



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 30 2011

UNITED PARCEL SERVICE

Mr. Jack C. Bender, Esq.
Greenebaum Doll & McDonald PLLC
300 West Vine St., Suite 1100
Lexington, Kentucky 40507-1665

Re: Consent Agreement and Final Order
In the Matter of the Century Aluminum of Kentucky, LLC
Docket No. CAA-04-2011-1532(b)

Dear Mr. Bender:

Enclosed please find a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV (Final Order), for the terms and instructions regarding Century Aluminum's final payment on the penalty due. Any questions regarding the processing of Century Aluminum's penalty may be directed to Ms. Lori Weidner, Financial Management Office, at (513) 487-2125.

If you have any other questions, please contact Ahmad Dromgoole of the North Air Enforcement Section at (404) 562-9212 or Keri Powell, Associate Regional Counsel, at (404) 562-9567.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg
Chief
Air and EPCRA Enforcement Branch

Enclosure

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/25/11
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Century Aluminum of Kentucky LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 178,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2011 1532(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 30 2011

UNITED PARCEL SERVICE

Mr. Jack C. Bender, Esq.
Greenebaum Doll & McDonald PLLC
300 West Vine St., Suite 1100
Lexington, Kentucky 40507-1665

Re: Consent Agreement and Final Order
In the Matter of the Century Aluminum of Kentucky, LLC
Docket No. CAA-04-2011-1532(b)

Dear Mr. Bender:

Enclosed please find a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV (Final Order), for the terms and instructions regarding Century Aluminum's final payment on the penalty due. Any questions regarding the processing of Century Aluminum's penalty may be directed to Ms. Lori Weidner, Financial Management Office, at (513) 487-2125.

If you have any other questions, please contact Ahmad Dromgoole of the North Air Enforcement Section at (404) 562-9212 or Keri Powell, Associate Regional Counsel, at (404) 562-9567.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg
Chief
Air and EPCRA Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)

Century Aluminum of Kentucky, LLC)
Hawesville, Kentucky)

Respondent.)
)

Docket No. CAA-04-2011-1532(b)

11 AUG 20 11 1:50

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. part 22.

2. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is Century Aluminum of Kentucky, LLC, a limited liability company incorporated in the State of Delaware and doing business in the Commonwealth of Kentucky (hereinafter, "Respondent").

3. Consistent with Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the requisite joint determination has been made by EPA and the United States Department of Justice that this matter is appropriate for an administrative penalty action.

4. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

5. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the EPA Administrator. The EPA Administrator has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

6. Respondent has been the owner or operator of a stationary source located at 1627 State Route 271 North, Hawesville, Kentucky 42348, since April 2001.

7. Respondent is a “person” as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

II. Statutory and Regulatory Background

8. Pursuant to section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b), after the effective date of any permit program approved or promulgated under title V of the Act, no source subject to title V may operate except in compliance with a title V permit.

9. EPA granted full approval of Kentucky’s title V program on November 30, 2001, and Kentucky’s title V program became effective on that date. 40 C.F.R. part 70, App. A.

10. Pursuant to 40 C.F.R. § 70.6(a), a title V permit must include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. For title V purposes, the term “applicable requirement” includes, among other things, any standard or other requirement under section 112 of the Act. 40 C.F.R. § 70.2.

11. Pursuant to 40 C.F.R. § 70.6(b)(1), all terms and conditions in a part 70 permit are enforceable by the Administrator and citizens under the Act.

12. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), authorizes EPA to promulgate emission standards for categories of sources of hazardous air pollutants (HAPs), listed in Section 112(b)(1) of the CAA. Those regulations have been promulgated at 40 C.F.R. part 63, and regulate specific categories of stationary sources that emit (or have the potential to emit) one or more HAPs. The HAP regulations contain general provisions in subpart A and special provisions for specific categories in the subparts to part 63.

13. On October 7, 1997, EPA promulgated HAP regulations for Primary Aluminum Reduction Plants (62 Fed. Reg. 52383), which were published at 40 C.F.R. part 63, subpart LL. EPA amended subpart LL on June 23, 2003 (68 Fed. Reg. 37354). The compliance date for existing sources subject to subpart LL is October 7, 1999. New sources subject to subpart LL are required to comply upon start up. 40 C.F.R. § 63.847.

