



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**

)
) **EPA-5-11-113(a)-OH-02**
)
)
)
)
) Proceeding Under Sections
) 113(a)(3) and 114(a)(1)
) of the Clean Air Act
) 42 U.S.C. §§ 7413(a)(3) and
) 7414(a)(1)

Administrative Consent Order

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, is entering into this Administrative Consent Order with Henkel Corporation, Mentor Ohio (Henkel or you), under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the Act, 42. U.S.C. § 7414(a)(1). The Regional Administrator of EPA, Region 5, has delegated her information gathering authority to the Director of the Air and Radiation Division pursuant to EPA Region V Delegation 7-8.
3. 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.
4. 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.
5. The Subpart HHHHH regulations, at 40 C.F.R. § 63.8015, state that you must meet the requirements in Table 3 to Subpart HHHHH. Table 3 requires you to implement a leak detection and repair (LDAR) program.

Findings

6. At all times relevant to this Order, Respondent owned and/or operated a coating manufacturing facility (the facility) at 7405 Production Drive, in Mentor, Ohio.
7. On March 9, 2001, Ohio Environmental Protection Agency (Ohio EPA) issued a Title V Permit to Respondent's facility. Ohio EPA issued an amendment to the Title V permit on July 21, 2005.
8. On April 28, 2007, Respondent submitted a Title V Compliance Certification for 2006. According to the Title V Compliance Certification, Henkel stated that it failed to implement a leak detection and repair program for emission unit P017 as required by 40 C.F.R. § 63.8015.

LDAR Compliance Program

9. By no later than six months after the effective date of this order, Henkel shall develop a facility-wide document that describes: (i) its facility-wide LDAR program (*e.g.*, applicability of regulations to process units and/or specific equipment; leak definitions; monitoring methods and frequencies); (ii) a tracking program (Henkel's "Management of Change" process) that ensures that new pieces of equipment added to the Facility for any reason are evaluated for inclusion and, if appropriate, integrated into the LDAR program and that pieces of equipment that are taken out of service are removed from the LDAR program; (iii) the roles and responsibilities of all employee and contractor personnel assigned to LDAR functions at the Facility; (iv) how the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR program; and (v) the steps the Facility has taken or plans to take in order to implement its enhanced LDAR program ("ELP"), which includes the basic LDAR program as required under applicable law and any additional elements that are required due to their inclusion within this CAFO. Henkel shall review this document by October 1st of each year and update it as needed by no later than 60 days after the completion of each annual review.

Quality Assurance ("QA")/Quality Control ("QC")

10. Certification by Monitoring Technicians. Commencing by no later than nine months after the effective date of this order, on each day that LDAR monitoring occurs, at the end of such monitoring, Henkel shall ensure that each monitoring technician certifies that the data collected accurately represents the LDAR monitoring performed for that day by requiring the monitoring technician to sign a form that includes the following certification:

"On [insert date], I reviewed the monitoring data that was collected today and certify that to the best of my knowledge and belief the recorded data accurately represent the monitoring that was performed today."

11. Annual Review. Commencing by no later than nine months after the effective date of this order, once during each calendar year, an LDAR-trained employee or

contractor of Henkel, who does not serve as an LDAR monitoring technician on a routine basis, shall undertake the following unannounced ELP review:

- a. Verify that any pieces of equipment that are required to be in the LDAR program are included in said program, and that any pieces of equipment that are not required to be in the LDAR program have been deleted;
 - b. Verify that equipment was monitored at the appropriate frequency;
 - c. Verify that proper documentation and sign-offs have been recorded for all equipment placed on the delay of repair (DOR) list;
 - d. Confirm that repairs have been performed in the required periods;
 - e. Review monitoring data and equipment counts (e.g., number of pieces of equipment monitored per day) for feasibility and unusual trends;
 - f. Verify that proper calibration records and monitoring instrument maintenance information are maintained;
 - g. Verify that LDAR program records are maintained as required; and
 - h. Observe each LDAR monitoring technician in the field to ensure monitoring is being conducted in accordance with the Facility LDAR program methods and procedures.
12. Henkel shall correct any deficiencies detected or observed as soon as practicable. Henkel shall maintain a log that: (i) records the date and time that the reviews, verifications, and observations required by this order were undertaken; and (ii) describes the nature and timing of any corrective actions taken.

LDAR Audit and Correction Action

13. Henkel shall retain a third party with experience in conducting LDAR audits to conduct a Facility-wide LDAR compliance audit. The LDAR compliance audit shall be completed no later than six months after the effective date of this order. The third party auditor shall not have previously performed routine LDAR monitoring at the Facility.
14. The LDAR audit shall include but is not limited to reviewing compliance with all applicable LDAR regulations, reviewing and/or verifying the same items that are required to be reviewed and/or verified in Subparagraphs 11.a-11.h, and performing the following activities:
 - a. Calculating Comparative Monitoring Audit Leak Percentages. Covered Equipment shall be monitored in order to calculate a leak percentage for each Covered Process

Unit broken down by equipment type (i.e., valves, pumps, and agitators). The monitoring that takes place during the audit shall be called “comparative monitoring” and the leak percentages derived from the comparative monitoring shall be called the “Comparative Monitoring Audit Leak Percentages.”

