

## Proposed Pretreatment Settlement Agreement

PRETREATMENT SETTLEMENT AGREEMENT  
HENKEL

This Agreement is dated August 10, 2016, and is between the City of Scottsdale (the City), an Arizona municipal corporation, and Henkel Consumer Goods Inc. (Henkel), doing business at 7201 E. Henkel Way Scottsdale, Arizona 85255.

WHEREAS, pursuant to Arizona Revised Statutes, Sections 9-276 and 49-391, the City of Scottsdale Charter, and Chapter 49 Article IV of the Scottsdale Revised Code, the City has authority to build, repair and regulate sewer use and enforce the ordinances related thereto;

WHEREAS, pursuant to Chapter 49 Article IV of the Scottsdale Revised Code, the City requires each significant industrial user who releases industrial discharge into the sewer system to obtain a Class "A" Wastewater Discharge Permit from the Director of the Water Resources Department;

WHEREAS, Henkel is a significant industrial user that releases industrial process discharge into the City sewer system;

WHEREAS, the Water Resources Director issued Class "A" Wastewater Discharge Permit Number A-06 (Permit) to Henkel;

WHEREAS, the City issued to Henkel the following compliance and enforcement notices, all of which are attached hereto as Exhibit A and referred to collectively as the Notices:

- 1) On October 9, 2015, the City issued a Notice of Violation to Henkel for discharging Heptachlor, a prohibited substance. Heptachlor was detected on January 28, 2015; May 22, 2015; July 24, 2015; and November 17, 2015.
- 2) On July 15, 2016, the City issued to Henkel a Notice to Show Cause why the City should not issue monetary penalties as set forth within the Notice.

WHEREAS, on October 14, 2015 Henkel submitted a written Response the Notice of Violation, a copy of which is attached as Exhibit B;

WHEREAS, Henkel submitted to the City a Response to the Notice to Show Cause, a copy of which is attached as Exhibit C;

WHEREAS, the City and Henkel met on August 10, 2016;

WHEREAS, Henkel has devoted significant time, effort, and resources into investigating and addressing the aforementioned violations;

WHEREAS, prior to these violations Henkel had a good compliance history with the City;

WHEREAS, Henkel fully and professionally cooperated with City staff throughout the entire root cause investigation;

WHEREAS, it is the desire of the City and Henkel to resolve all disputes between them arising out of the allegations of the Notice without litigation; and

WHEREAS, to that end, the City and Henkel have entered into this Agreement in order to resolve all disputes between them according to the terms, conditions and provisions hereof,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. At the time of its signing this Agreement, Henkel agrees to pay to the City a civil penalty in the amount of one thousand dollars (\$1,000) which includes the public notice newspaper publication fee and which shall be paid within thirty days of a receipt of a billing statement sent by the City. Payments shall be made by check, payable to the City of Scottsdale and hand-delivered to the City of Scottsdale 8787 East Hualapai Drive Scottsdale, Arizona.

2. Timely and complete performance of all elements contained in Paragraph 1 constitutes complete satisfaction of all claims against, and all amounts owing by, Henkel and its directors, officers, employees, and agents to the City arising because of or in connection with the events described in the Notices. The City hereby releases Henkel and its directors, officers, employees, and agents from all claims, demands, penalties, liabilities, and actions, arising because of or in connection with the events described in the Notices.

3. The money paid by Henkel as required by this Agreement shall be used by the City in connection with its Industrial Pretreatment Program.

4. Both the City and Henkel reserve all legal remedies available to enforce the provisions of this Agreement. The City acknowledges that Henkel has entered into this Agreement as an accord to and resolution of a dispute with City, and that this Agreement does not constitute an admission of culpability or liability by Henkel.

5. Henkel acknowledges the City's intent to comply with its obligations regarding Henkel's Significant Noncompliance (SNC) status by listing Henkel as SNC in the City's annual pretreatment report to the City of Phoenix.

6. Henkel acknowledges that this Agreement is not and shall not be interpreted to be a permit issued under Chapter 49 of the Scottsdale Revised Code.

7. The provisions of this Agreement shall be severable, and should any provision be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

8. The persons executing this Agreement expressly represent and warrant that they are authorized to execute the same. Further, the parties expressly acknowledge that they, and each of them, have been, or had the opportunity to be represented by their respective attorneys in connection with the preparation and execution of this Agreement.

9. The parties agree that each of them shall undertake such further actions and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to its terms.

