

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

TO FEB 17 PM 2:12  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of:	)	EPA Docket No. CAA-07-2010-0008
	)	
Noranda Aluminum, Inc.	)	
391 St. Jude Industrial Park	)	ADMINISTRATIVE ORDER ON
New Madrid, Missouri 63869	)	CONSENT
	)	
Respondent.	)	

ADMINISTRATIVE ORDER ON CONSENT

Preliminary Statement

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Noranda Aluminum, Inc. ("Noranda"). The purpose of this Order is to address the recent vacatur of two regulatory provisions relating to Startup, Shutdown and Malfunction events. See paragraph 11.

2. It is the parties' intent through this agreement to 1) address Noranda's concerns regarding EPA's potential application of the emission limits in 40 C.F.R. Part 63 to emissions during its startup process on potline (#3) at its primary aluminum facility in New Madrid, Missouri, and 2) state the specific terms and conditions by which Noranda will reaffirm its general duty to "operate and maintain" its potline "in a manner consistent with safety and good air pollution control practices for minimizing emissions" during the startup process, as required in 40 C.F.R. § 63.6(e)(1)(i).

3. This Order is entered into by EPA under the authority of Section 113(a)(4) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(4), as amended. Noranda agrees that it will not contest EPA's authority to issue this Order. Furthermore, EPA and Noranda recognize that this Order has been negotiated in good faith and that the actions undertaken by Noranda in accordance with this Order and the terms of this Order do not constitute an admission of any liability or waive any of Noranda's legal rights or arguments regarding the legal impact of the *Sierra Club* decision (see paragraph 11).

4. As required by Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), EPA has provided the State of Missouri with a copy of this Order. The State of Missouri has represented to the parties that it has no objection to the entry of this Order.

5. Noranda shall comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms in any proceeding to enforce

this Order. However, none of the provisions of this Order shall be used by either party as the basis for any claim that the startup, shutdown and malfunction exemption contained in 40 C.F.R. §§ 63.6(f)(1) or (h)(1) does or does not apply to subpart LL.

6. The terms of this Order, and its appendices, shall not be modified except by a subsequent written agreement between EPA and Noranda.

### Regulatory Background

7. Noranda is subject to the requirements of Subpart LL (National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants) of 40 C.F.R. Part 63 because it owns or operates an existing potline (potline #3) associated with primary aluminum production.

8. The regulations at 40 C.F.R. § 63.843(a)(1)(i), which are found in Subpart LL, state that for existing sources, the owner or operator “shall not discharge or cause to be discharged into the atmosphere any emissions of [Total Fluorides] . . . in excess of . . .” 1.9 pounds per ton of aluminum produced” for each center-worked prebake process (the “Fluoride Process Limit”).

9. The requirements at 40 C.F.R. §§ 63.6(e) and 63.6(f) apply to owners and operators subject to Subpart LL.

10. Prior to October 16, 2009, the regulation at 40 C.F.R. § 63.6(f)(1) stated that the “non-opacity emission standards . . . shall apply at all times *except during periods of startup, shutdown, and malfunction*, and as otherwise specified in an applicable subpart” (emphasis added). The terms “startup,” “shutdown,” and “malfunction” are all defined at 40 C.F.R. § 63.2.

11. In the Sierra Club v. EPA decision issued on December 19, 2008, the United States Court of Appeals for the District of Columbia Circuit vacated the exemption contained within 40 C.F.R. §§ 63.6(f)(1) and 63.6(h)(1).<sup>1</sup> See Sierra Club, 551 F.3d 1019, 1021. The mandate for this vacatur was issued by the court on October 16, 2009. Although EPA believes that this vacatur immediately and directly affects 40 C.F.R. Part 63 subpart LL, which incorporates 40 C.F.R. §§ 63.6(f)(1) and 63.6(h)(1) by reference, Noranda does not agree that the vacatur has this effect.

