



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

SEP 25 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Adam M. Kushner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Dear Mr. Kushner:

Enclosed is a file-stamped 2nd Amendment to a Consent Agreement and Final Order (CAFO Amendment), which amends the resolution to case docket no. CAA-05-2013-0010. As indicated by the filing stamp on its first page, we filed the CAFO Amendment with the Regional Hearing Clerk on September 25, 2015.

Please direct any questions regarding this case to Gary Steinbauer, Associate Regional Counsel, (312) 886-4306.

Sincerely,

A handwritten signature in cursive script that reads "Brian Dickens".

Brian Dickens,
Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer /C-14J
LaDawn Whitehead, Regional Hearing Clerk/E-19J
Gary Steinbauer/C-14J
Jeff T. Connell, MPCA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Gopher Resource, LLC
Egan, Minnesota,

Respondent.



Docket No. CAA-05-2013-0010

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act
42 U.S.C. § 7413(d)

WHEREAS, the United States Environmental Protection Agency, Region 5 and Gopher Resource, LLC (Respondent or Gopher) entered into a Consent Agreement and Final Order in the above-referenced matter, which was filed with the Regional Hearing Clerk on February 20, 2013;

WHEREAS, the United States Environmental Protection Agency, Region 5 and Gopher entered into an Amendment to the Consent Agreement and Final Order in the above-referenced matter, which was filed with the Regional Hearing Clerk on March 14, 2014 (collectively, the Consent Agreement and Final Order and Amendment to the Consent Agreement and Final Order will hereinafter be referred to as the "CAFO");

WHEREAS, under the CAFO, Gopher agreed to complete an "early compliance" Supplemental Environmental Project (SEP) consisting of installing air pollution control, a Dry Scrubbing System Option or SPC System Option (defined in Paragraph 53 of the CAFO), to limit its sulfur dioxide (SO₂) emissions to the SO₂ Emission Rate (defined in Paragraph 55 of the CAFO);

WHEREAS, the "early compliance" SEP Gopher agreed to complete in the CAFO was in anticipation of a new SO₂ emission limit that would be imposed at the Facility as a result of

EPA's revised Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010);

WHEREAS, Gopher has informed EPA that it will no longer need a Dry Scrubbing System or SPC System to meet the SO₂ emission limit that will be imposed as a result of EPA's revised Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010), and that it can meet the SO₂ Emission Rate through multiple process changes;

WHEREAS, Gopher has agreed to further reduce its emissions of sulfur dioxide beyond the reductions it agreed to as part of the original SEP, and has agreed to complete a lead-based paint abatement SEP;

WHEREAS, in light of the foregoing, the parties agree that amending the CAFO is in their interest and in the public interest;

NOW, THEREFORE, the parties hereby amend Paragraphs 52-59, 63, 68, and 72.d. of the CAFO as follows. Except as specifically set forth herein, all provisions of the CAFO shall remain in full force and effect.

Second Amendment to Consent Agreement and Final Order

1. Paragraph 52 of the CAFO is replaced as follows:

Respondent must complete a supplemental environmental project (SEP) designed to protect families by abating lead-based paint hazards in a number of residential properties in the Minneapolis-Saint Paul, Minnesota area, as described in more detail in Paragraph 53, below. This SEP may include, but is not limited to, window replacement, the removal of lead-based paint and dust, the permanent enclosure or encapsulation of lead-based paint, and the replacement of lead-based painted surfaces or fixtures. The focus of the SEP will be lead abatement at low-income residences where children age six and under or pregnant women reside and whose occupants are unable to afford the costs of such work. This project is hereinafter referred to as the Lead Abatement SEP.

2. Paragraph 53 of the CAFO is replaced as follows:

Respondent must complete the Lead Abatement SEP as follows:

- a. Respondent will contract with a local not-for-profit organization (“NFP”) experienced in lead-based paint abatement work to promptly undertake and complete such work in the Minneapolis-Saint Paul, Minnesota area. Respondent has tentatively selected CLEARCorps as the NFP, which is acceptable to EPA. The foregoing statement shall not be construed to prohibit Respondent from selecting a different NFP. Respondent shall require the NFP to conduct the Lead Abatement SEP according to all applicable federal and state work practice and notification requirements, including the United States Department of Housing and Urban Development’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and the State of Minnesota, unless otherwise specifically provided in this CAFO.
 - b. Respondent must fully fund an escrow account to pay for the Lead Abatement SEP not later than 30 days after the effective date of this CAFO.
 - c. Respondent agrees to spend at least \$200,000 to complete the Lead Abatement SEP. The NFP may assess administrative costs not to exceed 10% of the total project value (i.e., not to exceed 10% of 200,000).
 - d. Respondent will complete the SEP within one year after the effective date of this CAFO, provided that this date may be extended by mutual agreement of the parties in writing.
3. Paragraph 54 of the CAFO is replaced as follows:

Respondent must complete a SEP designed to protect the environment or public health by significantly reducing the amount of sulfur dioxide emitted from the following Emissions Units (EUs) at the Facility as listed on page A-23 of Respondent’s Title V Permit (03700016-004): EU 004 West Reverberatory Furnace; EU 006, Scrap Dryer; EU 007 East Reverberatory Furnace; EU 009 Blast Furnace; EU 025 Thermal Oxidizer (aka CE007); and MR 001 SO₂ CEMS. This project is hereinafter referred to as the SO₂ Reduction SEP.

4. Paragraph 55 of the CAFO is replaced as follows:

At its Facility, Respondent must complete the SO₂ Reduction SEP as follows:

- a. By the effective date of this CAFO and until January 1, 2016, Respondent must implement process changes at its Facility such that it achieves an SO₂ emission rate of 205 pounds per hour, calculated as a 30-day rolling average. The 30-day rolling average shall be calculated as the arithmetic average of all hourly SO₂ emissions in pounds per hour for a given day and the 29 days immediately preceding the given day. Respondent shall use hourly SO₂ emission data from SO₂ CEMS (MR 001) to calculate the 30-day rolling average when such data is available.
- b. By January 1, 2016 and until December 31, 2019, Respondent must implement process changes at its Facility such that it achieves an SO₂ emission rate of 185 pounds per hour, calculated as a 30-day rolling average. The 30-day rolling average shall be calculated as the arithmetic average of all hourly SO₂ emissions in pounds per hour for a given day and the 29 days immediately preceding the given day. Respondent shall use hourly SO₂ emission data from SO₂ CEMS (MR 001) to calculate the 30-day rolling average when such data is available.
- c. Respondent anticipates that the process changes used to comply with the SO₂ emission rates in Paragraphs 55.a. and b. may include changes to its grid sulfur washing system and battery grinding system, which would reduce the amount of sulfur entering the furnace, as well as changes to its spray dry absorber to improve the efficiency of SO₂ removal. The parties acknowledge that these described changes are not finalized, and that other or additional changes may be made at the Facility to meet the required limits.

5. Paragraph 56 of the CAFO is replaced as follows:

Respondent certifies that it will spend the following amounts on the SEPs:

- a. Respondent agrees to spend at least \$200,000 to complete the Lead Abatement SEP.
 - b. Respondent agrees to spend at least \$950,000 to complete the SO₂ Reduction SEP.
6. Paragraph 57 of the CAFO is replaced as follows:

On or before January 31, 2016, Respondent shall submit a report describing each of the process changes it made as of December 31,

2015, to meet the SO₂ emission rates in Paragraphs 55.a. and b., the capital cost of each process change, the results of any emission tests performed to determine the emission reductions achieved by the process changes, and the date each process change was finalized.

7. Paragraph 58 of the CAFO is replaced as follows:

Beginning on the effective date of this CAFO, Respondent must provide the following information in a report filed semi-annually:

- a. Daily sulfur dioxide emission rate in pounds per hour from the Emission Units listed in Paragraph 54 above, calculated using a 30-day rolling average. The 30-day rolling average shall be calculated as the arithmetic average of all hourly SO₂ emissions in pounds per hour for a given day and the 29 days immediately preceding the given day. Respondent shall use hourly SO₂ emission data from SO₂ CEMS (MR 001) to calculate the 30-day rolling average when such data is available. This information must be submitted in an electronic spreadsheet in Microsoft Excel or other similar format, saved on physical media such as compact disk, flash drive, or other similar media;
- b. Annual Facility-wide sulfur dioxide emissions, broken down by Emission Unit, in tons per year;
- c. An itemized summary of the operating and maintenance costs attributed to the process changes; and
- d. Identification of any and all periods of time that Respondent failed to meet the applicable SO₂ emission rate in Paragraphs 55.a. or b. and a statement of the cause(s) for any exceedances.