10. This Agreement sets forth the complete and exclusive understanding between the parties relating to the subject matter hereof and supersedes all prior oral and written understandings, representations, proposals and communications.

11. No waiver, modification, or amendment of any provision of this Agreement shall be binding upon either party unless agreed to in writing and executed by the parties.

12. This Agreement shall be governed by the laws of the State of Arizona.

13. Nothing in this Agreement shall create any private cause of action or other right or interest in favor of any person not a party to this Agreement.

14. The parties acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of A.R.S. Section 38-511.

15. In the event any party hereto finds it necessary to employ legal counsel to bring an action at law or other proceeding against any other party to enforce any of the terms, covenants or conditions hereof, the party prevailing in such action or proceeding shall be paid all reasonable attorneys' fees by the other party, unless otherwise determined by the court or by agreement of the parties, and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceeding. The amount of reasonable attorneys' fees shall be determined by the court and not by a jury.

16. Thirty-Day Public Comment Period.

a. Henkel acknowledges that before this Agreement can become final the City must provide a thirty-day public comment period. At a minimum, a public

notification will appear in the Arizona Republic newspaper and will, among other things, inform the public of the name and address of Henkel, the terms of the Agreement and the locations where this Agreement may be examined. This Agreement will also be posted on a City of Scottsdale public notice website. After the close of the thirty-day public comment period, the City will execute this Agreement or take whatever action it deems appropriate based upon the public comments received.

b. A copy of the Affidavit of Newspaper Publication will be attached as Exhibit D to this Agreement.

The parties have caused this Agreement to be duly executed by their authorized representatives.

HENKEL CONSUMER GOODS INC.



\_\_\_\_\_  
Holger Buschmann, Sr. Vice President Finance



\_\_\_\_\_  
Valerie Pochron, Assistant General Counsel

CITY OF SCOTTSDALE

\_\_\_\_\_  
David Petty, Acting Water Resources Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Janis L. Bladine, Senior Assistant City Attorney  
For Bruce Washburn, City Attorney

## **List of Exhibits**

- |           |  |
|-----------|--|
| Exhibit A | City of Scottsdale Compliance and Enforcement Notices Issued to Henkel |
| Exhibit B | Henkel's Response to the Notice of Violation                           |
| Exhibit C | Henkel's Response to the Notice to Show Cause                          |
| Exhibit D | Affidavit of Newspaper Publication                                     |

Exhibit A

October 6, 2015

Ms. Heidi Partlowe  
**Henkel Consumer Goods, Inc.**  
 7201 E. Henkel Way  
 Scottsdale, AZ 85255

Ms. Partlowe:

On July 24, 2015 the City of Scottsdale Water Quality Staff performed third quarter industrial user sampling at the designated compliance sample point as outlined in permit No. A-06-Henkel Consumer Goods, Inc.

Subsequently data analysis of the first and third quarter samples taken by the City of Scottsdale (City) revealed an exceedance of the City's value for heptachlor.

<u>Type of Violation</u>	<u>Sample</u>				<u>Value</u>	<u>Limit</u>
	<u>Date</u>	<u>Monitor</u>	<u>Location</u>	<u>Parameter</u>	<u>(µg/l)</u>	<u>(mg/l)</u>
Exceedance	01-28-15	COS	Henkel	Heptachlor	4.5	Prohibited
Exceedance	05-22-15	Henkel	Henkel	Heptachlor	0.20	Prohibited
Exceedance	07-24-15	COS	Henkel	Heptachlor	7.1	Prohibited

This most recent occurrence is the third detect for heptachlor for three consecutive quarters at your facility. In accordance to federal regulations and the City's Pretreatment Enforcement Response Plan (ERP), your facility has been determined to be in significant non-compliance (SNC). This SNC status could subject your facility to an administrative order, a show cause hearing, monetary penalty and publication in a valley wide newspaper signifying your SNC status.

The City hereby determines the following compliance schedule of required activities be conducted for Henkel Consumer Goods, Inc. to achieve compliance:

- **Self-Monitoring Requirement:** Beginning the week of **October 19, 2015** you are required to conduct a Temporary Increase in Self-Monitoring (TISM) for **heptachlor** using EPA method 608. The TISM requires that you collect one monthly heptachlor sample at your permitted outfall. You are required to continue monthly sampling until heptachlor is no longer detected in the effluent discharge for three (3) consecutive months. Email the results of each monthly sample within 24 hours of your receipt from your lab.

