency generator RICE engines located at the Facility. During the walkthrough portion of the inspection, Respondent's representatives indicated that these RICE engines were used at the Facility for emergency lighting, as well as IT backup under emergency situations.
30. Pursuant to 40 C.F.R. §63.6585, Respondent is subject to Subpart 4Z because it owns or operates a stationary RICE at an area source of HAP emissions. More specifically its compression ignition (CI) emergency stationary RICE engine is subject to the work practice requirements under Subpart 4Z.
31. Pursuant to 40 C.F.R. §63.6640(f), if you own or operate an emergency stationary RICE, you must operate the emergency stationary RICE according to the requirements in paragraphs (f)(1) through (4) of §63.6640(f). In order for the engine to be considered an emergency stationary RICE under this subpart, any operation other than emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (f)(1) through (4)

of §63.6640(f), is prohibited. The Facility must demonstrate continuous compliance with the requirements in Table 2d as per 63.6640(a).

32. Upon information and belief, the compression ignition RICE engine is an emergency stationary RICE engine because it meets the definition of "emergency stationary RICE" set forth in 40 C.F.R. §63.6675. Furthermore, the engine is in a source that emits HAPs and the Facility is an area source.
33. On March 28, 2016, EPA issued an information request letter to Respondent pursuant to Section 114 of the Act, 42 U.S.C. §7414, seeking additional information as follow-up to the November 17, 2015 compliance inspection.
34. On May 3, 2016, Respondent provided responses to EPA's March 28, 2016 Section 114 information request. The May 3, 2016 Section 114 response provided information on each RICE engine at the Facility, including the manufacturing date of each one. The CI emergency stationary RICE engine was manufactured on October 23, 1997 (existing source) and the spark ignition engine was manufactured in October 13, 2006 (new source).
35. The May 3, 2016 Section 114 response further indicated that Respondent was a minor source of volatile organic compounds ("VOC") and particulate matter ("PM"), and also included records related to Respondent's Request for Determination based upon the potential to emit ("PTE") resulting from manufacturing operations at the Facility. Those records indicate that PADEP granted Respondent an exemption from the requirement to have a Plan Approval or Permit, as VOCs-at the Facility were determined to be below 2.7 tons per year ("tpy"), and emissions of PM were controlled by a baghouse located at the Facility.

36. Respondent's May 3, 2016 Section 114 information response also included emission calculations for 2014, as well as volatile HAP emissions. Even though the emission calculations included the usage of heavy metals compounds of cadmium, chromium, lead and nickel in Respondent's manufacturing process, Respondent reported zero emissions for these heavy metal HAPs.
37. In Attachment 4 of its May 3, 2016 Section 114 information response, Respondent included information related to its operation of emergency RICE at the Facility. Upon information and belief, EPA has determined that the CI RICE engine (existing source) meets the emergency engine definition under Subpart 4Z. The emergency engine is subject to work practice requirements under Subpart 4Z as described in Table 2d. The information contained in Attachment 4 of Respondent's May 3, 2016 response includes the inspections completed on both RICE engines and includes information which appeared to confirm their usage solely for emergency purposes.
38. Respondent's May 3, 2016 Section 114 response further indicated that Respondent was changing the oil every 100 hours for both engines. Subpart 4Z requires that the engine oil for emergency RICE be changed every 500 hours, or annually, whichever occurs first. 40 C.F.R. §63.6603(a) and Table 2d. EPA has determined that Respondent failed to change the engine oil for the CI engine annually in accordance with Subpart 4Z.
39. The May 3, 2016 Section 114 response did not indicate that Respondent inspected the air cleaner for its compression ignition RICE engine annually, as per 40 C.F.R. §63.6603(a) and Table 2d of Subpart 4Z. Thus, Respondent failed to change the air cleaner for its compression ignition RICE engine annually in accordance with 40 C.F.R. §63.6603(a) and Table 2d of Subpart 4Z.

40. On April 9, 2018, EPA issued a second information request letter to Respondent under the authority of Section 114 of the Act, 42 U.S.C. §7414.
41. On May 4, 2018, EPA received Respondent's response to the April 9, 2018 Section 114 information request. This response confirmed the presence of heavy metals in several dry pigments related to Respondent's paint and allied products manufacturing process. Respondent's Request for Determination further indicates that PM emissions were due to the usage of dry pigments.
42. Several dry pigments used by Respondent in its paint and allied products manufacturing process have various contents of heavy metals HAP. Upon information and belief, Respondent's paint and allied products manufacturing process has, or will emit, or has the potential to emit, heavy metal HAP as part of its PM emissions.
43. EPA has determined that several dry pigments used by Respondent in its paints and allied products manufacturing process have sufficient heavy metal content to meet the "material containing HAP" definition as per 40 C.F.R. §63.11607, subjecting Respondent to regulation under Subpart 7C.
44. Respondent's May 4, 2018 response to EPA's April 9, 2018 information request confirmed that Respondent failed to conduct performance tests on the particle control device (i.e., the baghouse) located at the Facility, in accordance with 40 CFR §63.11602. Invoices provided by Respondent indicated that Whitford performed maintenance activities on the baghouse. Those invoices did not, however, provide sufficient information demonstrating that the Respondent was completing periodic inspections of the control device and its ductwork, which include: weekly visual inspections of any flexible ductwork; annual inspections of rigid ductwork; annual determination of the

conditions of the fabric filter; and Method 22 every three (3) months, as per 40 C.F.R. §63.11602(a)(2)(ii) and (iii).

