

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

METOKOTE CORPORATION

Facility ID# 07-02-023

ADMINISTRATIVE CONSENT ORDER
NO. 2009-AQ-30

TO: MetoKote Corporation
Andy Rickert, Plant Manager
312 Savannah Park Road
Cedar Falls, Iowa 45801

MetoKote Corporation
CT Corporation System, Registered Agent
2222 Grand Avenue
Des Moines, Iowa 50312

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and MetoKote Corporation (MetoKote) for the purpose of resolving air quality violations at its facility in Cedar Falls, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Rick Martens, Field Office No. 1
Iowa Department of Natural Resources
909 West Main, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

DESCRIPTION OF FACILITY:

1. MetoKote has a facility located at 312 Savannah Park Road, Cedar Falls, Iowa. This facility is known as MetoKote Plant 15. MetoKote provides protective coating applications for automotive, agricultural and construction equipment. The Cedar Falls facility surface coats mostly agricultural equipment. MetoKote surface coats metal parts through the use of an electro deposition paint line and two wet paint lines. The wet paint lines each consist of a parts preparation and wash station, primer booth, flash off area, top coat booth and drying oven. These lines emit to the outside air through roof stacks and have been issued air quality construction permits by DNR. Additionally, this facility is a Title V major source of air pollution and has a Title V permit from DNR, Permit No. 99-TV-032R1, issued June 12, 2007.

2. On June 5, 2009, DNR Field Office No. 1 received an anonymous complaint concerning paint deposited on cars located north of the Cedar Falls MetoKote facility. On June 9, 2009, Rick Martens of DNR Field Office No. 1 visited the site. Mr. Martens first visited the parking lot of the Standard Distribution Company, located across the street to the north from MetoKote. Although the vehicles surfaces in the parking lot appeared normal, on the south side of the lot, Mr. Martens observed green paint spots on the top of the white mailbox.

3. Mr. Martens next visited the MetoKote facility. At MetoKote, Mr. Martens met with Andy Rickert, Plant Manager; Dawn Winhold, Technical Quality Manager; and Larry Martinez, Production Manager. During the conversation, Eric Kerner, Environmental Manager, also was contacted by telephone. Mr. Martens and the MetoKote personnel discussed the complaint of paint emissions discharging from the facility onto neighboring property. Mr. Rickert explained that MetoKote was aware of the past discharges of paint from the facility and that MetoKote had been making efforts to resolve the problem. Mr. Rickert stated that MetoKote had been receiving complaints concerning paint deposited on vehicles for over a year. He

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stated that MetoKote had been paying to clean car finishes affected by the paint discharges.

4. Mr. Martinez explained to Mr. Martens that the Line 3 wet paint line originally utilized a water curtain to control emissions. DNR Air Quality Construction Permits 96-A-624-S3 and 96-A-626-S3 were issued to the facility on June 14, 2007, for, respectively, a Line 3 Top Coat Spray Booth using a Water Curtain as control equipment, and a Line 3 Primer Spray Booth using a Water Curtain as control equipment. Mr. Martinez stated that the water curtain controls had sometimes failed and then paint could be emitted out the stack. He stated that the two-part paint system is a slow-drying formulation and that a bake oven is used to speed the process of drying the paint. He stated that MetoKote had attempted to correct the emission problem in the spring of 2009 by replacing the water curtain controls with dry filters. MetoKote made these changes without timely requesting to modify its Line 3 air quality construction permits.

5. Accompanied by Mr. Martinez, Mr. Martens inspected the MetoKote production area, the paint lines, and the facility roof. Mr. Martinez pointed out an area inside the facility where the Water Curtain System tanks had been located but were now removed. Mr. Martins observed the two Line 3 paint booths, which were operating. A dry filter was installed on the floor of each down-draft booth. Mrs. Martinez pointed out recently installed controls to adjust fan speed to the paint booth exhaust stacks. Again, MetoKote made these changes without timely requesting to modify its Line 3 paint booth air quality construction permits.

6. On the roof of the facility, Mr. Martinez and Mr. Martens inspected the stack and roof surfaces. Spots of green paint were evident on roof surfaces and on outside stack surfaces connected to the Line 3 paint booths. The two stacks for the Flash Off areas of Line 3, permitted by DNR Air Quality Construction Permit Nos. 96-A-625-S1 and 96-A-627-S1, issued June 14, 2007, also showed a build-up of green paint. Mr. Martinez noted that he was aware that the Flash Off stacks might discharge paint and that he had modified the stacks to slow air discharge. The green paint spots observed on the roof appeared identical to the paint spots observed at the Standard Distribution Company facility. Near the base of both Line 3 paint booth stacks, Mr. Martens and Mr. Martinez observed clumps of green paint residue. Mr. Martinez stated that he believed the paint had been discharged during maintenance or cleaning of the stacks. Mr. Martinez was instructed by Mr. Martens to remove the accumulated paint debris from the roof.

7. None of the MetoKote staff could recall or provide records of notifications to DNR concerning excess emissions or applications to modify the permitted air emission points, as required. On June 10, 2009, Mr. Kerner contacted DNR Field Office 1 and stated that no records were located indicating that MetoKote had contacted DNR regarding excess emissions or had applied for air quality

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construction permit modifications prior to making changes to the two Line 3 paint booths. Mr. Kerner was able to conclude from a search of company records that the dry filters were installed to replace the wash curtains in April 2009.