- **Secondary Containment Tanks:** The City recommends the three industrial tanks be completely pumped and power-washed along with the connecting lines to the city sewer and from the respective labs. **The waste sludge in the three secondary containment tanks shall not be disposed of in the city sewer.** The intention of this action is to eliminate existing instances of heptachlor in the tanks.
- **Response:** Respond, in writing, within ten (10) days from the date that you receive the NOV; provide a written explanation for the violation; correct the problem and provide a written explanation for any corrective actions taken; re-sample the parameter(s) listed above once per month until permitted limits are achieved, and submit sample results, in writing, to the City within 24 hours from the time you receive them.
- **Enforcement Actions:** To be in full compliance of this administrative order, you must meet the requirements listed above. If you fail to meet the requirements, the City will then apply the next step(s) of enforcement according to the City's Enforcement Response Plan and Penalty Policy Plan.
- This notice does not preclude the City from taking additional enforcement actions.

If you have any questions or concerns regarding this letter, please contact me at (480) 312-8709

Respectfully,

Zoltan Dregely  
Water Quality Coordinator

Christina M. González, City of Scottsdale Water Quality Specialist (email)

Carie Wilson, City of Scottsdale Regulatory Compliance Manager (email)

Suzanne Grendahl, City of Scottsdale Water Quality Director (email)

Janis Bladine, City of Scottsdale Asst, Sr. I City Attorney (email)

July 15, 2016

Ms. Heidi Partlowe  
Safety and Environmental Coordinator  
Dial Corporation, a Henkel Company.  
7201 E. Henkel Way  
Scottsdale, Arizona 85255

Hand Delivered: \_\_\_\_\_

Date: \_\_\_\_\_

Received by: \_\_\_\_\_

Signature: *Zed Dugan* 8/1/2016

Re: Notice of Show Cause Meeting

Dear Ms. Partlowe:

As you know, on four separate occasions between January 8, 2015 and January 8, 2016, Dial Corporation, a Henkel Company (Henkel) discharged Heptachlor, a prohibited substance.<sup>1</sup> Henkel Company was previously notified of these pretreatment violations and was issued a Notice of Violation (NOV) on October 9, 2015 to which Henkel responded on October 14, 2015. Henkel investigated the violations and cleaned its internal tanks. Re-sampling after tank cleaning showed no further detections of Heptachlor.

In light of these violations and in accordance with the City of Scottsdale Revised Code and Enforcement Response Plan, the City has completed a point assessment and a civil penalty calculation, a copy of which is enclosed with this Notice. As a result, the City, acting as the Control Authority pursuant to Title 40 of the Code of Federal Regulations Part 403, hereby notifies Henkel of its intent to use appropriate remedies to address the pretreatment violations, including monetary penalties.

Representatives from Henkel are required to attend a Show Cause Meeting to be held on August 4, 2016 at 9:00 a.m. in the Water Resources Office at 8787 E. Hualapai Dr., Scottsdale, AZ 85255.

During the Show Cause Meeting, Henkel will be given the opportunity to respond to the allegations, and will be asked to show cause why the City should not seek monetary and/or other penalties. Henkel may choose to present to the City for its consideration, information relevant to the following penalty factors:

- Seriousness of the violation(s);
- Economic benefit resulting from the violation(s);
- History of violations;
- Good faith efforts to comply;
- Economic impact of penalty on violator; and,
- Such other factors as justice may require.<sup>2</sup>

Henkel is required to have in attendance at this meeting, persons knowledgeable about the matters alleged in this Notice, as well as persons having financial decision-making authority.<sup>3</sup> If desired, Henkel representatives

<sup>1</sup> Scottsdale Revised Code § 49-161(b)(10).

<sup>2</sup> City of Scottsdale Enforcement Response Plan at 7.

<sup>3</sup> Although we anticipate your continued professional cooperation, please be aware that a failure to appear will mean that the City will take all appropriate enforcement action it deems necessary, based on the facts as outlined in this Notice and attachments.

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may be accompanied by legal counsel. Please be aware that a representative from the City Attorney's Office will be present at the meeting.

Should Henkel desire to submit a written response for consideration during the Show Cause Meeting, it must be received by the Water Resources Office on or before 4:00 p.m. on August 1, 2016. For your reference, enclosed is a copy of the City's Civil Penalty Calculation Worksheet along with the City's Enforcement Response Plan and excerpts of the Scottsdale Revised Code.

Should you have any questions regarding this Notice, please contact Zoli Dregely, Water Quality Coordinator at 480-312-8709 whose office hours are 7:00 a.m. to 4:00 p.m., Monday through Friday.

