



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

November 30, 2020

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Eric B. Robinson, Senior Vice President & COO, Gopher Resource, LLC
c/o Adam Kushner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

Email: adam.kushner@hoganlovells.com

Dear Mr. Robinson:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Gopher Resource, LLC, docket no. CAA-05-2021-0003. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on November 30, 2020.

Pursuant to paragraph 59 of the CAFO, Gopher Resource, LLC must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Mary McAuliffe, Associate Counsel, 312.886.6237.

Sincerely,

SARA
BRENEMAN

Digitally signed by SARA
BRENEMAN
Date: 2020.11.30
15:55:50 -06'00'

Sara J. Breneman, Chief
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Mary McAuliffe/via electronic mail
Cory Boeck, MPCA/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2021-0003
)	
Gopher Resource, LLC)	Proceeding to Assess a Civil Penalty
Eagan, Minnesota)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Gopher Resource, LLC, a corporation doing business in Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

National Emission Standards for Hazardous Air Pollutants

9. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires the EPA to promulgate a list of all categories and subcategories of new and existing “major sources” of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA codified these standards at 40 C.F.R. Parts 61 and 63.

10. “Stationary source” is defined as “any building, structure, facility, or installation, which emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3).

11. “Hazardous air pollutant” is defined as “any air pollutant listed in or pursuant to” Section 112(b) of the CAA, and includes, among other pollutants, lead compounds. 42 U.S.C. § 7412(a)(6).

12. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. See also 40 C.F.R. §§ 61.05 and 63.4.

The NESHAP for Secondary Lead Smelting

13. Pursuant to Section 112 of the CAA, the EPA has promulgated a NESHAP for Secondary Lead Smelting, which has been amended periodically and is codified at 40 C.F.R. Part 63, Subpart X (the Secondary Lead NESHAP). See 60 Fed. Reg. 32587 (June 23, 1995);

62 Fed. Reg. 32216 (June 17, 1997); 64 Fed. Reg. 4572 (January 29, 1999); 64 Fed. Reg. 69643 (December 14, 1999); 70 Fed. Reg. 75320 (December 19, 2005); and 77 Fed. Reg. 555 (January 5, 2012). Under the Secondary Lead NESHAP, the Facility's compliance date for the comprehensive amendments promulgated on January 5, 2012, was January 6, 2014. On January 3, 2014, EPA issued a direct final rule amending the Secondary Lead NESHAP amending certain regulatory text to clarify compliance dates and provisions relating to monitoring of negative pressure in total enclosures. 79 Fed. Reg. 367, 372 (Jan. 3, 2014)

14. In 40 C.F.R. § 63.542, "total enclosure" is defined as "a containment building that is completely enclosed with a floor, walls, and a roof to prevent exposure to the elements and to assure containment of lead bearing material with limited openings to allow access and egress for people and vehicles. The total enclosure must provide an effective barrier against fugitive dust emissions such that the direction of air flow through any openings is inward and the enclosure is maintained under constant negative pressure."

15. 40 C.F.R. § 63.544(c)(1) requires that facilities ventilate the total enclosure continuously to ensure negative pressure values of at least 0.013 mm of mercury (0.007 inches of water).

16. 40 C.F.R. § 63.548(k) states that the source must install, operate, and maintain a digital differential pressure monitoring system to continuously monitor each total enclosure. To demonstrate compliance with the standard for differential pressure, facilities must maintain the pressure in total enclosures such that the average pressure in any 15-minute period does not fall below the level specified in § 63.544(c)(1). The 15-minute averages must include at least one reading per minute. 40 C.F.R. § 63.548(k)(4); see also 40 C.F.R. § 63.10(b)(2)(vii).

17. 40 C.F.R. § 63.548(j) requires that sources demonstrate continuous compliance with the total hydrocarbon (THC) and dioxin and furan (D/F) emissions standards.

18. 40 C.F.R. § 63.548(j)(1) states that sources must install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in § 63.8.

19. 40 C.F.R. § 63.548(j)(3) requires that sources monitor and record the temperature of the afterburner or the furnace exhaust streams every 15 minutes during the initial performance or compliance test for THC and D/F and determine an arithmetic average for the recorded temperature measurements.

20. 40 C.F.R. § 63.548(j)(4) states that to demonstrate continuous compliance with the emission standards for THC and D/F, you must maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50°F) below the average established pursuant to § 63.548(j)(3).

21. 40 C.F.R. § 63.545(f) states that, “as provided in § 63.6(g), as an alternative to the requirements specified in this section, you can demonstrate to the Administrator (or delegated State, local, or Tribal authority) that an alternative measure(s) is equivalent or better than a practice(s) described in this section.”

