



**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: Polymeric Systems, Inc. – Administrative Compliance Order
EPA No. CAA-003-2019-0023DA**

Dear Ms. McCabe:

Enclosed find a copy of the fully executed Administrative Compliance Order between the United States Environmental Protection Agency (EPA) and Polymeric Systems, Inc. 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**

IN THE MATTER OF)
)
POLYMERIC SYSTEMS, INC.)
)
)
)
Respondent)
_____)

U.S. EPA-REGION 3-RHC
FILED-21DEC2018PM12:59

Docket No. CAA-03-2019-0023DA

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”)).

B. 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. §63.11603 sets forth notification, reporting and recordkeeping requirements under Subpart 7C. Pursuant to 40 C.F.R. §§63.11603(a)(1) and 63.11603(a)(2), the owner or operator of an existing affected source must submit an Initial Notification of applicability required by 40 C.F.R. §63.9(b)(2) no later than June 1, 2010, and a Notification of Compliance Status for an existing affected source in accordance with 40 C.F.R. §63.9(h) by June 3, 2013. Whenever a deviation from the requirements of Subpart 7C occurs, the regulations require that an Annual Compliance Certification Report be submitted, along with a deviation report. 40 C.F.R. §63.11603(b).

DEFINITIONS

9. 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.
10. The term “owner” or “operator” means any person who owns, leases, operates, controls, or supervises a stationary source. 40 C.F.R §63.2.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.”
16. 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 HAPs. Compounds of cadmium, chromium, lead and/or nickel are metal HAPs.

17. 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.

C. FINDINGS

18. Respondent Polymeric Systems, Inc. (“PSI”) is a privately held Pennsylvania corporation, located at 47 Park Avenue, Elverson, Pennsylvania, 19520 (the Facility). Respondent shares office space with “Whitford Corporation” and together both companies occupy approximately 50,000 square feet of the manufacturing area within the Facility.
19. Respondent is a wholly-owned subsidiary of the parent company “Whitford Worldwide Company”, a privately held company and global enterprise that manufactures coatings. Respondent is a leading manufacturer of specialty adhesives, sealants, epoxies and caulks.
20. 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 June 8, 2007 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 sealant and adhesives, as part of its paints and allied products manufacturing. 40 C.F.R. §63.11599(b)(3).

21. Pursuant to 40 C.F.R. §63.11600, existing affected sources must achieve compliance by December 3, 2012.
22. On November 17, 2015, a compliance inspection was conducted at the Facility by fully-credential EPA inspectors. Respondent manufactures specialty adhesives and sealants. The Facility blends viscous sealants and adhesives for commercial construction and other industrial applications. The intended use of Respondent's production of these coatings is to leave a dry film of solid material (nonstick coating). The specialty adhesives and sealants are produced by means of blending raw materials, including dry pigments containing nickel compounds, which is a HAP, as that term is used in 40 C.F.R. §63.11607.
23. Upon information and belief, Respondent PSI's manufacturing process produces particulate matter emissions from PSI's processing and use of raw material containing nickel compound. Respondent has two processes - the first to produce paste, and the second to produce caulks. The Facility mixes epoxy compounds in a vessel with large dough hooks. It is then moved into an extrusion process. The extrusion process is

connected to a baghouse (separate and apart from the baghouse used by Whitford Corporation) at the Facility for PM control. The products are dyed, heated, stretched, cooled, and packaged to be used as compounding putty or paste. In its second process, the Facility blends sealants and adhesives. The products are pressed out into tubes or totes for final packaging. The Facility has a NAICS code of 325520, which is mentioned as industry examples potentially subject to Subpart 7C, in the Federal Register.

24. Upon information and belief, the raw material used by Respondent in the manufacturing of sealant and adhesives will emit or has the potential to emit heavy metal HAP as part of its PM emissions to the atmosphere.
25. Upon information and belief, the raw material used by Respondent in the manufacturing of sealant and adhesives contain the following HAP 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: nickel compounds, which are listed HAPs under Subpart 7C.
26. Upon information and belief, Respondent emits or has the potential to emit HAPs including nickel, because it uses pigments containing such compounds as raw material which can or may be emitted to the atmosphere from the Facility.
27. 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 metal compound (in dry pigment) that has nickel (which is a HAP), to manufacture epoxies. 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 HAPs.