Sincerely,

Zoli Dregely  
Water Quality Coordinator

Enclosures: Civil Penalty Calculation Worksheet  
NOV dated October 6, 2015  
City of Scottsdale Enforcement Response Plan  
Scottsdale Revised Code excerpts

C: Carie Wilson, City of Scottsdale Regulatory Compliance Manger  
Suzanne Grendahl, City of Scottsdale Water Quality Director  
Janis Bladine, City of Scottsdale Senior Assistant City Attorney

**CIVIL PENALTY CALCULATION WORKSHEET**

Permit Number: COS ID 6000  
Dial Corporation, a Henkel Company.  
7201 E. Henkel Way  
Scottsdale, Arizona 85255  
List of Violations

**VIOLATIONS IDENTIFIED BY CITY MONITORING**

<u>Date</u>	<u>Parameter</u>	<u>Discharge Concentration</u>	<u>Discharge Limitation*</u>
01/28/2015	Heptachlor	4.5 ug/l	0.0 mg/L (P)*
07/24/2015	Heptachlor	7.1 ug/L	0.0 mg/L (P)*
11/17/2015	Heptachlor	0.54 ug/L	0.0 mg/L (P)*

**VIOLATIONS IDENTIFIED BY SELF MONITORING**

<u>Date</u>	<u>Parameter</u>	<u>Discharge Concentration</u>	<u>Discharge Limitation*</u>
05/22/2015	Heptachlor	0.20 ug/L	0.0 mg/L (P)*

= Daily Maximum      MAV = Monthly Average      I = Instantaneous Limit      \*P = Prohibited

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Penalty Calculations

Violation	Point Assessment	Penalty Amount <sup>4</sup>	Notes
01/28/2015	1	\$1,000	P-4, Prohibited discharge into the POTW
05/22/2015	2	2,000	P-5, Prohibited discharge into the POTW, 2 <sup>nd</sup> occurrence
07/24/2015	3	3,000	P-6, Prohibited discharge into the POTW, 3 <sup>rd</sup> occurrence or more
11/17/2015	3	3,000	P-6, Prohibited discharge into the POTW, 3 <sup>rd</sup> occurrence or more
<b>Subtotal</b>	<b>9</b>	<b>\$9,000</b>	
SNC Penalty		\$2,500 + publication in a newspaper of general circulation	Significant Non-Compliance (SNC) status attained due to accrual of more than 4 points
Publication Fee		1,000	To provide 30-day public comment
<b>Total</b>		<b>\$12,500 + publication in a newspaper of general circulation</b>	

<sup>4</sup> Each point equates to \$1,000.  
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Exhibit B

11/9/2015  
Z.D.



October 14, 2015

Mr. Zoltan Dregely  
Water Quality Coordinator  
Industrial Pretreatment Program  
8787 E. Hualapai Dr.  
Scottsdale, AZ 85255

Dear Mr. Dregely,

I am writing to acknowledge receipt and respond to the Notice of Violation (NOV) issued due to the detection of heptachlor in three consecutive quarterly wastewater samples. Henkel Consumer Goods, Inc. (Henkel) received the NOV on October 9, 2015 (hand-delivered by the City). As the City is aware from our previous discussions on this matter, we assure you that Henkel is taking this matter very seriously and is diligently working to investigate and rectify the problem.

As an initial matter, it is important to know that Henkel has a strong process for identifying and inventorying each and every chemical that is present at our Scottsdale facility. We have checked all MSDSs/SDSs, performed a physical inspection and searched our Chemical Inventory System and confirmed that we do not have any heptachlor onsite, nor have we identified any material that contains heptachlor. For this reason and per the follow-up letter provided to you in June 2015, when our initial Root Cause Analysis was completed, we suspected that intrusion from contaminated runoff or intrusion into the sewer where the quarterly samples are collected (Outfall 003) may be or may have been the source. This sewer is on common property and not on Henkel property. There seemed to be a correlation between rain events and the positive detection, so this seemed the most likely scenario as Henkel does not have and has never had heptachlor onsite.