8. A June 11, 2009, Notice of Violation (NOV) letter was sent by DNR Field Office No. 1 to MetoKote, citing failure to make reports of excess emissions in compliance with 567 IAC section 24.1 and failure to timely obtain air quality construction permit modifications in compliance with 567 IAC section 22.1. Further, MetoKote has violated the conditions of its Title V Operating Permit, Permit No. 99-TV-032R1, issued June 12, 2007. The NOV directed MetoKote to submit as-built air quality construction permit applications within 30 days; and to immediately remove the paint debris from the facility roof.

9. On July 14, 2009, MetoKote applied for as-built modifications to the four air quality construction permits for the Line 3 paint booths and flash off areas. Permits were issued July 31, 2009.

10. MetoKote has previous air quality violations. A June 14, 2002, NOV letter was sent to MetoKote for violations of operating limits in air quality construction permits and its Title V permit.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

Failure to report excess emissions:

2. 567 IAC 24.1 requires that an incident of excess emissions, other than an incident of excess emissions during a period of startup, shutdown or cleaning, shall be reported to the DNR field office within eight hours of the incident, or at the start of the first working day following the onset of the incident. MetoKote has a history of control system failures that have occurred over several years and have caused damage to neighboring properties. MetoKote has had its system failures brought to its attention by members of the public for a period of more than one year. The excess emissions incidents were frequent enough that in the spring of 2009, MetoKote made major unpermitted system modifications in an attempt to address the problem. MetoKote failed to report any of these incidents of excess emissions.

Failure to maintain equipment:

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3. 567 IAC 24.2(1) requires that the owner or operator of any equipment or control equipment shall maintain and operate the equipment or control equipment at all times in a manner consistent with good practice for minimizing emissions; remedy any cause of excess emissions in an expeditious manner; minimize the amount and duration of any excess emission to the maximum extent possible during periods of such emissions; implement measures contained in any contingency plan prepared in accordance with 24.2(2)"c;" and schedule, at a minimum, routine maintenance of equipment or control equipment during periods of process shutdown to the maximum extent possible. MetoKote has failed to maintain its equipment and control equipment in a manner that avoids damage to neighboring properties.

Failure to timely obtain construction permits:

4. 567 IAC 22.1(1) provides that unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph "c" of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to 22.8(455B), or permits required pursuant to 22.4(455B) and 22.5(455B) as required in this subrule. MetoKote failed to obtain modifications to four of its air quality construction permits prior to making changes to its facility in an effort to resolve its excess emissions problems.

Failure to comply with Title V operating permit conditions:

5. When MetoKote failed to comply with the conditions of four of its air quality construction permits and failed to apply for modifications to those air quality construction permits prior to making changes to its facility, MetoKote also failed to comply with the conditions of its Title V Operating permit, which reflected the conditions in its air quality construction permits.

V. ORDER

THEREFORE, the DNR orders and MetoKote agrees to do the following:

1. MetoKote shall comply with the requirements of 567 IAC 24.1 to timely report incidents of excess emissions;
2. In the future, MetoKote shall timely obtain modifications to its air quality construction permits prior to making changes to its equipment or control equipment;
3. By November 30, 2009, MetoKote shall submit to DNR a maintenance plan according to the provisions of 567 IAC 24.2(2); and

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4. MetoKote shall pay a penalty of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$5,000.00. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – MetoKote's failure to timely obtain modifications to its construction permits prior to making changes to its equipment and control equipment has allowed MetoKote to avoid DNR review of its processes and to avoid possible stack testing. MetoKote also avoided the time and expense of applying for permit modifications. This savings is estimated to be at least \$2,000.00, and this amount is assessed for this factor.

Gravity of the Violation - An air quality construction permit is required to be obtained prior to construction in order to allow for the prior review of plans and specifications pertaining to a proposed contaminant source. The purpose of this review is to determine if the source will meet all applicable emission limits and operating requirements. This review insures that the interests of the citizens of Iowa in clean air are protected. Construction prior to obtaining required permits also threatens the integrity of the construction permit and air pollution control programs. MetoKote's continued unreported excess emissions incidents and failure to maintain its equipment in a manner consistent with good practice for minimizing emissions has allowed businesses and individuals located in close proximity to Metokote to experience property damage for a period of more than a year. For these reasons, \$2,000.00 is assessed for the gravity of the violations.

Culpability – MetoKote has held air quality construction permits from DNR since 1995 and was issued its first Title V operating permit from DNR in 1999. MetoKote is well aware of the DNR's permitting requirements. Further, MetoKote has a duty to remain knowledgeable of DNR's requirements regarding excess emissions and to be alert to the probability that its conduct is subject to DNR's rules. However, MetoKote failed to notify DNR of its excess emissions, but responded to

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citizen complaints on a case-by-case basis until a citizen complained to DNR. For these reasons, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of MetoKote. For this reason, MetoKote waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. Failure to comply with this order may result in the imposition of further administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 19 day of
Nov., 2009.



For MetoKote Corporation

Dated this 3rd day of
November, 2009.

07-02-023; Anne Preziosi; FO1; EPA; VII.A.1