14. Pursuant to subpart LL, 40 C.F.R. § 63.848(f), the owner or operator of a primary aluminum reduction plant must install, operate, calibrate, and maintain a continuous parameter monitoring system for each emission control device. In particular, the owner or operator must install and operate, among other things, the following monitoring devices:

- a. For dry alumina scrubbers, devices for the measurement of alumina flow and air flow;
- b. For dry coke scrubbers, devices for the measurement of coke flow and air flow; and
- c. For wet scrubbers as the primary control system, devices for the measurement of water flow and air flow.

15. Pursuant to 40 C.F.R. §§ 63.6(e) and 63.850(c), the owner or operator of a primary aluminum reduction plant must develop a written plan that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standards.

III. Factual Allegations and Conclusions of Law

16. Respondent owns or operates a primary aluminum production facility at 1627 State Route 271 North in Hawesville (Hancock County), Kentucky.

17. Respondent's Hawesville facility is considered a major source of HAPs under section 112(a) of the CAA and is subject to regulations for primary aluminum reduction plants at 40 C.F.R. part 63, subpart LL.

18. During the period of approximately April 2001 until approximately July 2011, Respondent violated 40 C.F.R. § 63.848(f) by failing to install and operate a device to continuously measure the coke flow rate and air flow rate for the dry coke scrubber that controls emissions from the plant's paste production area.

19. During the period of approximately April 2001 until approximately July 2011, Respondent violated 40 C.F.R. § 63.848(f) by failing to install and operate a device to continuously measure the alumina feed rate for the alumina scrubber that controls emissions from the plant's anode bake furnaces.

20. During the period of approximately April 2001 until approximately July 2011, Respondent violated 40 C.F.R. § 63.848(f) by failing to install and operate a device to continuously measure the air flow rate for the alumina scrubber that controls emissions from Potline 5.

21. During the period of approximately April 2001 until approximately July 2011, Respondent violated 40 C.F.R. § 63.848(f) by failing to install and operate a device to continuously measure the water and air flow rate for the wet scrubbers that control emissions from Potlines 1-4.

22. The Commonwealth of Kentucky granted Respondent a title V permit for its Hawesville plant on June 20, 2003 (Part 70 Operating Permit No. V-01-019R1); that permit was revised on April 12, 2007. A renewal title V permit was issued on February 15, 2011.

23. Consistent with 40 C.F.R. §§ 63.6(e) and 63.850(c), at all times relevant to this proceeding Respondent's title V permit required Respondent to develop and implement a startup, shutdown and malfunction plan. (Permit section E, condition 2).

24. Sections A(3.0)(b) and B(3.01)(b) of the Standard Operating Procedures section of Respondent's startup, shutdown and malfunction plan classify "Sick Pots" as a malfunction. A "Sick Pot" is defined in the plan as a condition where pots are not operating correctly due to a chemical or electrical imbalance.

25. Sections A(3.0)(b) and B(3.01)(b) of the Standard Operating Procedures section of Respondent's startup, shutdown and malfunction plan classify "shield failures" as a pot malfunction. A shield failure is described as a damaged or failed hood shield that leads to improper hooding of the pot, causing excessive fugitive emissions.

26. Sections A(2.0) and B(2.0) of the Corrective Action Practices/Procedures section of Respondent's startup, shutdown and malfunction plan define a malfunction as an event with the potential to generate emissions in excess of normal conditions for a period greater than one hour in length. The corrective actions for sick pots include identifying the cause, initiating a corrective action, and removing the pot from service if the problem cannot be corrected within 24 hours.

27. Respondent's daily potline inspection logs document that pot cells were upset and unshielded for a number of consecutive days, including 1/21/08-1/22/08, 1/24/08-1/29/08, 2/6/08-2/7/08, 3/10/08-3/12/08, 4/3/08-4/10/08, 4/16/08-4/18/08, 6/28/07-6/29/07, 8/22/07-8/24/07, 8/30/07-8/31/07, 10/12/07-10/15/07, 10/25/07-10/26/07, 10/30/07-10/31/07, 11/08/07-11/09/07, 11/19/07-11/20/07, 12/11/07-12/12/07, 12/19/07-12/21/07, and 12/27/07-12/28/07.

28. By failing to remove sick pots from service that could not be corrected within 24 hours as required by its startup, shutdown and malfunction plan, Respondent violated its title V permit.

29. On November 17, 2009, EPA issued to Respondent a "Notice of Violation and Opportunity to Show Cause" (the "Notice Letter"). The Notice Letter identified the above-described violations to Respondent, as well as other alleged violations.