To further investigate, in addition to full chemical inventory review, Henkel performed additional exploratory sampling above and beyond the requirements by the City. We hired an independent consultant to pull samples to represent all sources of water which feed into the city sewer and sent them for analysis using method EPA 608 for heptachlor. The sampling points included:

- Facility process wastewater (result non-detect)
- Sanitary wastewater (result non-detect)
- Kitchen wastewater (result non-detect)
- East Wastewater Tank – R&D Labs (result detect)
- Center Wastewater Tank – R&D Laundry and Home Care Pilot Plant (result detect)

- West Wastewater Tank – R&D Personal Care Pilot Plant (result detect)

As noted above, we detected low (ppb) levels of heptachlor in three R&D Wastewater Collection Tanks located on the first floor of our parking garage. These tanks contain process wastewater from our R&D laboratories and scale-up pilot plants. These tanks are merely holding tanks primarily for spill containment purposes and are not used for wastewater treatment. We again looked at possible sources from the R&D laboratories and pilot plants and found no known heptachlor containing products or raw materials that could have resulted in the chemical being present in the tanks.

Once additional testing yielded positive analytical results for heptachlor using EPA Method 608 in the industrial wastewater holding tanks for the labs and pilot plants, we have formed a cross-functional team to perform a new root cause investigation to identify and address the issue. Emphasizing how seriously Henkel takes this matter, the team includes the Vice Presidents of R&D, the Analytical Chemistry Manager, the Pilot Plant Managers, the Facilities Manager, the SHEQ Manager and the SHE Coordinator.

The cross functional team continues to meet to identify potential root causes. Since the site has a strong chemical control system with a barcode inventory and we have no known heptachlor onsite, we have begun to suspect that an analytical issue may be the cause of the positive detections in both the quarterly wastewater and recent additional sampling. As a result, the following actions have been taken:

- We have pulled new samples from the wastewater tanks for additional sampling to analyze using a different sampling method.
- We are again reviewing any new chemicals introduced to our Scottsdale facility since October 1, 2014. The intent is to identify if there are any changes in composition that may be causing matrix issues with the 608 method. Additionally, chemical reactions in the wastewater tanks could be forming a halogen-containing compound resulting in a false detection of heptachlor. To definitively determine presence of heptachlor, EPA 525 gas chromatography/mass spectrometry testing is underway.
- If the 525 method results do not identify heptachlor in the wastewater tanks, we will set up a meeting with the City to explore further the potential of lab/matrix issues with the 608 method. We conducted additional voluntary testing on the wastewater tank samples referenced above. We ran a 'rush' 608 on the Center Wastewater Tank sample (previously a hit at 30 µg/L). The repeat sampling on the same tank, using the same lab with the same method came back non-detect (below the reportable limit 0.05 µg/L). See attached results. The tanks have not been cleaned or completely drained (i.e., they have maintained normal discharge) since the last sampling event. For additional investigation, we then authorized analysis of the East and West tanks for 608 analysis; results are pending.

If the EPA Method 525 confirms the presence of heptachlor, we will:

- Widen our investigation of raw materials in Scottsdale to determine if any materials are sourced from foreign countries where heptachlor is not banned, paying particular attention to raw materials that come from natural sources where the presence of heptachlor may not be known, noting that the material has been detected at very low levels (ppb).

- Investigate if any materials received onsite are coming through new suppliers, focused on materials new to the Scottsdale facility since Q4 of 2014.

Per your recommendation, the site is in the process of planning the steps necessary to jet out the lines that lead from the East Outfall to the wastewater tanks and from the R&D drains to the tanks. In addition, Henkel will begin the increased self-monitoring as requested beginning the week of October 19<sup>th</sup> and will continue monthly sampling and analysis with EPA Method 608 until heptachlor is no longer detected in the effluent for three consecutive months.

Of course, consistent with our open line of communication with the City, we will keep you posted on our continued efforts with the GC/MS testing. Thank you for your continued cooperative support during this investigation.

Sincerely,  
  
Heidi Partlowe  
Safety and Environmental Coordinator

Cc: Martina Spinatsch, Vice President Laundry and Home Care R&D  
Pamela Lam, Vice President Personal Care R&D  
Doris Dieleman, Facilities Manager

Exhibit C



August 1, 2016

Mr. Zoltan Dregely  
Water Quality Coordinator  
Industrial Pretreatment Program  
8787 E. Hualapai Dr.  
Scottsdale, AZ 85255

Dear Mr. Dregely,

I am writing to confirm receipt for the Notice to Show Cause notification dated July 15<sup>th</sup>, 2016. Henkel representatives Heidi Partlowe and Doris Dieleman from the facility and Jonathan Blaine, a representative of our corporate safety health and environmental and legal departments, will attend at the Show Cause Meeting on August 10<sup>th</sup> at 9:30 am at the Water Resources Office. We appreciate your willingness to adjust the meeting time to ensure all participants are available. Please find attached our written response for consideration during this meeting. We look forward to the opportunity to discuss and gain final resolution on this matter with you.

