UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Applicability of New Source Review Requirements to the Henkel Corporation

FROM: John B. Rasnic, Chief
Compliance Monitoring Branch
Stationary Source Compliance Division

TO: Bruce P. Miller, Chief
Air Programs Branch
Region IV

On December 18, 1987 you sent Gary McCutchen a memorandum which raised several questions regarding the proper permitting procedures for violating sources in nonattainment areas. Gary McCutchen's staff discussed the memo with your staff, SSCD, OECM and OGC, and it was decided that crafting a generic response to the hypothetical questions posed would be subject to misinterpretation. Alternatively, your staff requested a written response to a specific situation (regarding the Henkel Corporation) which involves similar issues. Due to the compliance issues raised, SSCD agreed to provide the response. Therefore, this memo addresses whether the Henkel Corporation specifically is a minor source and whether LAER and offsets are required.

It is our understanding that the Henkel facility in question had, prior to 1986, a potential to emit of over 100 tpy and did not have a federally enforceable SS51.18 permit. In 1986, process modifications caused a reduction in uncontrolled emissions to less than 100 tpy. There continue to be no federally enforceable conditions which restrict the source's allowable emissions to minor source levels.

In determining applicability to nonattainment New Source

Review, a source's potential to emit is based on uncontrolled emissions as may be limited by any federally enforceable

requirements. Given a lack of federally enforceable requirements, applicability is based simply on uncontrolled emissions. If our understanding is correct that the process change made in 1986 at Henkel caused uncontrolled emissions to be less than 100 tpy, then the source is currently minor. On the other hand if the facility could be operated in such a way as to emit over 100 tpy, even though actual emissions have been less than 100 tpy, the source would still be considered major.

Assuming the Henkel facility qualifies as a minor source, it would not be required to apply LAER nor obtain offsets. If however the source is still major, it is in violation of NSR permitting procedures, and must pay penalties and comply with injunctive relief as determined by any enforcement action that ensues. Appropriate injunctive relief could include the submission and receipt of a NSR permit which would require LAER and offsets, or the receipt of federally enforceable conditions which restrict emissions to minor source levels.

This response has been coordinated with the Air Enforcement Division of OECM and the New Source Review Section of AQMD. If you have any questions, please contact Sally M. Farrell at FTS 382-2875.

cc: Wayne Aronson, Region IV
Janet Hayward, Region IV
Gary McCutchen, AQMD
Dan deRoeck, AQMD
Judy Katz, OECM
Greg Foote, OGC