



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Henkel US Operations Corporation : Violations of The Clean Streams Law and
125 Jaycee Drive : NPEES Permit No. PAR232211
West Hazleton, PA 18202-1145 : West Hazleton Borough, Luzerne County

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 27th day of AUGUST, 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Henkel US Operations Corporation (“Henkel”). The Department has found and determined the following:

Parties and Background

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq. (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Administrative Code”) and the rules and regulations promulgated thereunder.

B. Henkel is incorporated in the State of Delaware and maintains a registered address in Pennsylvania of Corporation Service Company, 2595 Interstate Drive, Suite 103, Harrisburg, PA 17110, and a business address of 125 Jaycee Drive, West Hazleton, PA 18202-1145.

C. Henkel operates a soap and laundry detergent manufacturing facility located in West Hazleton Borough, Luzerne County.

D. Henkel is a person as defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

Self-Monitoring, Reporting and Recordkeeping – NPDES Permit

E. On December 5, 2012, the Department issued National Pollution Discharge Elimination System Permit No. PAR232211 (“NPDES Permit”) to Henkel for its West Hazleton Borough facility. The NPDES Permit authorized a discharge to Black Creek and Cranberry Creek in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the NPDES Permit. The effective date of the NPDES Permit was January 1, 2013.

F. The NPDES Permit required that Henkel sample the associated stormwater discharge once per year or conduct an annual inspection of the site. Part A, Section III – Self-Monitoring, Reporting and Recordkeeping, Condition B.4 required that Henkel submit a Discharge Monitoring Report (“DMR”) no later than 28 days after the completion of the associated sampling, or where an annual inspection is conducted in lieu of monitoring, a completed and signed Annual Inspection Form (“AIF”) is to be submitted to the Department postmarked no more than 28 days after the completion of

the associated inspection. Failure to do so constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611.

G. Henkel failed to comply with the monitoring and reporting requirements of the NPDES Permit by failing to submit either stormwater discharge sample results on a DMR or an AIF for the 2013 and 2014 monitoring periods as required by the NPDES Permit, which constitutes a violation of Part A, Section III – Self-Monitoring, Reporting and Recordkeeping, Condition B.4 and unlawful conduct under 35 P.S. § 691.611.

H. On September 28, 2015, the Department sent a Notice of Violation (“NOV”) notifying Henkel of its failure to comply with Part A, Section III – Self-Monitoring, Reporting and Recordkeeping, Condition B.4 of the NPDES Permit, specifically for calendar years 2013 and 2014.

I. On October 14, 2015, Henkel responded in writing to the Department’s September 28, 2015 NOV. In its response, Henkel stated that the 2013 and 2014 AIF/DMRs were not submitted to the Department due to Henkel’s belief that the records only needed to be kept on file for inspection by the Department upon request. Henkel also provided AIFs for 2013 and 2014 as part of its response.

J. On September 30, 2016, the Department’s Central Office published a final, Statewide NPDES General Permit for Discharges of Stormwater Associated with Industrial Activity (“Amended NPDES Permit”) for Henkel for its West Hazleton Borough facility. Through this permit action, Henkel’s NPDES Permit for its West Hazleton Borough facility was amended (“Amended NPDES Permit”). In general, Henkel’s self-monitoring, reporting and recordkeeping requirements changed in the Amended NPDES Permit to require semi-annual monitoring of its industrial stormwater and reporting of the results to the Department in a DMR, in addition to semi-annual inspections and submission of an annual report.

Self-Monitoring, Reporting and Recordkeeping – Amended NPDES Permit

K. The Amended NPDES Permit, referred to in paragraph J above, requires that Henkel sample the associated stormwater discharge twice per year and conduct semi-annual inspections of the site. Part A, Section III – Self-Monitoring, Reporting and Recordkeeping, Condition B.4 requires that Henkel submit a semi-annual DMR to the Department by January 28 for the July-December monitoring period and July 28 for the January-June monitoring period.

L. Henkel failed to submit stormwater discharge sample results on a semi-annual DMR for the July-December 2017 monitoring period by January 28, 2018 as required by the Amended NPDES Permit.