22. 40 C.F.R. § 63.547(a)(5) specifies that, when testing to determine compliance with lead compound emission standards, facilities must use Method 12 or 29 with a minimum sample volume of 2.0 dry standard cubic meters, or 70 dry standard cubic feet (dscf), for each run.

23. Table 1 of the Secondary Lead NESHAP incorporates 40 C.F.R. § 63.8(c)(2)(i) by reference, which provides that all continuous monitoring systems, such as differential pressure monitors, must be installed such that representative measures of emissions are obtained.

The Minnesota State Implementation Plan

24. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of EPA (Administrator) a plan which provides for the implementation, maintenance and enforcement of all national primary or secondary standards established pursuant to Section 109 of the CAA, 42 U.S.C. § 7409. These State Implementation Plans (SIPs) are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

25. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, the Administrator approved Minn. R. 7011.0020 as part of the federally enforceable SIP for Minnesota on May 24, 1995. 60 Fed. Reg. 27411.

26. The Minnesota Administrative Rules, at 7011.0020, prohibits circumvention, stating that “no owner or operator may install or use a device or means that conceals or dilutes emissions, which would otherwise violate a federal or state air pollution control rule, without reducing the total amount of pollutant emitted.”

Title V Permit Program

27. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

28. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992).

Those regulations are codified at 40 C.F.R. Part 70.

29. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

30. On December 4, 2001, EPA provided full and final approval for the State of Minnesota Title V operating permit program. See 40 C.F.R. Part 70, Appendix A. 66 Fed. Reg. 62967.

31. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

32. 40 C.F.R. § 70.6(b)(1) provides that all terms and conditions in a Title V permit are enforceable by the EPA.

Respondent Title V Permit Requirements

33. The Facility operates under a Title V Permit, Air Emission Permit No .03700016-004, first issued by MPCA on June 29, 2010 (Title V Permit). This permit was modified on September 10, 2013, and October 4, 2013.

34. The Title V Permit requires compliance with the provisions of the Secondary Lead NESHAP that are applicable to the Facility.

35. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

36. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the

administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

37. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

38. Respondent owns and operates a secondary lead smelting stationary source located at 685 Yankee Doodle Road, Eagan, Minnesota (the Facility).

39. The Facility is a secondary lead smelter and is therefore subject to the requirements of the Secondary Lead NESHAP (40 C.F.R. Part 63, Subpart X).

40. EPA conducted an inspection of the Facility on June 9, 2014, to assess compliance with the CAA.

41. EPA sent an information request to the Facility under Section 114 of the CAA, dated February 18, 2015 (2015 Information Request).

42. Respondent provided a response to the 2015 Information Request dated April 22, 2015.

Total Enclosure Negative Pressure

43. From January 6, 2014, through December 31, 2014, one or more of the three differential pressure monitors used to demonstrate compliance with the total enclosure requirements of the Secondary Lead NESHAP indicated a failure to maintain -0.007 inches of water or did not record a reading during 3,051 of the fifteen-minute time intervals. These instances represented 8.8% of the total time during that period, although additional monitoring during this period of time suggests that the facility may have maintained negative pressure

during many of the instances that the differential pressure indicated a failure to maintain -0.007 inches of water. These differential monitors were later replaced with monitors that provided more accurate measurements.

44. At two of the three differential pressure monitors used to demonstrate compliance with the total enclosure standards of the Secondary Lead NESHAP, Respondent installed wind shields in October 2013 due to significant wind shear.

THC and D/F Compliance Demonstration

45. On December 12, 2013, EPA issued a letter to Respondent approving a proposed alternative method for the East Reverberatory Furnace, allowing the continuous monitoring of natural gas flow in lieu of monitoring the afterburner temperature. EPA's approval imposed certain conditions including, among other things, requirements to:

- a. Establish a minimum required natural gas flow using the average natural gas usage during a performance test demonstrating compliance with THC and D/F emission standards;
- b. Show compliance with the THC and D/F standards at the East Reverberatory Furnace by maintaining natural gas usage at or above the natural gas flow limit established during the performance test; and
- c. Continuously record natural gas usage.

46. On June 9 and 10, 2014, Respondent performed emissions testing at the East Reverberatory Furnace and Blast Furnace to demonstrate compliance with the THC and D/F standards and establish a minimum required natural gas flow. When calculated per the requirements of EPA's December 12, 2013 letter approving the alternative monitoring method, the minimum required natural gas flow is 22,929 cubic feet per minute (cfm).

47. From January 6, 2014, through March 8, 2015, there were 1,044 hours during which the East Reverberatory Furnace was operating and the recorded natural gas usage was below the minimum established during testing. These instances represent 10.9% of the furnace operating time.

