

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

FILED

2008 JUN 18 AM 8:38

U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN RE:)	
)	DOCKET NO. CAA-09-2007-0031
US Pole Company, Inc.)	
660 West Avenue O)	CONSENT AGREEMENT AND
Palmdale, California 93551,)	FINAL ORDER
)	
RESPONDENT)	
)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA" or "EPA Region IX") and US Pole Company, Inc. ("Respondent" or "US Pole") agree to settle this case initiated under the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7401 et seq., and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. On July 5, 2007, EPA issued to Respondent a Request for Information under the authority of Section 114 of the Clean Air Act. This action was to identify, among other things, the type of business Respondent was engaged in, the origin of the raw materials charged into its furnaces, and whether Respondent was subject to the requirements of the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, 40 C.F.R. Part 63, Subpart RRR, §§ 63.1500 – 63.1519 ("Secondary Aluminum Standard" or "Standard").
2. Respondent's reply, submitted on July 30, 2007, stated that it was an aluminum foundry which purchased aluminum wheels from general scrap dealers. Respondent further stated that painted aluminum wheels were sometimes charged into its furnaces. Accordingly,

EPA concluded that Respondent was subject to the Secondary Aluminum Standard because it was melting wheels that did not meet the definition of "clean charge" found in 40 C.F.R. §63.1503 (defined, in pertinent part, as "aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants...").

3. On August 15, 2007, EPA issued an Administrative Compliance Order to Respondent finding that US Pole was subject to the Secondary Aluminum Standard, and had failed to comply with the requirements set forth in the Standard, and ordering Respondent to prepare a site-specific test plan and conduct an initial performance test for dioxin/furan emissions.
4. On September 26, 2007, EPA issued a Complaint to Respondent alleging that US Pole had violated the Secondary Aluminum Standard by failing to prepare a site-specific test plan and conduct an initial performance test by the date required in the Standard, and providing the Respondent an opportunity to request a hearing and to file an answer.
5. The Complaint was served on US Pole on October 9, 2007, and Respondent and EPA commenced negotiations leading to this CAFO shortly thereafter. An agreement in principle between EPA and Respondent on the terms of this CAFO was reached on November 6, 2007, and Respondent's deadline for responding to the Complaint has been extended in anticipation of a full resolution of the allegations in the Complaint by means of this CAFO.
6. The agreement in principle between EPA and Respondent on the terms of this CAFO included a commitment by Respondent to use only "clean charge" in its foundry operations so as to not be subject to the Secondary Aluminum Standard set forth in 40 C.F.R. § 63.1503 (definition of "Secondary aluminum production facility"), and to conduct a performance test for dioxin/furan emissions while using "clean charge."

7. The performance test was conducted on November 7-8, 2008, and Respondent developed the protocol set forth in Appendix A hereto, which is incorporated herein by this reference, to ensure that the scrap wheels it charged to its furnaces during the performance test were “known by the owner or operator to be entirely free of paints, coatings, and lubricants.” Respondent has continued to use the protocol set forth in Appendix A since the performance test to meet its commitment to use only “clean charge” in its furnaces.
8. EPA, after investigation and analysis of Respondent’s protocol, agrees that the protocol set forth in Appendix A produces “clean charge.” EPA’s investigation and analysis of Respondent’s protocol and its resulting conclusion that US Pole has sufficiently changed its process to only melt “clean charge,” is based in part, on Appendix B hereto, which is incorporated herein by this reference.
9. So long as US Pole is an aluminum foundry and continues to only melt “clean charge,” it will not be subject to the Secondary Aluminum Standard. See 40 C.F.R. §§ 63.1500(a), 1503.
10. However, EPA alleges, and Respondent neither admits nor denies, that prior to Respondent’s institution of its “clean charge” protocol, Respondent was subject to the Secondary Aluminum Standard. To resolve these allegations, EPA and Respondent have agreed that Respondent will pay a civil penalty of Forty-Eight Thousand Dollars, as set forth in Section I.C of this CAFO.
11. Respondent shall apply for a permit to operate its crucible furnaces, to be issued by the Antelope Valley Air Quality Management District, and such permit shall require that only “clean charge” may be melted in such furnaces.
12. EPA Region IX and Respondent have agreed to resolve and fully settle this civil

administrative proceeding arising under the Act by executing this CAFO.

B. RESPONDENT'S ADMISSIONS

13. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

14. Respondent hereby consents to the assessment of a civil penalty in the amount of forty-eight thousand dollars (\$48,000) as full, final, and complete settlement of the allegations in the Complaint. Respondent shall pay this penalty within 30 days of receipt of notice of entry of this CAFO. Payment shall be made by check or electronic fund transfer payable to the "Treasurer, United States of America." Payment by electronic fund transfer shall be sent to the following address:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

Payment by check shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

The payment by check shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment by check of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Daniel Reich
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

15. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
16. If Respondent fails to pay the civil administrative penalty within 30 days of receipt of notice of entry of this CAFO, then Respondent shall pay immediately to EPA a stipulated penalty of sixty thousand dollars (\$60,000) instead and in lieu of the agreed-upon penalty specified in paragraph 14. Respondent shall also be liable for the United States' enforcement and collection expenses, including, but not limited to, attorney fees and costs incurred by the United States for collection proceedings. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such

collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses issued by or other privileges conferred by EPA; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in paragraph 14. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of

Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

D. RETENTION OF RIGHTS

17. In accordance with 40 C.F.R. § 22.18(c), this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not alleged in or arising out of the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not alleged in the Complaint.
18. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

E. ATTORNEYS' FEES AND COSTS

19. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

F. EFFECTIVE DATE

20. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued


on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

G. BINDING EFFECT

21. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
22. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT US POLE COMPANY, INC.:

May 13, 2008
DATE


By: Joseph Straus
Title: President
Address: 640 West Avenue O
Palmdale, CA 93551

FOR COMPLAINANT EPA REGION IX:

6/10/08
DATE


Deborah Jordan
Director, Air Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

Appendix A
US Pole's Abrasive Blasting Protocol

US Pole currently uses the following protocol to assure that scrap aluminum wheels melted in its crucible furnaces are "known to the owner or operator to be entirely free of paints, coatings, and lubricants," as set forth in the definition of "clean charge" in the Secondary Aluminum Standard:

- a. US Pole uses a 48" Goff Table Blast with an attached dust collector to conduct the abrasive blasting of the wheels.
- b. The initial filling capacity of the booth for abrasive blasting material is 400 lbs.
- c. US Pole uses S280 steel shot as the abrasive blasting material.
- d. A maximum of four (4) wheels at a time, placed vertically as they would sit on a car, are placed in the abrasive blasting booth.
- e. The abrasive blasting cycle time is a minimum of 90 seconds.
- f. US Pole adds approximately 50 lbs of new shot to the booth each week that the booth is being used to shot blast wheels in preparation for melting.

This abrasive blasting protocol is estimated to remove between 1/16 – 1/8 inch of the wheel surface. The wheels have a matte, slightly rough surface with tiny pits after being subjected to the abrasive blasting protocol set forth above.

EPA Region IX performed an analysis of US Pole's dioxin/furan source test results and found that the average emissions are less than the lowest average value EPA obtained for melting clean charge when EPA developed the Secondary Aluminum Standard. Therefore, EPA concluded that scrap wheels processed using US Pole's abrasive blasting protocol meet the definition of "clean charge."

Appendix B
Comparison of US Pole's Emissions Against EPA's Clean Charge Tests

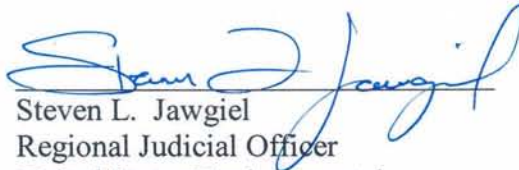
1. EPA Region IX performed an analysis of US Pole's dioxin/furan source test results and concludes that their test result of 0.1 ug/Mg is comparable to the results obtained by EPA for processing "clean charge" contained in the initial proposal for the Secondary Aluminum Standard (64 FR 6945, 6978, February 11, 1999).
2. For US Pole, the majority of the dioxin/furan congeners analyzed for their three test runs were "non-detect". See US Pole Company Inc. Source Test Report, January 3, 2008, Appendix C, Section II.
 - a. Run 1: 13 of 17 congeners were non-detects; remaining 4 congeners were less than the calibration limit for the instrument
 - b. Run 2: 16 of 17 congeners were non-detects; remaining 1 congener was less than the calibration limit for the instrument
 - c. Run 3: 14 of 17 congeners were non-detects; remaining 3 congeners were less than the calibration limit for the instrument
3. 40 C.F.R. Part 60, Appendix A, Method 23, Section 9.0 states:
"Any PCDD's or PCDF's that are reported as nondetected (below MDL) shall be counted as zero for the purpose of calculating the total concentration of PCDD's and PCDF's in the sample."
4. US Pole's dioxin/furan test result is 0.106 ug/Mg. As shown below, this value is lower than the test results EPA obtained while testing clean charge at other facilities when EPA was developing its Secondary Aluminum Standard (see lines a, b, and c below - 64 FR 6945, 6978, February 11, 1999; Docket EPA-HQ-2003-0212-0005).
 - a. 0.029 - 0.491 ug/Mg, with an average of 0.212 ug/Mg – clean charge test
 - b. 0.281 - 0.560 ug/Mg, with an average of 0.414 ug/Mg – clean charge test
 - c. 0.049 - 0.585 ug/Mg, with an average of 0.236 ug/Mg – clean charge test
 - d. 0.020 - 0.154 ug/Mg, with an average of 0.106 ug/Mg – US Pole (2007 test)**
5. Therefore, because US Pole's dioxin/furan average emissions are less than the lowest average value EPA obtained for melting clean charge when EPA developed the Secondary Aluminum Standard, EPA Region IX concludes that US Pole's steel shot blasted aluminum wheels meet the definition of "clean charge", and its foundry operations no longer subject to the Secondary Aluminum Standard.

II. FINAL ORDER

EPA Region IX and US Pole Company, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2007-0031) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$48,000, and otherwise comply with the terms set forth in the CAFO.

06/17/08
DATE


Steven L. Jawgiel
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, addressed to the following:

Joseph Straus
President
US Pole Company, Inc.
660 West Avenue O
Palmdale, CA 93551
Certified Return Receipt No. 7006 0100 0006 2455 2796

Patricia O'Toole, Esq.
The O'Toole Law Firm
Attorneys at Law
Post Office Box 352348
Los Angeles, CA 90035-0260
Certified Return Receipt No. 7006 0100 0006 2455 2765

Dated:

June 18, 2008

By:

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901