Sincerely,

A handwritten signature in cursive script that reads "Heidi Partlowe".

Heidi Partlowe  
Safety and Environmental Coordinator

Enclosures: Show Cause Response  
Certificate of Analysis (Sample ID: IUCG15-072)

Cc: Peter Crayton, Henkel Director SHEQ  
Martina Spinatsch, Henkel Vice President Personal Care R&D  
Pamela Lam, Henkel Vice President Laundry and Home Care R&D  
Doris Dieleman, Scottsdale Facilities Manager  
Alan Gropp, Henkel Sr. Vice President Supply Chain  
Christopher Signorello, Vice President, Associate General Counsel



July 28, 2016

### Show Cause Response

#### Background - Henkel Facility and Permit History:

The Henkel Consumer Goods facility located at 7201 E. Henkel Way in Scottsdale, Arizona (“Site”) serves as the North American Consumer Goods Headquarters and Research and Development facility. The Site is comprised of a 4 story building (including parking garage) which houses various analytical and product development laboratories, two pilot plants, a warehouse and Administrative Offices. The Site maintains several environmental permits and registrations covering, among other things, air emissions, wastewater discharge, and waste disposal. There are robust programs in place for each regulatory program, the success of which can be measured by the strong positive compliance history. Relevant to the topic of this Show Cause Hearing, the Site has maintained an industrial wastewater permit with the city since it began operating and has maintained compliance with that permit with no exceedances for over 10 years, with the exception of the Heptachlor issue that gave rise to these proceedings.

Henkel prides itself on conducting business in a way to have minimal impact on the environment and has Sustainability as one of its Core Values. The Scottsdale site has demonstrated commitment in this area and has gone above and beyond compliance. The facility is a LEED Silver Certified site and also has a well-developed Safety, Health, Environment and Quality Management System with certifications to ISO 9001 (Quality), ISO 14001 (Environment) and OHSAS 18001 (Safety).

#### Purpose:

During the Show Cause Meeting, Henkel intends to provide information relating to its investigations into the presence of Heptachlor in the wastewater samples noted in the Show Cause notice, as well as its reasons for why the City should not seek monetary and/or other penalties in connection with those results. A brief summary of the information and explanations/reasons which Henkel intends to present at the Show Cause hearing is presented below. Such information addressed the relevant penalty factors outlined in the City of Scottsdale Enforcement Response Plan including:

- Seriousness of the violation(s);
- Economic benefit resulting from the violation(s);
- History of violations;
- Good faith efforts to comply;
- Economic impact of penalty on violator; and
- Any other factors relevant to justice in the matter.

In the Show Cause Hearing notice dated July 15, 2016, the City alleged the following:

Page 1 of 5



On four separate occasions between January 8, 2015 and January 8, 2016, Dial Corporation, a Henkel Company (Henkel) discharged Heptachlor, a prohibited substance. Henkel Company was previously notified of these pretreatment violations and was issued a Notice of Violation (NOV) on October 9, 2015.

VIOLATIONS IDENTIFIED BY CITY MONITORING

<u>Date</u>	<u>Parameter</u>	<u>Discharge Concentration</u>	<u>Discharge Limitation*</u>
01/28/2015	Heptachlor	4.5 $\frac{\mu\text{g}}{\text{L}}$ mg/L	0.0 $\frac{\mu\text{g}}{\text{L}}$ mg/L (P)*
07/24/2015	Heptachlor	7.1 $\frac{\mu\text{g}}{\text{L}}$ mg/L	0.0 $\frac{\mu\text{g}}{\text{L}}$ mg/L (P)*
11/17/2015	Heptachlor	0.54 $\frac{\mu\text{g}}{\text{L}}$ mg/L	0.0 $\frac{\mu\text{g}}{\text{L}}$ mg/L (P)*

VIOLATIONS IDENTIFIED BY SELF MONITORING

<u>Date</u>	<u>Parameter</u>	<u>Discharge Concentration</u>	<u>Discharge Limitation*</u>
05/22/2015	Heptachlor	0.20 $\frac{\mu\text{g}}{\text{L}}$ mg/L	0.0 $\frac{\mu\text{g}}{\text{L}}$ mg/L (P)*

= Daily Maximum    MAV = Monthly Average    I = Instantaneous Limit    \*P = Prohibited