48. When the Blast Furnace is in operation alone, or when the West Reverberatory Furnace is in use, the alternative monitoring method for the East Reverberatory Furnace is not in effect. During these times, Respondent must show continuous compliance with THC and D/F limits, by operating such that the furnace exhaust remains above an established minimum temperature.

49. Until 2016, Respondent had not established a minimum compliance furnace exhaust temperature, nor has it obtained EPA approval for an alternative monitoring method, for the Blast Furnace or the West Reverberatory Furnace to demonstrate compliance with THC and D/F limits.

50. From January 6, 2014, through March 8, 2015, there were 594 hours during which only the Blast Furnace operated, and 504 hours during which the West Reverberatory Furnace was in use.

Lead Performance Testing

51. On June 9 and 10, 2014, Respondent performed emissions testing at the East Reverberatory Furnace and Blast Furnace to demonstrate compliance with lead emission standards. The average sample volume collected during each run of the test was 46.7 dscf.

Total Enclosure Negative Pressure Violations

52. EPA alleges Respondent violated 40 C.F.R. § 63.544(c)(1) and the Title V Permit by operating its facility without continuously maintaining negative pressure at the total enclosure.

53. EPA alleges Respondent violated 40 C.F.R. § 63.8(c)(2)(i), and the Title V Permit by installing windshields at two of the three differential pressure monitors used to demonstrate compliance with the total enclosure standards of the Secondary Lead NESHAP. See also Minn. R. 7011.0020.

THC and D/F Compliance Demonstration Violations

54. EPA alleges Respondent violated 40 C.F.R. § 63.548(j) as incorporated into its Title V Permit by failing to maintain the minimum natural gas flow when operating the East Reverberatory Furnace, as allowed per the alternative monitoring method approved by EPA pursuant to 40 C.F.R. § 63.6(g).

55. EPA alleges Respondent violated 40 C.F.R. § 63.548(j)(1), (3) and (4) and the Title V Permit by failing to establish and maintain a minimum furnace exhaust temperature when operating the Blast Furnace alone, or when the West Reverberatory Furnace was in use.

Lead Performance Testing Violation

56. EPA alleges Respondent violated 40 C.F.R. § 63.547(a)(5) by failing to use an adequate sample volume when performing compliance testing for lead at the East Reverberatory Furnace and Blast Furnace.

57. Respondent disputed the above allegations of the NOV, but performed the following activities to respond to EPA's allegations:

- a. In 2015, replaced previously existing differential pressure monitors with new units described as providing more accurate data;
- b. In April 2020, established new operating parameters at the Blast Furnace and East Reverberatory Furnace during performance testing demonstrating compliance with the emission limits of the Secondary Lead NESHAP; and

- c. Will no longer rely on an alternative monitoring method, approved by EPA on December 12, 2013, which used minimum natural gas flow to the East Reverberatory Furnace to demonstrate compliance with THC and D/F standards.

Civil Penalty

58. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$110,000.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$110,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

Respondent may also pay by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

60. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Mary McAuliffe
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
mcauliffe.mary@epa.gov

Regional Hearing Clerk
r5hearingclerk@epa.gov

61. This civil penalty is not deductible for federal tax purposes.

62. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

63. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

64. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and adam.kushner@hoganlovells.com (for Respondent).

65. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

66. The effect of the settlement described in paragraph 65, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 57 of this CAFO.

67. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

68. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 65, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

69. Respondent certifies that it is complying fully with the Secondary Lead NESHAP, its Title V permit, and the Minnesota SIP.

70. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

71. The terms of this CAFO bind Respondent, its successors and assigns.

72. Each person signing this consent agreement 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.

73. Each party agrees to bear its own costs and attorney's fees in this action.
74. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Gopher Resource, LLC

Gopher Resource, LLC, Respondent

11/20/2020

Date



Eric B. Robinson
Senior Vice President & COO
Gopher Resource, LLC

In the Matter of: Gopher Resource, LLC

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.11.30
11:38:10 -06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Gopher Resource, LLC
Docket No. CAA-05-2021-0003

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.11.30
14:21:28 -06'00'

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Gopher Resource, LLC
Docket Number: **CAA-05-2021-0003**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0003, which was filed on November 30, 2020, in the following manner to the following addressees:

Copy by E-mail to Respondent: Eric B. Robinson
c/o Adam Kushner
adam.kushner@hoganlovells.com

Copy by E-mail to Attorney for Complainant: Mary McAuliffe
mcauliffe.mary@epa.gov

Copy by E-mail to Attorney for Respondent: Adam Kushner
adam.kushner@hoganlovells.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____

LADAWN WHITEHEAD Digitally signed by LADAWN WHITEHEAD
Date: 2020.11.30 14:47:41 -06'00'

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5