ORDER

45. Respondent is ordered to conduct the compliance program described in this section of the Order.
46. Respondent must undertake and fully complete the following compliance actions (as expeditiously as practicable, but in no event longer than 12 months from the effective date of this Order) in order to address the violations alleged in this Order:
 - a. Complete initial inspection and test on particle control device (i.e., baghouse) as per 40 C.F.R. §63.11602(a)(1) and record the information following 40 C.F.R. §63.11602(b) within a hundred and eighty (180) days of the effective date of this Order. Submit records within ten (10) days of completing each task;
 - b. Complete ongoing inspections on the particle control device (i.e., baghouse) as per 40 C.F.R. §63.11602(a)(2)(ii)-(iii) and record the information following 40 C.F.R. §63.11602(b). The ongoing inspections must be started after the initial inspections and test are completed, but not later than three hundred (300) days of the effective date of this Order. Submit records within ten (10) days of completing each task, except for weekly flexible ductwork inspections. Records of all flexible ductwork inspections must be submitted at least 30 days prior to the expiration of this Order;
 - c. Complete annual requirements for the emergency CI RICE engine as per 40 C.F.R. §63.6603(a) and Table 2d (item 4) within ninety (90) days of the effective date of this Order. Within ten (10) days of completion of the annual requirements,

submit records showing Respondent completed the emergency engine annual requirements for the CI RICE emergency engine as per 40 C.F.R. §63.6603(a) and Table 2d.

OTHER TERMS AND CONDITIONS

47. Respondent admits the jurisdictional allegations contained in this Order.
48. Respondent neither admits nor denies the findings (Findings) of this Order.

SUBMISSIONS

49. Respondent must provide documentation of completion of these tasks to EPA within ten (10) days of completion of each required task. All documentation shall be submitted in accordance with Paragraphs 50 and 51 of this Order. All compliance actions listed in paragraph 46 and submittals must be completed within a year of the effective date of this Order.
50. All submissions to EPA required by this Order shall contain the following certification, signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments thereto, and that based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

51. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant

to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

POTENTIAL LIABILITY

52. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Act, 42 U.S.C. §7413. Under Section 113(a) of the Act, the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$46,192 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$46,192 per day for each violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Act.

53. Issuance of this Order does not preclude EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of Respondent to comply with all federal, state and local statutes, regulations and permits.

GENERAL PROVISIONS

54. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$46,192 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

55. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
56. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
57. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Order until the Termination Date as set out in paragraph 63 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Whitford Corporation. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.
58. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

Natalia Vazquez
Environmental Engineer
Office of Air Enforcement and Compliance Assistance
U.S. EPA Region 3
1650 Arch Street (3AP20)
Philadelphia, PA 19103
vazquez.natalia@epa.gov

All notices and submissions shall be considered effective upon receipt.

59. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
60. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

61. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to the issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

JUDICIAL REVIEW

62. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. §7607(b)(1).

TERMINATION

63. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:
- a. One year after the effective date of this Order;
 - b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
 - c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103

IN THE MATTER OF)

WHITFORD CORPORATION)

Respondent)

03-*JS* 12/17/18
Docket No. CAA-2019-0022DA
^

ADMINISTRATIVE
COMPLIANCE ORDER ON CONSENT

For United States Environmental Protection Agency, Region III:

12/17/18
Date



Cristina Fernandez, Director
EPA, Region III Air Protection Division
1650 Arch St (3AP00) Philadelphia PA 19103

Michael Coates
Signature

12/17/18
Date

Printed Name: Michael Coates

Title: NA Managing Director,

Address: 47 Park Avenue Elverson PA 19520

CERTIFICATE OF SERVICE

I certify that the foregoing "Administrative Compliance Order on Consent" in the Matter of Whitford Corporation, Order No. CAA-03-2019-0022DA, was filed and copies of the same were mailed to the Respondent by certified mail, return receipt requested, postage prepaid, to:

Carol F. McCabe, Esquire
Manko Gold Katcher Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
(484) 430-2304 cmccabe@mankogold.com
(Counsel for Respondent Whitford Corporation)

U.S. EPA-REGION 3-RHC
FILED-21DEC2018pm1:03

12/21/18
Date

for Robert D. Abraham
Dennis M. Abraham

Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 3
1650 Arch Street (3RC10)
Philadelphia, PA 19103
abraham.dennis@epa.gov