- b. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. For each Covered Process Unit that is audited, the historic, average leak percentage from prior periodic monitoring events, broken down by equipment type (i.e., valves, pumps and agitators), shall be calculated. The following number of complete monitoring periods immediately preceding the comparative monitoring audit shall be used for this purpose: valves – 4 periods; connectors – 1 period; and pumps – 4 periods.
- c. Calculating the Comparative Monitoring Leak Ratio. For each Covered Process Unit and each Covered Type of Equipment, the ratio of the comparative monitoring audit leak percentage from Subparagraph 14.a to the historic periodic monitoring leak percentage from Subparagraph 14.b shall be calculated. This ratio shall be called the “Comparative Monitoring Leak Ratio.” If a calculated ratio yields an infinite result, it shall be assumed that one leaking piece of equipment was found in the process unit through historic monitoring during the 12-month period before the audit and the ratio shall be recalculated.

15. Corrective Action Plan (“CAP”).

- a. Requirements of a CAP. By no later than 30 days after the completion of the LDAR compliance audit referenced in Paragraph 13, Henkel shall develop a preliminary CAP if the results of the LDAR compliance audit identify any areas of substantive non-compliance. The preliminary CAP shall describe the actions that Henkel has taken or will take to correct identified areas of non-compliance. Henkel shall complete each corrective action as expeditiously as possible with the goal of completing each action by no later than 90 days after the completion of the LDAR compliance audit. If any corrective action is not completed or not expected to be completed within 90 days after the completion of the LDAR compliance audit, Henkel shall explain the reasons for non-completion and propose a reasonable schedule for completion in the final CAP to be submitted under Subparagraph 15.b.
- b. Submission of the Final CAP to U.S. EPA. By no later than 90 days after completion of the LDAR compliance audit, Henkel shall submit the final CAP to U.S. EPA, together with a certification of the completion of each item of corrective action. For any corrective action that is not completed or not expected to be completed within 90 days after completion of the LDAR compliance audit, Henkel shall explain the reasons for non-completion, together with a reasonable schedule for completion of any outstanding corrective actions. Henkel shall submit a supplemental certification of completion by no later than 30 days after completing all outstanding corrective actions identified on said schedule.

- c. Review/Comment on CAP. U.S. EPA may submit comments on the final CAP within 45 days of receipt. Except for good cause, U.S. EPA may not request Henkel to modify any action within the CAP that already has been completed at the time of U.S. EPA's comments. Within 30 days of receipt of any comments on the Final CAP from U.S. EPA, Henkel shall submit a revised final CAP or a statement of reasons for disputing U.S. EPA's comments.

Certification of Compliance.

16. Within 180 days after completion of the LDAR compliance audit, Henkel shall certify to EPA that: (i) the Facility is in compliance with all applicable LDAR regulations and this ELP; (ii) Henkel has completed all corrective actions, if applicable, or is in the process of completing all corrective actions pursuant to the final CAP; and (iii) all equipment at the Facility that is regulated under the LDAR program has been identified and included in the Facility's LDAR and ELP program. To the extent that Henkel cannot make the certification in any of these respects, Henkel shall specifically identify any deviations from Items (i) – (iii) in its certification statement, provide an explanation for such deviations and a schedule for correcting any deviations. Henkel shall submit a supplemental certification by no later than 30 days after any deviations identified on said schedule.
17. Henkel must send all reports required by this Order to:

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

General Provisions

18. This Order does not affect Henkel's responsibility to comply with other federal, state and local laws.
19. This Order does not restrict EPA's authority to enforce provisions of the operating permit, the Ohio SIP, the NESHAP, or any other section of the Clean Air Act.
20. Nothing in this Order limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the Act, 42 U.S.C. § 7413, for Henkel's violation of the CAA.
21. Failure to comply with this Order may subject Henkel to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

22. The terms of this Order are binding on Henkel, its assignees and successors. Henkel must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.
23. EPA may use any information submitted under this Order in an administrative, civil judicial or criminal action.
24. Henkel agrees to the terms of this Order.
25. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will terminate two years from the effective date, provided that Henkel has complied with all terms of the Order throughout its duration.
26. Each person signing this Order 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.
27. Each party agrees to pay its own costs and attorneys' fees in this action.
28. This Order constitutes the entire agreement between the parties.
29. Henkel may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to U.S. EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Henkel fails to assert a business confidentiality claim, U.S. EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.
30. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

AGREED AS STATED ABOVE:

HENKEL CORPORATION

By: *Dan Brogan* Date: 3/15/11

Name: Dan Brogan

Title: President - AC North America

and

By: *Paul R. Berry* Date: March 14, 2011

Name: Paul R. Berry

Title: Sr VP, Chief Legal Officer

Approved as to Form
CS
Henkel NA Law Dept.

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

3/24/11
Date

Cheryl L. Newton
Cheryl L. Newton
Director
Air and Radiation Division

standard bcc's:
other bcc's:

official file copy w/ attachment(s)
Shilpa Patel (AE-17J)
Jose C. de Leon (C-14J)

CERTIFICATE OF MAILING

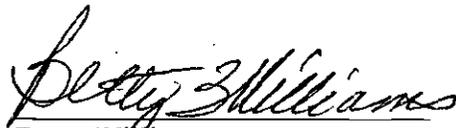
I, Betty Williams, certify that I sent the final Administrative Consent Order, EPA Order No. **EPA-5-11-113(a)-OH-02**, by Certified Mail, Return Receipt Requested, to:

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

I also certify that I sent a copy of the Administrative Consent 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 28th day of March, 2011.


Betty Williams
Administrative Program Assistant
Planning and Administrative Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7670 2386