Relevant to Henkel’s responses provided below, it is noted that the units for the discharge concentration in the table above are incorrect. Laboratory results for Heptachlor are micrograms per liter ( $\mu\text{g}/\text{L}$ ) rather than milligrams per liter (mg/L). This inaccuracy has already been communicated to the City. It is also additionally noted that the discharge concentration reported for 7/24/15 in the table above is an order of magnitude higher than the lab reported results provided on the Certificate of Analysis (Sample ID IUCG15-072) aside from the unit inaccuracy and should read 0.71  $\mu\text{g}/\text{L}$ . A copy of the Certificate of Analysis showing this data provided by the City is included as an attachment to this response. This inaccuracy was also communicated to the City.

In connection with the alleged violations noted above, the City informed Henkel that is was seeking \$9,000 in penalties plus an additional \$3,500 in adjustments for significant non-compliance and publication for a total of \$12,500.

**Henkel Response:**

In response to the July 15, 2016 notification regarding the Show Cause hearing, Henkel will present evidence as to why the detections of Heptachlor in its wastewater discharge stream during 2015 should not be considered to be repeat occurrences resulting in significant non-compliance or the need for publication.



1. Lack of Serious Violation

- The results referenced in the October NOV indicate that the presence of heptachlor was at very low levels in the single  $\mu\text{g/L}$  range. This is several orders of magnitude lower than the  $\text{mg/L}$  units associated with the prohibition.
- Henkel's water discharge to the City system is very low volume, representing only a minute fraction of the total flow to the City treatment works.
- While Henkel would prefer that no heptachlor was ever detected in our discharge (which we believe is the norm), given the sporadic nature of the presence of heptachlor in the wastewater stream, the low concentration and the low flow, Henkel believes that whatever small amount of heptachlor that reached the City sewer had no adverse impact.
- Henkel has never had heptachlor on its Site and none of the chemicals and substances which have been present at the Site list heptachlor as a component even at trace levels. Henkel never intended to discharge nor did it have reason to believe that it would discharge heptachlor in any amount. Compliance monitoring of our outfall as required in the October NOV did reveal the presence of heptachlor at a level roughly equivalent to the laboratory detection limit, but in December 2015, January 2016 and February 2016 were non-detect for heptachlor.
- For these reasons, and others which may be discussed, Henkel not believe that there was a serious violation or even significant non-compliance associated with the heptachlor issue.

2. No Economic benefit to Henkel

- Henkel has not used and does not have any Heptachlor at its Site and therefore has never had any costs associated with its management or disposal. In fact, the detected presence of the substance in the wastewater stream in 2015 came as a complete surprise.
- Contrary to economic benefit, the presence of Heptachlor in the wastewater in 2015 resulted in a detriment to Henkel. Among other things, it resulted in unquantifiable costs for the time incurred by the large internal Henkel team, suppliers and third party experts, additional sampling and analysis costs totaling approximately \$10,000, and additional costs associated with emptying and cleaning the wastewater holding tanks.

3. History of Permit Compliance

- Henkel has reviewed its compliance records. The Site has not had an exceedance of an effluent limit since building inception in 2008.
- The Site maintains a robust program to ensure permit compliance that includes strict laboratory and pilot plant discharge procedures, routine preventive wastewater system maintenance, continuous review and tracking of chemicals on-site and adherence to an approved total toxic organic management plan. The City has acknowledged after the requirements of the October



NOV were closed-out that the Site adherence to the TTO plan is sufficient to ensure that toxic organic chemicals such as heptachlor are effectively kept out of the City sewer system.

4. Good Faith Efforts of Henkel

- The site has a strong history of cooperation with the City in the past and throughout the investigation of this issue.
- In response to the initial sampling results indicating that Heptachlor has been detected in our wastewater discharge, Henkel engaged an independent consultant to help us determine why the substance may have been in the effluent and where it may have come from. With their assistance as well as input from our internal investigation team, we explored all avenues to determine the root cause. In addition to performing a deep dive review of all chemicals at the Site, Henkel conducted additional sampling and analysis above and beyond the requirements of the permit or City requests as summarized below.
  - Collected samples to represent all sources of water which feed into the city sewer and sent them for analysis using method EPA 608 for heptachlor (e.g., facility wastewater, sanitary wastewater, kitchen wastewater, and water held in the three wastewater tanks for the labs and pilot plants)
  - Split sampling sending results to two different labs
  - Use of additional analytical methodology to confirm the presence (or absence) of heptachlor using GC/MS (EPA 625)
  - Increased self-monitoring rush analysis on all samples
- Henkel acted promptly and aggressively to resolve the Heptachlor issue even before the NOV was issued in October 2015 and maintained full and transparent communications with the City during the entire time.
- Henkel fully complied with all the terms noted in the October NOV, including additional monitoring over the next four months and immediate cleaning of the wastewater tanks in October 2015.