### Factual Background

12. Noranda operates a primary aluminum production facility in or near New Madrid, Missouri. As a result of an ice storm in January 2009, Noranda was forced to shut down its

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<sup>1</sup> The regulation at 40 C.F.R. § 63.6(f)(1) states, in part, that the “non-opacity emission standards set forth in [Part 63] shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.” Similarly, the regulation at 40 C.F.R. § 63.6(h)(1) states, in part, that the “opacity and visible emission standards set forth in [Part 63] must apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.”

potline #3. EPA and Noranda agree that this shutdown event was sudden, infrequent, and not reasonably preventable.

13. In 2008, Noranda's potline #3 produced approximately 213 million pounds, or 106,500 tons, of aluminum. This is equivalent to approximately 291 tons per day. Because the applicable total fluoride emissions limit in 40 C.F.R. Part 63 subpart LL is 1.9 pounds of fluoride per ton of aluminum produced, Noranda's daily total emissions cap during 2008 was 552 pounds of fluoride.

14. Line #3 has two separate rooms (potline 3East and potline 3West), with 80 pots in each room. With prior notification to EPA, Noranda began restart of potline 3West on November 1, 2009. The startup process for all of potline #3 is expected to be completed over a four-month period. Noranda contends that the Fluoride Process Limit does not apply during startup; however, if it does apply, Noranda anticipates that during the startup period it may not be able to meet the Fluoride Process Limit. Noranda has raised these concerns to EPA.

#### Terms and Conditions

15. During periods of startup, Noranda shall operate and maintain potline #3, including air pollution control equipment and monitoring equipment associated with potline #3, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, Noranda is required to reduce emissions from the potline #3 affected source to the greatest extent which is consistent with safety and good air pollution control practices.

16. Noranda shall not exceed the start up rate for its potline #3 presented in the "Cell Start up Plan," which is found at Appendix A and is hereby incorporated by reference to this Order. Noranda has presented information to EPA that by proceeding with startup in accordance with the Cell Start up Plan, Noranda's total Fluoride emissions shall not exceed 276 pounds per day per potline group.

17. In the event of any noncompliance with the requirements of paragraph 19 or exceedance of the startup rate in the Cell Start up Plan, Noranda shall take immediate corrective actions and undergo root cause analyses to prevent any future noncompliance or exceedance. Noranda shall submit the written results of any such root cause analyses to EPA.

18. In the event Noranda discovers that it is in noncompliance with the requirements of paragraph 19 or has exceeded the startup rate in the Cell Start up Plan, Noranda shall disclose this exceedance to EPA within two business days.

19. Noranda shall continue operating its Fluidized Dry Bed Alumina Scrubber system at all times, during the startup of potline #3. Furthermore, during startup of potline #3, Noranda shall implement its Potline Startup Environmental Compliance Plan (Potroom Procedure POT0036) and its associated attachments and referenced documents, which are found at Appendix B and are hereby incorporated by reference to this Order.

20. During start-up of potline #3, Noranda shall also continue ambient Total Fluoride emissions monitoring consistent with the ambient monitoring being performed as part of the fluoride risk assessment ambient monitoring being done pursuant to its 2004 PSD permit (Permit Number 102004-001, effective October 4, 2004). *See* Special Permit Condition 10. The results of these monitoring tests shall be submitted to EPA monthly.

21. Noranda shall also submit to EPA any ambient Total Fluoride emissions monitoring data it has gathered since October 2008 pursuant to its 2004 PSD permit within thirty days of the effective date of this Order

22. Noranda shall perform a visual determination of fugitive emissions at potline #3 three times daily in accordance with EPA Method 22 (40 CFR part 60, appendix A-7) for two five-day periods (Monday through Friday) during the remainder of the start-up process. The first five-day period shall commence upon the first Monday after the effective date of this Order; the second five-day period shall occur during the final week of start-up. Noranda shall retain the records of these visual determinations of fugitive emissions and submit them to EPA within ten days following the last day of the five-day period during which they are collected.