28. On March 28, 2016, EPA issued an information request letter to Respondent pursuant to Section 114 of the CAA, 42 U.S.C. §7414, seeking additional information as follow-up to the November 17, 2015 compliance inspection.
29. Information provided by Respondent in its May 5, 2016 response to EPA's March 28, 2016 Section 114 information request indicated that the Facility is a minor source of volatile organic compounds ("VOC") and particulate matter ("PM"). The May 5, 2016 Section 114 response also included records related to the Request for Determination, based upon the potential to emit ("PTE") resulting from manufacturing operations at the Facility. PADEP granted Respondent an exemption from the requirement to have a Plan Approval or Permit, as VOC's at the Facility were determined to be below 2.7 tons per year ("tpy"), and emissions of PM were controlled by a baghouse.
30. On January 17, 2017, EPA sent an email to PSI representatives requesting air emission estimates as well as information related to raw material used by the Facility. On the following day, Respondent provided a list of raw materials used by the Facility that included pigments containing chromium and nickel.
31. On April 9, 2018, EPA issued a second information request letter to Respondent pursuant to Section 114 of the CAA, 42 U.S.C. §7414, seeking additional information.
32. On May 4th, 2018, in response to EPA's April 9, 2018 Section 114 information request, PSI provided EPA with its emission calculations for VOC and PM, but not hazardous air pollutants ("HAPs").
33. The May 4th, 2018 response included the Material Safety Data Sheets of several dry pigments used by Respondent in its paint and allied products manufacturing process. Two dry pigments have various contents of heavy metal HAPs. The heavy metals were

chromium and nickel, but only the nickel compound meets the “material containing HAP” definition.

34. Upon information and belief, the May 4, 2018 response confirmed that Respondent failed to perform a performance test on the baghouse at the Facility, in accordance with 40 CFR §63.11602. Invoices provided by Respondent shows that the Facility performed maintenance activities on the baghouse, however, the invoices did not provide sufficient information demonstrating that the Respondent was completing periodic inspections of the control device, 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).
35. Upon information and belief, at least one of the 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.
36. 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.
37. On October 4, 2018, a meeting was held at EPA’s Region III offices between EPA and representatives for Respondents PSI and Whitford Corporation (including Respondents’ counsel). At that time, representatives for the two companies indicated their intention to eliminate the usage of pigment containing nickel in its manufacturing operations, at PSI,

within three months, with the stated objective of removing the Facility from regulation as an affected source under Subpart 7C.

D. ORDER

38. Respondent is ordered to conduct the compliance program described in this section of this Order.
39. Specifically, Respondent agrees that it shall complete the following compliance actions:
 - a. Submittal of Notification as per 40 C.F.R. §63.11599(d) stating that the Respondent is no longer subject to subpart 7C as it no longer processes, uses or generates materials containing HAP and does not plan to process, use or generate materials containing HAP in the future, within a hundred and eighty (180) days of the effective date of this Order as per 40 C.F.R. §63.11603(d).

E. OTHER TERMS AND CONDITIONS

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

F. GENERAL PROVISIONS

42. 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.
43. 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.

44. 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.

45. 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 51 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 the Facility. 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.

46. 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

All notices and submissions shall be considered effective upon receipt.

47. 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.
48. 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.

H. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

49. 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.

I. JUDICIAL REVIEW

50. 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


51. 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
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF)	
)	
POLYMERIC SYSTEMS, INC.)	Docket No. CAA-03-2019-0023DA
)	
)	ADMINISTRATIVE
Respondent)	COMPLIANCE ORDER ON CONSENT
_____)	

For United States Environmental Protection Agency, Region III:

<u>12/17/18</u>	
Date	Cristina Fernandez, Director
	EPA, Region III Air Protection Division
	1650 Arch St (3AP00) Philadelphia PA 19103

	<u>12/7/18</u>
Signature	Date
Printed Name: <u>Michael Coates</u>	
Title: <u>NA Managing Director,</u>	
Address: <u>47 Park Avenue Elverson PA 19520</u>	

CERTIFICATE OF SERVICE

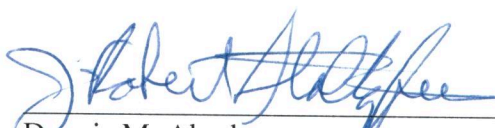
I certify that the foregoing "Administrative Compliance Order" in the Matter of Polymeric System, Inc., Order No. CAA-03-2019-0023DA, was filed and copies of the same were mailed to the Respondent by certified mail, return receipt requested, postage prepaid, to:

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
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12/21/18

Date


for 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