



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 25 2011

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dan Brogar
President-AC North America
Henkel Corp
7405 Production Drive
Mentor, Ohio 44060

Dear Mr. Brogar:

Enclosed is a final Administrative Consent Order which would resolve the Notice and Finding of Violation issued to Henkel Corporation (Henkel) on August 14, 2009. Also enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2011-0032 with Henkel. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAR 25 2011.

Pursuant to paragraph 30 of the CAFO, Henkel must pay the civil penalty within 60 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2011-0032, and the billing document number, 2751103A030.

Please direct any questions regarding this case to Jose DeLeon, Associate Regional Counsel at 312.353.7456.

Sincerely yours,

A handwritten signature in black ink that reads "William L. MacDowell".

William MacDowell
Section Chief, AECAS (MN/OH)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Henkel Corporation)
Mentor, Ohio.)
)
Respondent.)
_____)

Docket No. CAA-05-2011-0032
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

RECEIVED

MAR 25 2011

**REGIONAL HEARING CLERK
USEPA
REGION 5**

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 (U.S. EPA), Region 5.

3. Respondent is Henkel Corporation (Henkel or you), a business incorporated in the State of Delaware and doing business in the State of Ohio.

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the 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 the 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. On June 16, 1997, U.S. EPA approved Ohio Administrative Code (OAC) 3745-21-07(G)(2) as part of the federally enforceable Ohio State Implementation Plan. 62 Fed. Reg. 18520 (April 8, 2004).

10. OAC 3745-21-07(G)(2) prohibits the release of more than 40 lbs/day of organic material into the atmosphere from any article, machine, equipment, or other contrivance for employing, applying, evaporating or drying any photochemically reactive material, or substance containing such photochemically reactive material, unless said discharge has been reduced by at least 85%.

11. On December 11, 2003, U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Miscellaneous Coatings Manufacturing at 40 C.F.R. Part 63, Subpart HHHHH. 68 Fed. Reg. 69163.

12. Under 40 C.F.R. § 63.7985, the subpart HHHHH regulations are applicable to any person who owns and/or operates a coating manufacturing facility that produces inks, paints, and adhesives and is located at a major source of Hazardous Air Pollutants (HAP) emissions.

13. The subpart HHHHH regulations, at 40 C.F.R. § 63.8015, state you must meet the requirements in Table 3 to subpart HHHHH. Table 3 requires you to implement a leak detection and repair program.

14. The subpart HHHHH regulations, at 40 C.F.R. § 63.8080, state you must keep the

records required by subpart A of part 63 and in referenced subparts SS, TT, UU, and WW of part 63. Subpart A of part 63 requires you to implement a startup, shutdown, and malfunction plan. Subpart SS of part 63, at § 63.998(a)(2)(ii)(C), requires you to record condenser outlet temperatures.

15. The subpart HHHHH regulations, at 40 C.F.R. § 63.8005(g), state you must install, calibrate and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow.

16. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, through January 12, 2009, and \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

17. 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.

18. 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

19. At all times relevant to this CAFO, Respondent owned and/or operated a coating manufacturing facility (the facility) at 7405 Production Drive, in Mentor, Ohio.

20. On March 9, 2001, Ohio Environmental Protection Agency (Ohio EPA) issued a Title V Permit to Respondent for its facility. Ohio EPA issued an amendment to the Title V permit on July 21, 2005.

21. Respondent submitted a Title V Compliance Certification for 2006 and for 2007. According to the Title V Compliance Certifications, Henkel stated that it failed to do the following:

- a. Implement a leak detection and repair program for emission unit P017 as required by 40 C.F.R. § 63.8015.
- b. Implement a startup, shutdown and malfunction plan as required by 40 C.F.R. § 63.8080.
- c. Maintain the daily organic compound (OC) emission limit of 40 lbs per day as required by OAC 3745-21-07(G)(2).
- d. Install and operate a control device flow indicator for condensers associated with emission units P001, P002, P003, P012, P015, and P017 as required by 40 C.F.R. § 63.8005(g).
- e. Calculate and record the daily average condenser outlet temperature for condensers associated with emission units P001, P002, P012, and P015, under 40 C.F.R. §63.998(a)(2)(ii)(C), as required by 40 C.F.R. § 63.8080.
- f. Record condenser outlet temperatures for condensers associated with P003 and P017, under 40 C.F.R. §63.998(a)(2)(ii)(C), as required by 40 C.F.R. § 63.8080.