30. Respondent responded to the Notice Letter and provided facts and information to EPA with respect to each of EPA's alleged violations identified therein. In light of the information provided to EPA by Respondent after its receipt of the Notice Letter, EPA determined that it would not pursue certain of the allegations identified in the Notice Letter.

IV. Terms of Settlement

31. Respondent stipulates that EPA has jurisdiction over the subject matter of this CAFO, and Respondent waives any jurisdictional defenses.

32. Respondent neither admits nor denies the factual allegations and conclusions of law set forth above in this CAFO.

33. As provided in 40 C.F.R. § 22.18(b)(2), for the purposes of this proceeding, Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying this consent agreement.

34. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. part 19 provide that the EPA Administrator may assess a civil penalty of up to \$27,500 per day for each violation of the CAA that occurs between January 30, 1997 and March 15, 2004, up to \$32,500 per day for each violation that occurs between March 15, 2004, and January 12, 2009, and up to \$37,500 for each violation that occurs after January 12, 2009.

35. Based on an analysis of the penalty assessment criteria set forth in section 113(e) of the Act, 42 U.S.C. § 7413(e), EPA has determined an appropriate civil penalty to settle this matter. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in section V of this CAFO.

36. Respondent certifies that as of the date of its execution of this CAFO, its facility at 1627 State Route 271 North in Hawesville, Kentucky is in compliance with the requirements of its title V permit and 40 C.F.R. part 63, Subpart LL addressed by this CAFO that are identified in paragraphs 18-28, above.

37. Compliance with this CAFO shall resolve the alleged violations referenced herein, and EPA hereby releases Respondent from all liability for the violations alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO. Respondent reserves its rights and defenses regarding liability in any proceedings other than a proceeding by Complainant to enforce this CAFO.

38. EPA and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

V. Final Order

39. Respondent shall pay a civil penalty of one hundred and seventy-eight thousand dollars (**\$178,000**).

40. Respondent shall pay the penalty **within 30 days** of the effective date of the CAFO by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall reference on its face the name of the Respondent and the Docket Number of the CAFO.

41. Respondent can also choose to pay the penalty **within 30 days** of the effective date of the CAFO by wire transfer to the Federal Reserve Bank of New York with the following wire transfer content:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

42. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Mr. Ahmad Dromgoole
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

43. The penalty described in paragraph 39, shall represent civil penalties assessed by EPA within the meaning of section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax-deductible expenditure for purposes of federal law.

44. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date payment is due, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

45. EPA and Respondent shall bear their own costs and attorney fees in this matter.

46. This CAFO shall be binding upon the Respondent, its successors and assigns.

47. The following individual is authorized to receive service for EPA in this proceeding:

Mr. Ahmad Dromgoole
Air Enforcement and EPCRA Branch
Air, Pesticides and Toxics Management Division
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9212

48. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.


Remainder of page intentionally left blank.

VI. Effective Date

49. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

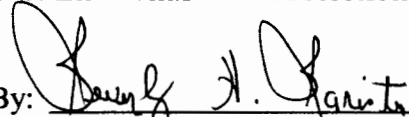
Century Aluminum of Kentucky, LLC

By:  (Signature) Date: 8/16/2011

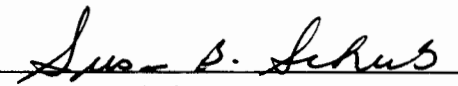
Name: STEVEN D. HENSLEY (Typed or Printed)

Title: PLANT MANAGER - CENTURY KY (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: AUG 19 2011
Beverly H Banister, Director
Air, Pesticides and Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 30th day of August, 2011.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE


I hereby certify that on the date set out below I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the same, in the Matter of Century Aluminum of Kentucky, LLC, Docket No. CAA-04-2011-1532(b), on the parties listed below in the manner indicated:

Ahmad Dromgoole (Via EPA's internal mail)
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Keri N. Powell (Via EPA's internal mail)
Office of Air, Pesticides & Toxics Legal Support
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

Jack C. Bender, Esq. (Via Certified Mail
Greenebaum Doll & McDonald PLLC Return Receipt Requested)
300 West Vine St., Suite 1100
Lexington, Kentucky 40507-1665
(Counsel for Respondents)

Date: 8/30/11


Belinda Johnson, Acting Regional Hearing Clerk
United States Environmental Protection Agency,
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9686

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/25/11 (Name) (Date)

in the Region 4, ORC, OEA (Office) at (404) 562-9504 (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Century Aluminum of Kentucky LLC (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 178,000 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CA 04 2011 1532(C)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)