

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEADING CLERK

IN THE MATTER OF:

Standard Mine Superfund Site
Gunnison County, Colorado

Mark Cook and Norman Cook,

Respondents.

ADMINISTRATIVE ORDER TO COMPEL
COMPLIANCE WITH AN
INFORMATION REQUEST

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-2008-0005

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

JURISDICTION

1. This order to compel compliance with an information request (“Order”) is issued pursuant to the authority vested in the United States by Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e). This authority has been duly delegated to the Regional Administrators of the United States Environmental Protection Agency (EPA), and further delegated to the Region 8 supervisors in the Office of Enforcement, Compliance and Environmental Justice, Technical and Legal Enforcement Programs by Regional Delegation 14-6.

FINDINGS OF FACT

2. The Respondent Mark Cook is an individual who resides in Branson, Missouri, conducts business at 304 Flynn Road, Branson, Missouri 56516, and purports to be a corporate officer, corporate director, and/or shareholder of American Holdings, Inc., the purported successor to Standard Metals Corporation.

3. The Respondent Norman Cook is an individual who resides in Branson, Missouri, conducts business at 304 Flynn Road, Branson, Missouri 56516, and purports to be a corporate officer, corporate director, and/or shareholder of American Holdings, Inc., the purported successor to Standard Metals Corporation. Hereinafter, Mark Cook and Norman Cook are collectively referred to as the “Respondents”.

4. The Standard Mine Site (“Site”) is located approximately 30 miles northwest of Gunnison and 5 miles west of Crested Butte in Gunnison County, Colorado, in the Ruby Range of the Gunnison National Forest. The Site includes adits and shafts which access approximately 8,400 feet of open mine workings on six operating levels, waste rock and tailings piles, concrete

footings and stem walls, a tailings pond approximately an acre in size, and various mine-related structures. Standard Metals Corporation is the current owner and operator of most of the Site.

5. EPA has determined that the Site is contaminated with lead, copper, zinc, cadmium, and manganese at levels that threaten human health and the environment. The threat of an unanticipated release of hazardous substances from the tailings impoundment and the loading of acid mine drainage containing heavy metals from the Site into Coal Creek, the primary supply of drinking water for the town of Crested Butte, pose a threat to human health. There is also a risk of direct exposure from mining wastes at the Site to nearby residents and recreations users. Exposure to these heavy metals could lead to numerous adverse health effects such as delayed mental and physical development in children, kidney damage, skin damage, problems with the circulatory system and an increase risk of cancer.

6. EPA listed the Site on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B) on September 14, 2005. In addition, EPA has determined that the Site presents an imminent and substantial endangerment to the public health, welfare and environment and is conducting response actions at the Site to control and mitigate the releases of hazardous substances at and from the Site.

7. In March 2005, Mark Cook a/k/a Mark Rice filed documents with the Delaware Secretary of State to revive and renew the corporate charter of Standard Metals Corporation and purporting to be the president of the company. In November 2005, Norman Cook filed documents with the Delaware Secretary of State changing the name of “Standard Metals Corporation” to “American Holding, Inc.”, and purporting to be the president of the company.

8. On or about August 8, 2007, the EPA Region 8 Division Director for the Technical Enforcement Program, a duly designated representative of the President and EPA, sent a certified letter, return receipt requested, to the Respondents pursuant to 42 U.S.C. § 9604(e) requesting that the Respondents furnish certain information to EPA (the "Information Request"). A copy of the Information Request is attached as Attachment A.

9. According to the U.S. Post Office return receipt, the Respondents received the Information Request on August 11, 2007.

