

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

07 APR 16 AM 9:12
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of :

ACH Foam Technologies, L.L.C.)
1418 Cow Palace Road)
Newton, Kansas 67114) Docket No. CAA-07-2007-0029

ADMINISTRATIVE ORDER ON CONSENT

This Order is entered into by the United States Environmental Protection Agency, Region 7 (EPA) and by the Respondent ACH Foam Technologies, L.L.C. (ACH or Respondent), pursuant to Section 113(a)(1) of the Clean Air Act (CAA), 42 U.S.C. 7413(a)(1), as amended, in response to violations of a Class II operating permit issued pursuant to the Kansas Administrative Regulations (K.A.R.) 28-19-540, et seq., and K.A.R. 28-19-501, which are part of a state implementation plan approved by EPA pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410.

The EPA and Respondent recognize that this Administrative Order on Consent (AOC) has been negotiated in good faith and the actions undertaken by Respondent do not constitute an admission of liability. Respondent admits the jurisdiction of EPA to issue this AOC and agrees not to contest EPA's jurisdiction in any subsequent proceeding to enforce the terms of this AOC. Respondent neither admits nor denies EPA's other factual findings and conclusions of law.

I. Statutory and Regulatory Background

1. Section 110 of the Clean Air Act, 42 U.S.C. § 7410, grants the Administrator of EPA the authority to approve a state plan which provides for implementation, maintenance, and enforcement of standards in each air quality control region within the state.

2. K.A.R. Sections 28-19-501 and 28-19-540 apply to an emissions unit or stationary source that requests an operational permit restriction which reduces the potential-to-emit of an emissions unit or stationary source. These regulations were adopted as part of the federally-approved Kansas State Implementation Plan (SIP) on January 23, 1995.

II. Factual Background/Conclusions of Law

3. ACH Foam Technologies, L.L.C., 1418 Cow Palace Road, Newton, Kansas 67114, is a Colorado corporation in good standing in the State of Colorado and licensed to do business in the State of Kansas. ACH is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

4. ACH acquired the Newton, Kansas facility on or about July 1, 2005. ACH manufactures custom-formed polystyrene foam products from beads of polystyrene resins at its Newton, Kansas location. The manufacturing process releases volatile organic compounds (VOCs) present in the resin beads.

5. KDHE issued a Class II Operating Permit to ACH's predecessor, Contour Products, on September 2, 1998. The purpose of the permit was to limit the facility's potential-to-emit VOC emissions to below major source thresholds (100 tons per year) in accordance with K.A.R. 28-19-501. ACH acquired the facility and became subject to the permit in 2005.

6. The permit limited ACH's VOC emissions to 95 tons per year for any twelve-month consecutive period.

7. In a letter dated February 27, 2006, ACH disclosed to KDHE that ACH had exceeded the operational limitation in their operating permit.

8. Using the assumptions and formulas for calculating emissions contained in the permit, ACH's actual emissions exceeded 100 tons per year for the twelve-month rolling total every month from January through June, 2006.

9. By exceeding its permit limits during the months of January through June, 2006, ACH is in violation of its Class II operating permit, issued pursuant to a state implementation plan approved pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410.

III. Compliance Order

10. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered and agreed that Respondent ACH shall achieve compliance with the limitations in its Class II Operating Permit by installing a VOC Emission Control System (VECS).

11. Design and construction of the VECS. The VECS shall capture VOC emissions from the following emissions points at the Newton, Kansas facility: 1) the INT IPE-7000 batch pre-expander for block molding bead, along with its corresponding fluidized bed dryer; 2) the bag storage room for pre-expanded beads; and 3) the Big W Block Mold and its corresponding vacuum system. The collected VOC emissions shall be routed to the burner(s) of either Boiler #1 or Boiler #2 and shall be combusted. ACH shall install the following equipment by the dates listed below.

a. By April 21, 2007, ACH shall complete the engineering study, mechanical design and engineering drawings for the VECS. Also by April 21, 2007, ACH shall submit for EPA's approval, a report which describes the VECS that ACH will install in order to achieve compliance with the limitations in its Class II Operating Permit. The report shall contain a description and schematic diagrams of the VECS, along with drawings of the proposed location

of the equipment to be installed. ACH shall submit the report to EPA's representative identified in paragraph 17.

b. By May 1, 2007, ACH shall install a INT IPE-7000 batch pre-expander for block molding bead, along with its corresponding fluidized bed dryer.

c. By May 1, 2007, ACH shall install a 250-ton Cooling Tower in order to supply cooling water to the Steam Condenser.