22. At all times relevant to this CAFO, Respondent operated emission units identified as

mixers P001, P002, P003, P005, P012, P015 and P017 in the Title V Permit at its facility.

23. At all times relevant to this CAFO, mixers P001, P002, P003, P005, P012, P015 and P017 were subject to the NESHAP at 40 C.F.R. Part 63, Subpart HHHHH and OAC rule 3745-21-07(G)(2).

24. By April 21, 2009, Ohio EPA approved an alternative method to monitor the flow to the condensers associated with mixers P001, P002, P003, P012, P015 and P017 in lieu of installing a flow indicator.

25. By July 1, 2009, Respondent installed and operated new dataloggers to calculate and record the daily average condenser outlet temperatures for the condensers associated with mixers P001, P002, P012, and P015.

26. By July 1, 2009, Respondent installed and operated new dataloggers to record the daily average condenser outlet temperatures for the condensers associated with mixers P003 and P017.

27. By January 24, 2007, Respondent implemented a leak detection and repair program at P017.

28. By March 1, 2007, Respondent implemented a startup, shutdown and malfunction plan.

Civil Penalty and Other Relief

29. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Henkel's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$148,000.

30. Within 60 days after the effective date of this CAFO, Respondent must pay a \$148,000 civil penalty by one of the following options:

a. Sending via U.S. Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note the case name, docket number of this CAFO, and the billing document number.

b. Sending via a carrier that will not deliver to P.O. Boxes (*e.g.* express carrier) a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note the case name, docket number of this CAFO, and the billing document number.

c. Sending via electronic funds transfer payable to the "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

31. A transmittal letter stating Respondent's name, complete address, the case docket

number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604;

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

Jose C. de Leon, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

33. If Respondent does not pay timely the civil penalty, the U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

General Provisions

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

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

37. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in Paragraph 35, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

38. Respondent certifies that it is complying fully with 40 C.F.R. Part 63, Subpart HHHHH.

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

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

41. 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.

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

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

Henkel Corporation, Respondent

3/15/11
Date

Dan Brogan
Signature

Printed Name: Dan Brogan

Title: President - AC North America

march 14 2011
Date

Paul R. Berry
Signature

Printed Name: Paul R. Berry

Title: Sr VP, Chief Legal Officer



United States Environmental Protection Agency, Complainant

3/24/11
Date

Cheryl L. Newton
Cheryl L. Newton, Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Henkel Corporation

Docket No. CAA-05-2011-0032

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.

3-24-2011

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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MAR 25 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:
Henkel Corporation
Docket No: CAA-05-2011-0032

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2011-0032 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that I mailed by Certified Mail, Return Receipt Requested, to Henkel Corporation, by placing it in the custody of the United States Postal Service addressed as follows:

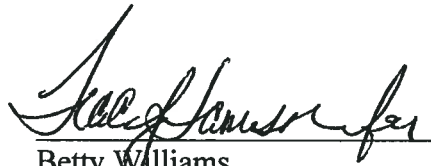
Mr. Dan Brogar
President-AC North America
Henkel Corporation
7405 Production Drive
Mentor, Ohio 44060

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MAR 25 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

I also certify that I sent a copy of the Consent Agreement and Final Order by first class mail to:

Ken Djukic
Ohio Environmental Protection Agency
Northeast District Office
Division of Air Pollution Control
2110 East Aurora Road
Twinsburg, Ohio 44087

on the 25 Day of March 2011


Betty Williams
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 70091680 0000 7660 8633