8. Paragraph 59 of the CAFO is replaced as follows:

The first semi-annual report referenced in Paragraph 58 must cover the period from the effective date of this CAFO until January 1, 2016. Subsequent semi-annual reports must cover the semi-annual reporting period from January 1 to June 30 or the semi-annual reporting period from July 1 to December 31. Respondent must provide a semi-annual report for each reporting period until December 31, 2019.

9. Paragraph 63 of the CAFO is replaced as follows:

For each SEP, Respondent must submit a SEP completion report as follows:

- a. For the Lead Abatement SEP, Respondent must submit a SEP completion report no later than sixty (60) days after the SEP is complete. This report must contain the following information:
 - i. Detailed description of the SEP as completed;
 - ii. Description of any problems implementing the SEP and any actions taken to correct the problems;
 - iii. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of goods and services;
 - iv. Certification that Respondent has completed the SEP in compliance with this CAFO; and
 - v. Description of the environmental and public health benefits resulting from the SEP (quantify benefits and pollution reductions, if feasible). Include the number and each type (e.g., single-family residential, multi-unit residential, day care) of property from which lead was removed or otherwise addressed under the SEP.
- b. For the SO₂ Reduction SEP, Respondent must submit a SEP completion report by February 28, 2020. This report must contain the following information:
 - i. Detailed description of the SEP as completed;
 - ii. Description of any operating problems and the actions taken to correct the problems;
 - iii. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, cancelled checks or other customary business records that specifically identify and itemize the individual costs for implementation of the process changes and the operation and maintenance associated with such changes;
 - iv. Certification that Respondent has completed the SEP in compliance with this CAFO; and

- v. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

10. Paragraph 68 of the CAFO is replaced as follows:

If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

a. For the Lead Abatement SEP:

- i. Except as provided in Paragraph 68.a.ii., below, if Respondent did not complete the Lead Abatement SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty equal to 150 percent of the difference between the amount it spent on the Lead Abatement SEP and the amount set forth in Paragraph 56.a.
- ii. If Respondent did not timely submit the Lead Abatement SEP completion report required by Paragraph 63.a., Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 st through 14 th day
\$400	15 th through 30 th day
\$800	31 st day and beyond

b. For the SO₂ Reduction SEP:

- i. If Respondent fails to meet the applicable SO₂ emission rate in Paragraph 55.a. or b., Respondent must pay a penalty of \$500 for each violation of the applicable SO₂ emission rate.
- ii. If Respondent did not submit timely the SO₂ Reduction SEP completion report or any other report required by Paragraphs 57 through 59, and 63.b. above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 st through 14 th day
\$400	15 th through 30 th day
\$800	31 st day and beyond

11. Paragraph 72.d. of the CAFO is replaced as follows:

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEPs. An event which causes or may cause a delay includes, but is not limited to, extraordinary weather events, natural disasters, national emergencies, delays in obtaining any necessary approval, permit, or license from any government agency that result despite Respondent's timely and appropriate submission of all information and documentation required under applicable law for obtaining such approval, permit, or license within a time frame that would permit the work to proceed in a manner contemplated by the schedules and deadlines contained in this CAFO. Increased costs for completing the SEPs will not be a basis for an extension of time under subparagraph b., above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

[Signature page follows.]

Gopher Resource, LLC, Respondent

9/10/15

Date




Christopher G. Swanberg
Vice President, Environmental, Health
and Safety
Gopher Resource, LLC

United States Environmental Protection Agency, Complainant

9/18/15

Date



George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Second Amendment to Consent Agreement and Final Order

In the Matter of: Gopher Resource, LLC


Docket No. CAA-05-2013-0010

Final Order

The foregoing Second Amendment to the 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.

23 September 2015
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Gopher Resource, LLC
Docket Number: CAA-05-2013-0010

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on September 25, 2015, this day in the following manner to the addressees:

Copy by Certified Mail
Return-Receipt Requested:

Chris Swanberg
Vice President, Environmental, Health & Safety
Gopher Resource, LLC
3385 Dodd Road
Eagan, Minnesota 55121

Copy by E-mail to
Complainant:

Adam M. Kushner
Adam.kushner@hoganlovells.com

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 25, 2015

L Whitehead

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

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2640 4482