d. By June 1, 2007, ACH shall install an Oxygen-Trim system on the Boiler that will be used in the VECS. The Oxygen-Trim system shall automatically control the natural gas fuel supply to ensure optimal combustion in the burner(s) of the Boiler.

e. By June 1, 2007, ACH shall install a Cold Water Pump and a Warm Water Pump. The Cold Water Pump shall supply the spray nozzles of the Steam Condenser with cold water from the Cooling Tower and the Warm Water Pump shall return the warm water from the Steam Condenser back to the Cooling Tower.

f. By July 1, 2007, ACH shall install a Steam Condenser which will condense steam in the exhaust streams from the Pre-expander and Block Mold prior to entering the Vacuum System of the Block Mold.

g. By July 1, 2007, ACH shall relocate the Block Mold from its current location to a location near the bag storage room, according to the final layout plan.

h. By August 1, 2007, ACH shall install a 15-Ton Chiller in order to supply cold water to a heat exchanger which will reduce the humidity of the exhaust stream from the Vacuum System prior to entering the Bag Room.

i. By August 1, 2007, ACH shall install an electronic Programmable Logic Controller (PLC) Control Panel that will concentrate signals from equipment within the VECS, its monitors and sensors. The Control panel shall be linked to the boiler controls in order to activate or deactivate the pentane supply to the Boiler that will be used in the VECS. The Control Panel shall also be designed to trigger the alarm system whenever the pentane concentration is above pre-set limits.

j. By August 1, 2007, ACH shall install a minimum of two Pentane Monitors capable of measuring and indicating the pentane concentration in the ambient air at the facility. The Pentane Monitors shall be connected to the Control Panel and alarm system.

k. By August 1, 2007, ACH shall complete the installation of the ducting system, fans, filters and blowers for the VECS.

l. By September 15, 2007, ACH shall start up and commence operation of the VECS. The VECS shall direct pentane emissions to either Boiler #1 or Boiler #2, from the following emission points: 1) the INT IPE-7000 batch pre-expander for block molding bead, along with its corresponding fluidized bed dryer; 2) the bag storage room for pre-expanded beads; and 3) the Big W Block Mold and its corresponding vacuum system.

m. The VECS shall be operated at all times when the process equipment is operating (including the storage of pre-expanded beads in the bag storage room) except during previously planned startup and shutdown periods (including planned maintenance periods) and malfunctions of the VECS. ACH shall, to the extent practicable, control emissions during a startup, shutdown or malfunction event in a manner consistent with good air pollution control practice for minimizing emissions.

n. Once installed, the VECS shall limit the VOC emissions from the facility to 95 tons per year or less in any consecutive 12 month period as determined monthly by summing the emission totals for the preceding 12 months.

12. Performance Testing. ACH shall conduct performance testing of the VECS as follows:

a. By May 1, 2007, ACH shall submit a testing protocol for determining the capture and destruction efficiency of the VECS to the EPA representative identified in paragraph 17 below for review and approval in accordance with the procedures set forth in paragraph 16. A courtesy copy of the protocol shall also be submitted to the KDHE representative identified in paragraph 17.

b. By no later than 45 days following the startup and operation of the VECS, ACH shall conduct testing in accordance with the testing protocol developed pursuant to paragraph 12.a.

c. ACH shall provide EPA and KDHE written notice no later than forty-five (45) days prior to conducting performance testing.

d. No later than sixty (60) days after the performance test date, ACH shall submit a report with the testing results to EPA and KDHE's representatives identified in paragraph 17 below.

13. Quarterly Reporting. ACH shall submit quarterly progress reports. The first report shall be due no later than sixty (60) days after the effective date of this Administrative Order on Consent (AOC), and each subsequent report shall be due no later than each ninety (90) days thereafter. The report shall itemize all tasks accomplished in the past quarter along with the date the task was completed, the applicable deadline for completion of each task, as well as a description of any anticipated problems with respect to meeting any of the requirements of the

AOC. The report shall also include a month-by-month update of the 12 month rolling total of VOC emissions for the facility.

14. Application for Permit Modification. No later than June 1, 2007, ACH shall submit both a construction permit application and an application for a modification of the existing Class II operating permit to KDHE. The permit applications shall incorporate all equipment installed pursuant to this AOC and shall impose a VOC emission limitation not to exceed 95-tons of VOC in any consecutive 12 month period as determined monthly by summing the emission totals for the preceding 12 months for the Newton, Kansas facility.