10. In the Information Request, EPA requested information relevant to Standard Metals Corporation, the current owner and operator of the Site, including information as to the ownership and authority to control the corporation, and the ability of the corporation to pay for or to perform cleanup activities. Both Respondents have asserted in documents filed with the Delaware Secretary of State to be officers of the corporation and as such should have knowledge of the corporate structure and financial information. The Information Request also notified the Respondents that EPA could seek penalties for failure to comply with the Information Request and that the Respondents could contact certain individuals at EPA (whose telephone numbers and addresses were provided) if the Respondents had questions or concerns regarding the Information Request. The Information Request required the Respondents to submit a complete and truthful response, including the provision of all relevant documents, to EPA within 30 days after the date of receipt. The Respondents failed to submit a complete response to the Information Request by this date.

11. Respondent Mark Cook and his legal counsel each separately contacted the EPA attorney for this matter by telephone, acknowledged receipt of the Information Request, and stated that the

requested information would be provided. No such response was ever provided by either of the Respondents.

12. On or about November 20, 2007, the EPA Region 8 Division Director for the Technical Enforcement Program sent letters (the Warning Letters) to the Respondents with a copy to Respondents' legal counsel. The Warning Letters enclosed a second copy of the Information Request, required that the Respondents promptly submit a response to the Information Request, again provided information about how to contact certain individuals at EPA if the Respondents had questions, and stated that the Respondents' failure to respond to the Information Request was a violation of federal law for which penalties could be imposed. According to the U.S. Post Office return receipt, the Respondents received the Warning Letters on November 21, 2007. Copies of the Warning Letters are attached hereto as Attachment B.

13. To date, the Respondents have completely failed to comply with the Information Request.

DETERMINATIONS

14. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. Each substance listed in paragraph 5 above is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. There has been a "release" or a threat of a release at the Site of "hazardous substances" into the "environment" within the meaning of Sections 101(8), 101(14), and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8), (14) and (22).

17. The Respondents are each a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. The Respondents are persons who have or may have information relevant to any of the matters specified in the Information Request.
19. The information and documents requested in the Information Request are for the purpose of enforcing the provisions of Title I of CERCLA within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).
20. The Respondents' failure to comply with the Information Request is a violation of CERCLA § 104(e), 42 U.S.C. § 9604(e).

ORDER

21. Within **ten (10) business days** after the effective date specified below, the Respondents shall each provide EPA with a full and complete response, including copies of all documents requested directly or indirectly, to the entire Information Request (Attachment A). The Respondents shall submit all responses and documents required by this Order to:

Andrea Madigan
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

22. Nothing herein limits or otherwise affects any right of the United States to gather information pursuant to applicable laws, regulations, or permits.

EFFECTIVE DATE

23. This Order is effective on the tenth business day after the date it is signed by the EPA.

OPPORTUNITY TO CONFER

24. Within three business days after receipt of this Order, the Respondents may request a conference with EPA to be held no later than two days before the effective date of this Order. The conference may deal with any matter pertinent to this Order, including the determinations

upon which the Order is based, the applicability of the Order to the Respondents, the appropriateness of any action the Respondents are ordered to take, or any other relevant and material issues regarding the Order. This conference is not an adversarial hearing and is not a formal proceeding to enforce or challenge the Order. The Respondents may appear in person or by attorney or other representative at the conference. The Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference or no later than two days before the effective date of the Order if the Respondents do not request a conference. EPA will deem the Respondents to have waived their right to a conference or to submit written comments if the Respondents fail to request the conference or to submit written comments, within the specified time period.

25. Any request for a conference or written comments should be submitted to:

Andrea Madigan
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

ENFORCEMENT

26. Failure to comply with this Order within the time specified may subject the Respondents to judicial enforcement of this Order as well as civil penalties of up to \$32,500 for each day of noncompliance with the Information Request, and with this Order, or both pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5).

MODIFICATION

27. This order may be amended or modified only by EPA in writing. Any such amendments or modifications shall be effective when signed by the Regional Administrator or his delegates.

SO ORDERED.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: Sharon Kercher
Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 21 March 2008

By: Matthew Cohn
Matthew Cohn, Supervisor
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 3/27/08