M. On February 1, 2018, Henkel submitted the July-December 2017 DMR to the Department. This submission was 3 days late and constitutes a violation of Part A, Section III – Self-Monitoring, Reporting and Recordkeeping, Condition B.4 of the Amended NPDES Permit.

Unpermitted Discharges to Black Creek

N. Section 602(d) of the Clean Streams Law states, "Each day of continued violation of any provision of this act, any rule or regulation of the department, any order of the Department, or any condition of any permit issued pursuant to this act shall constitute a separate offense."

O. On January 20, 2017, the Department conducted an inspection at Henkel's West Hazleton facility in relation to a complaint of foam in Black Creek. Foam was noted at the opening of two storm drains on Henkel's property. This foam, considered industrial waste, subsequently entered Black Creek.

P. On May 3, 2017, Henkel provided an update to the Department in writing on the actions taken following the January 20, 2017 inspection. Henkel stated that it conducted an investigation, hired an external contractor to clean and inspect the two containment sumps located in the unloading stations located near the stormwater outfall, and the legacy clarifier piping was sealed.

Q. On January 11, 2018, the Department was notified of a pollution incident in Black Creek. A Department representative investigated and noted a gray discharge containing "suds" underneath Henkel's stormwater Outfall 001 pipe. This wastewater, considered to be an industrial waste, subsequently entered Black Creek.

R. On January 12, 2018, the Department was notified of a pollution incident in Black Creek. A Department representative investigated and noted foam, considered to be an industrial waste, in Henkel's stormwater Outfall 001 discharge channel. This wastewater, considered to be an industrial waste, subsequently entered Black Creek. A Department representative also observed a discharge of foam from the local POTW's sewer line adjacent to Henkel's property.

S. Department representatives investigating the January 11 and 12, 2018 pollution incidents initiated contact with Henkel and were on-site on both days.

T. On January 13, 2018, Henkel informed the Department by telephone that on that day the company identified a separation in a joint in its wastewater pipe conveying wastewater to the local POTW's system. Henkel also noted the joint separation in its February 27, 2018 response to the Department's NOV. Henkel stated to the Department that it ceased discharging wastewater to the local POTW's sewer main on January 11, 2018 and that its discharge remained shut down until January 25, 2018, when the installation of a new wastewater line, which Henkel utilizes to discharge its wastewater to the local POTW, was completed.

U. On January 17, 2018, the Department conducted an inspection at Henkel's West Hazleton facility. A Department representative met with the plant manager of the Henkel facility regarding the discovery of the separation in a joint of the terracotta lateral line, which Henkel utilized to discharge its wastewater to the local POTW, as well as Henkel's plan to install a new wastewater conveyance line as a corrective action measure to prevent unpermitted discharges.

V. On January 23, 2018, the Department was notified of a pollution incident in Black Creek. The Department conducted an inspection at Henkel's West Hazleton facility. Foam, considered to be an industrial waste, was noted in Henkel's stormwater Outfall 001 discharge channel and in Black Creek.

W. On January 23, 2018, the Department also received a 5-day written report from Henkel, dated January 18, 2018, with respect to the pollution incidents that occurred on January 11 and January 12, 2018 as noted in paragraphs Q and R, respectively.

X. On February 16, 2018, the Department was notified of a pollution incident in Black Creek. A Department representative investigated and noted foam, an industrial waste, in stormwater Outfall 001's discharge channel and within Black Creek.

Y. Sections 301 and 307 of the Clean Streams Law, 35 P.S. §§691.301 and 691.307, provide that no person shall discharge or permit the discharge of industrial waste into the waters of the Commonwealth without a permit or contrary to the terms of a permit.

Z. Henkel's pollution incidents described in paragraphs O, Q, R, V, and X constitute violations of Sections 301 and 307 of the Clean Streams Law, 35 P.S. § 691.301 and § 691.307.

Failure to Provide Notifications

AA. Section 92a.41(b) of the Department's regulations, 25 Pa. Code § 92a.41(b), requires that a permittee shall comply with the immediate oral notification requirements of § 91.33(a) relating to incidents causing or threatening pollution. Oral notification is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the pollution incident.