15. Stipulated Penalties. If for any reason installation of any equipment or submission of any documents is delayed beyond the dates set forth in this AOC, then upon written demand by EPA, ACH agrees to pay a penalty of \$2,000.00 per item/per day of delay until the date of installation or submission for each item or document. Imposition of any such penalties pursuant to this paragraph shall not affect the ability of EPA to take action(s) for the underlying failure(s) of ACH to comply with the Clean Air Act.

16. Review and approval of documents. Unless otherwise provided herein, the provisions of this paragraph shall apply to EPA's review and approval of documents submitted pursuant to this AOC. Upon receipt of a document subject to this paragraph, the EPA shall either approve the document, approve the document with comments, or disapprove the document with comments. If the document is approved with comments, ACH may proceed with any actions required by the document but must incorporate EPA's comments and resubmit the document within fourteen (14) days of receipt of comments. If the document is disapproved, ACH shall incorporate any comments within fourteen (14) days of ACH's receipt of such comments and resubmit the document. The EPA shall review the revised document and shall approve, approve with comments, or disapprove the document. Failure by ACH to incorporate EPA's comments after one resubmission of a document shall be deemed a violation of this AOC.

17. EPA and KDHE Representatives. Documents submitted pursuant to this AOC shall be sent to:

For EPA:
Bill Peterson
Environmental Engineer
Air Permitting and Compliance Branch
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101;

For KDHE:
Russ Brichacek
Team Leader
Bureau of Air and Radiation
Kansas Department of Health and Environment
1000 SW Jackson, Suite 310
Topeka, Kansas 66612-1366.

IV. Force Majeure/Disputes Regarding Force Majeure

18. Respondent agrees to perform all requirements under this AOC within the time limits set forth herein unless performance is delayed by a *force majeure*. For purposes of this AOC, a *force majeure* shall be defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents the performance of any obligation under this AOC despite Respondent's best efforts to perform. *Force majeure* shall not include financial inability to complete the work or increased cost of performance.

19. Respondent shall notify EPA orally within forty-eight (48) hours, and in writing within ten (10) days of when Respondent becomes aware or should have become aware of the occurrence of a *force majeure* event. Such notice shall be provided to the EPA representative identified in paragraph 17 above and shall identify the event which Respondent believes constitutes a *force majeure* event causing an anticipated delay, the estimated length of the delay, state the measures taken or to be taken to minimize the delay and the timetable for taking any such measures. Respondent shall take all reasonable measures to avoid or minimize any delays. Failure to comply with the notice requirement of this section constitutes a waiver of any claim of *force majeure*.

20. Any dispute regarding whether an event qualifies as a *force majeure* event under the definition in this section shall be resolved by the Director of the Air, RCRA and Toxics Division. If EPA's representative disagrees that the event identified by Respondent is a *force majeure* event as defined by this section, the EPA shall submit a written notice to Respondent within ten (10) days of receipt of Respondent's written notice, with a copy of EPA's notice and Respondent's notice provided to the Director of the Air, RCRA and Toxics Division. The Director will issue a written decision on the dispute, which will be binding on both parties.

21. Regardless of the occurrence of any *force majeure* event, Respondent must finally complete all obligations under this AOC no later than one year from the effective date of this AOC. Failure to complete all work and achieve all required reductions within that time frame may subject Respondent to further actions to enforce the provisions of this AOC, or to seek penalties for failure to comply with this AOC, or both.

V. Potential Liability, Effective Date And Termination

22. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an order to any person found in violation of a state implementation plan approved pursuant to Section 110 of the Clean Air Act and the regulations promulgated pursuant thereto.

23. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air 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 \$32,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Clean Air Act.

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


25. This Order shall become effective on the date that it is signed by the Acting Director of the Air, RCRA, and Toxics Division, EPA, Region 7.

26. A copy of this Order will be sent to State Air Pollution Control Authority for the State of Kansas, as required by Section 113(a)(4), 42 U.S.C. § 113(a)(4).

27. All information and documents submitted by ACH to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by ACH in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

28. The party signing this AOC on behalf of ACH certifies by his signature that he is authorized to bind ACH to the provisions of this AOC.

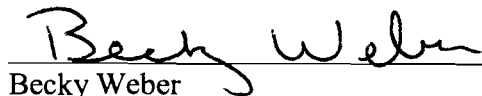
FOR RESPONDENT:



Richard Nickloy
Executive Vice President for Operations
ACH Foam Technologies, Inc.

Date: 4-6-07

FOR EPA, REGION 7:



Becky Weber
Division Director
Air, RCRA and Toxics Division
U.S. EPA Region 7

Date: 4/12/07