5. Lack of Identified Source of Heptachlor

- Henkel has a robust process for identifying and inventorying each and every chemical (including components) that is present at our Scottsdale facility.
- Beyond the standard review process, in connection with the heptachlor issue, we checked all MSDSs/SDSs, performed a physical inspection and searched our Chemical Inventory System. Despite all efforts to date, we have not found any heptachlor on site, nor have we identified any material that contains heptachlor. Put succinctly, after thorough investigation, no source of heptachlor contamination was ever found either by Henkel or the City. Because Henkel has



never had heptachlor at its Site, we have never engaged in any act which could have introduced into our discharge the heptachlor that was detected on the occasions noted in the NOV.

6. Other Factors for Consideration

- As noted above, Henkel fully complied with the requirements listed in the NOV and demonstrated, whether through its efforts or other reasons, that Heptachlor is no longer present in detectable concentrations in our discharge. Based in the language of the October NOV, Henkel was under the impression that full compliance would likely preclude the need for the City to take further enforcement action such as that which we are now facing.
- Henkel believes that the sum of its efforts, the lack of an identifiable source, lack of impact to the City sewer system and the enforcement proceedings already initiated and closed concerning this problem have provided sufficient justice in regards to the problems related to the Heptachlor in 2015.

For all the reasons noted above, we believe that no further action is required with regard to the 2015 heptachlor matter. Specifically, Henkel does not believe that the City ERP or justice require the imposition of civil penalties, fees or public involvement in a matter that both the City and Henkel were admittedly perplexed by from the time of initial to final detection.



Water Quality Laboratory  
 8787 E. Hualapai Dr.  
 P.O. Box 25089  
 Scottsdale, AZ 85255

8/25/2015  
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 9.29.15  
 any  
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- CERTIFICATE OF ANALYSIS -

Lab # AB58618

Zoll Dregely  
 City of Scottsdale  
 8787 E. Hualapai Drive  
 Scottsdale, AZ 85255

Sample ID: IUCG15-072  
 Location ID: ID #6000

Date Sampled: 07/24/2015  
 Time Sampled: 08:20  
 Date Received: 07/24/2015  
 Report Date: 08/19/2015

Location Description: Henkel/Dial Corporation

Test	Method	Result	Data Qualifier	DF	Units	PQL	Analysis Date
pH, Field	SM4500-H B	7.83		1.00	Std. Units		07/24/2015
Water Temperature, Field	SM2550 B	29.8		1.00	°C		07/24/2015
Chemical Oxygen Demand	HACH 8000	597		1.00	mg/L	20	08/07/2015
Fluoride, F	EPA 300.0	0.7		1.00	mg/L	0.2	08/07/2015
Residue, Total Dissolved	SM 2540 C	1400		1.00	mg/L	20	07/28/2015
Residue, Total Suspended	SM 2540 D	108		1.00	mg/L	10	07/24/2015
Chromium, Cr	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Nickel, Ni	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Copper, Cu	EPA 200.8	0.0609	D1	5.00	mg/L	0.0050	08/04/2015
Zinc, Zn	EPA 200.8	0.129	D1	5.00	mg/L	0.050	08/04/2015
Arsenic, As	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Selenium, Se	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Molybdenum, Mo	EPA 200.8	0.0093	D1	5.00	mg/L	0.0050	08/04/2015
Silver, Ag	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Cadmium, Cd	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Lead, Pb	EPA 200.8	< 0.0050	D1	5.00	mg/L	0.0050	08/04/2015
Heptachlor	EPA 608	0.71		10.00	ug/L	0.50	07/31/2015
Heptachlor epoxide	EPA 608	< 0.50		10.00	ug/L	0.50	07/31/2015



Water Quality Laboratory  
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8/25/2015  
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 9.29.15  
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- CERTIFICATE OF ANALYSIS -

Zoll Dregely  
 City of Scottsdale  
 8787 E. Hualapai Drive  
 Scottsdale, AZ 85255  
 Sample ID: IUCG15-072  
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Exhibit D

[To be inserted after publication]