BB. The Department did not receive oral notification in accordance with 25 Pa. Code §§ 91.33(a) and 92a.41 from Henkel of the pollution incidents described in paragraphs O, Q, R, V, and X on the dates of the incidents, in violation, of 25 Pa. Code §§ 92a.41(b) and 91.33(a).

CC. Section 92a.41(b) of the Department's regulations, 25 Pa. Code § 92a.41(b), also requires that the permittee must submit written notification of a pollution incident within 5 days of the time the permittee becomes aware of the incident causing or threatening pollution. Failure to do so constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

DD. Henkel failed to submit written notification of the pollution incidents described in paragraphs O, Q, R, V, and X in a timely manner.

EE. On February 2, 2018, the Department sent a NOV notifying Henkel of its industrial waste discharge violations noted in paragraphs O, Q, R, V, and X, as well as its DMR submission violation noted in Paragraph M. The NOV also scheduled an enforcement conference with Henkel for February 28, 2018.

FF. On February 27, 2018, Henkel responded in writing to the Department's February 2, 2018 NOV. The response reiterated the submission of the January 23, 2018 pollution incident report, listed procedures taken place to correct the pollution incident, and summarized the steps Henkel has taken to prevent future pollution incidents.

GG. On June 6, 2018, an enforcement conference was held with Representatives of Henkel. The discussion focused on the pollution incidents described in paragraphs O, Q, R, V, and X above and Henkel's actions taken to identify and eliminate the source of those incidents.

HH. The Department conducted follow-up inspections on January 18, 2018, January 25, 2018, February 28, 2018, March 5, 2018, and March 12, 2018 and did not observe any additional incidents.

II. The violations described in Paragraphs G, H, L, M, O, Q, R, V, X, Z, BB, DD and EE constitute a statutory nuisance under Section 301 of The Clean Streams Law 35 P.S. § 691.301; unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611; and subject Henkel to a claim for civil penalties under Section 605 of The Clean Stream Law, supra, 35 P.S. § 691.605.

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Henkel as follows:

1. **Assessment.** In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of The Clean Streams Law, supra, 35 P.S. § 691.605, the Department hereby assesses a civil penalty of Nineteen Thousand, Four Hundred and Ten Dollars (\$19,410.00), which Henkel hereby agrees to pay.

2. **Civil Penalty Settlement.** Within fifteen (15) days of the date of this CACP, Henkel shall pay the civil penalty assessed in Paragraph 1. This payment is in settlement of the Department's claim for civil penalties for the violations and dates set forth in Paragraphs G, H, L, M, O, Q, R, V, X, Z, BB, DD and EE. The payment shall be by corporate check or the like, made payable to the Commonwealth of Pennsylvania, Clean Water Fund and sent to: Patrick Musinski, Environmental Group Manager, Pennsylvania Department of Environmental Protection, Clean Water Program, 2 Public Square, Wilkes-Barre, PA 18701-1915.

3. **Findings.**

a) Henkel agrees that the findings in Paragraphs A through HH are true and correct and, in any matter or proceeding involving Henkel and the Department, Henkel shall not challenge the accuracy or validity of these findings.

b) The parties do not authorize any other persons to use the findings in this CACP in any matter or proceeding.

4. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. Henkel reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this CACP.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of Henkel certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of Henkel, that Henkel consents to the entry of this CACP as an ASSESSMENT of the Department; that Henkel hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that Henkel knowingly waives its right to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law.

FOR
HENKEL US OPERATIONS
CORPORATION:

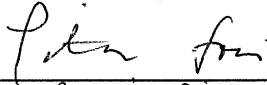
DEPARTMENT OF ENVIRONMENTAL
PROTECTION:



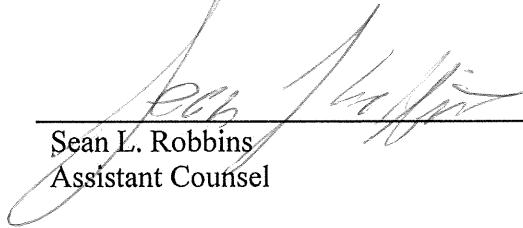
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Bharat Patel, P.E.
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Sean L. Robbins
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Approved as to Form
EDGAR
PEW
Henkel NA Law Dept.