23. Noranda shall submit the submissions required in this Order to:

Ms. Natasha Hazziez  
Air Permitting and Compliance Branch  
U.S. EPA Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

24. EPA and its representatives, including attorneys, contractors and consultants, upon presentation of credentials, shall have the right of entry at reasonable times to Noranda's facility during a startup of potline #3, for the purpose of:

- a. verifying any data or information submitted to EPA in accordance with this Order;
- b. obtaining samples and, upon request, splits of any samples taken by Noranda or its representatives, contractors, or consultants; and
- c. assessing Noranda's compliance with this Order.

Upon written request made prior to sampling, Noranda shall provide EPA or its authorized representatives with the opportunity to collect splits of any samples taken by Noranda to the extent that the sampling method allows for the collection of split samples. Upon written request made prior to sampling, EPA shall provide Noranda with the opportunity to collect splits of any samples taken by EPA to the extent that the sampling method allows for the collection of split samples. Each sampling party shall provide the non-sampling party with adequate written notice of sampling sufficient to allow the non-sampling party to request split samples and schedule the personnel necessary to properly collect split samples.

25. Provided that Noranda complies with the terms and conditions in this Order, EPA will take this into consideration, among other factors, in determining an appropriate response to any

issues of compliance with Subpart LL during the startup of Noranda's potline #3 at its facility in New Madrid, Missouri.

26. This Order should not be interpreted to apply to any similar primary aluminum facilities subject to 40 C.F.R. Part 63 Subpart LL, nor any other subparts affected by the vacatur granted by the D.C. Circuit Court of Appeals, nor shall it be used by either party as the basis for any claim that the startup, shutdown and malfunction exemption contained in 40 C.F.R. §§ 63.6(f)(1) or (h)(1) does or does not apply to 40 C.F.R. Part 63 Subpart LL.

27. EPA reserves the right to terminate this Order, with two days written notice to Noranda, if it discovers at any time that any of the information presented by Noranda to EPA was incorrect, false or otherwise misleading. Similarly, EPA reserves its right to terminate this Order, with two days written notice to Noranda, if it discovers that Noranda has failed to comply with the conditions of paragraphs 15 through 24. Noranda reserves its right to contest EPA's termination and the basis therefore and preserves all its defenses to any enforcement action that may result from or be related to such termination.

28. EPA expressly reserves all legal or equitable remedies available to enforce the provisions of this Order and Noranda, except as provided in paragraph 5, expressly reserves all defenses to same. This Order shall not be construed to limit the rights of EPA to obtain penalties or injunctive relief under the Clean Air Act or implementing regulations, or under other Federal laws, regulations, or permit conditions.

29. Nothing in this Order should be construed as a release for any past or future claims EPA may have against Noranda for violations of other provisions of the Clean Air Act, as well as any other state or federal statute or regulation. In addition, this Order is not a permit or a modification of any permit under any Federal, State or local laws or regulations. Compliance with this Order shall not relieve Respondent of any existing or future obligations under any existing permit issued pursuant to the Clean Air Act.

30. Unless otherwise agreed to by EPA and Noranda, this Order shall automatically terminate on the earliest of the following events: a) March 31, 2010, b) the effective date of any modification of the regulations at 40 C.F.R. Part 63 Subpart LL to address the D.C. Circuit Court's mandate, or c) a withdrawal of the Sierra Club mandate.

31. This Agreement shall be binding upon EPA and Noranda, as well as Noranda's successors and/or assigns. By signing below, EPA and Noranda signify their assent to all of the terms of this Agreement. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms of the Agreement on behalf of his or her respective party.

**For the Environmental Protection Agency**

2/17/10  
Date

Becky Weber  
Becky Weber  
Director, Air and Waste Management Division  
EPA Region 7

**For Noranda Aluminum, Inc.**

2-10-10  
Date

Frank R. Davis Jr  
Frank Davis  
Plant Manager