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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the Matter of:	)	
	)	Docket No. CAA- <sup>09</sup> 9-2007- <del>00</del> 0031
U.S. Pole Company, Inc.	)	COMPLAINT AND NOTICE
680 West Avenue O	)	OF OPPORTUNITY FOR HEARING
Palmdale, California 93551	)	IN ACCORDANCE WITH 40 C.F.R.
	)	§ 22.14
Proceeding under Section 113 of	)	
the Clean Air Act,	)	
42 U.S.C. § 7413	)	

I. STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Section 113(d) of the Clean Air Act ("CAA" or "the Act"), 42 United States Code ("U.S.C.") § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 Code of Federal Regulations ("C.F.R.") Part 22. The Complaint is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"). This authority has been delegated to the Regional Administrator, EPA Region IX, and the Regional Administrator, in turn, re-delegated that Authority to the Director of the Air Division, EPA Region IX ("Complainant").

2. Section 113(d) of the Act limits EPA's authority to issue administrative complaints to matters where the total penalty sought does not exceed \$270,000,<sup>1</sup> and the first alleged date of violation occurred no more than 12 months prior to the initiation of the action, unless the EPA Administrator and the Attorney General for the U.S. Department of Justice ("DoJ") jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative action. Since this Complaint contains alleged violations that occurred more than 12 months ago, Complainant has obtained the required joint determination from EPA Headquarters and DoJ.
3. This Complaint notifies U.S. Pole Company, Inc. ("U.S. Pole" or "Respondent") of Complainant's determination that U.S. Pole has violated Sections 112 of the CAA, 42 U.S.C. § 112, and the federal standards for emissions from secondary aluminum production operations promulgated pursuant to Sections 112 of the CAA, 42 U.S.C. § 7412, at 40 C.F.R. Part 63, Subpart RRR, §§ 63.1500 - 63.1519.

## **II. NATURE OF ACTION**

4. This is a federal enforcement action under the CAA, 42 U.S.C. §§ 7401-7671, to obtain civil penalties. Specifically, Complainant seeks civil penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for

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<sup>1</sup>As adjusted for inflation under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and implementing regulations at 40 C.F.R. Part 19.

Respondent's violations of various sections of the CAA and of regulations promulgated pursuant to the CAA.

### **III. STATUTORY AND REGULATORY FRAMEWORK**

5. Section 112 of the Act, 42 U.S.C. §7412, lists various hazardous air pollutants ("HAPs") and requires EPA to establish national emissions standards for these pollutants.
6. Pursuant to Sections 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production ("Secondary Aluminum Standard") as a final regulation on March 23, 2000. 65 Fed. Reg. 15689. EPA promulgated amendments to the Standard on September 24, 2002, and December 30, 2002. See 67 Fed. Reg. 58787 and 67 Fed. Reg. 79807, respectively. The Secondary Aluminum Standard is set forth at 40 C.F.R. Part 63, Subpart RRR, §§ 63.1500 - 63.1519.
7. A "secondary aluminum production facility" is defined, in part, as "any establishment using *clean charge, aluminum scrap*, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.*, melting, holding, sweating, refining, fluxing or alloying)..." 40 C.F.R. § 63.1503.
8. "Major source" means "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or

more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity..." 40 C.F.R. § 63.2.

9. "Area source" means "any stationary source of hazardous air pollutants that is not a major source as defined in this part." 40 C.F.R. § 63.2.
10. "Group 1 furnace" means "a furnace of any design that melts, holds or processes aluminum that contains paint, lubricants, coatings, or other foreign materials with or without *reactive fluxing*, or processes *clean charge* with *reactive fluxing*." 40 C.F.R. § 63.1503.
11. The Secondary Aluminum Standard applies to the owner or operator of each secondary aluminum production facility that has Group 1 furnace(s) which is a major or area source of HAPs. 40 C.F.R. § 63.1500.
12. The Secondary Aluminum Standard requires, in part, for owners and operators of secondary aluminum facilities with a Group 1 furnace(s) to prepare a site-specific test plan that must be approved by Complainant. 40 C.F.R. § 63.1511(a).
13. The Secondary Aluminum Standard requires, in part, for owners and operators of secondary aluminum facilities with Group 1 furnace(s) to conduct an initial performance test for dioxins and furans. 40 C.F.R. § 63.1511(b).
14. The Secondary Aluminum Standard requires owners and operators of secondary aluminum facilities to comply with, among other things, various monitoring, testing, and

compliance demonstration requirements. See 40 C.F.R. §§ 63.1510, 63.1511 and 63.1512.

15. The Secondary Aluminum Standard requires that each owner or operator must comply with the emission limit requirements set out at 40 C.F.R. § 63.1505.

#### **IV. GENERAL ALLEGATIONS**

16. U.S. Pole is a corporation incorporated under the laws of the State of California.
17. U.S. Pole is the "owner or operator" of the Facility within the meaning of 40 C.F.R. § 63.2.
18. U.S. Pole owns and operates a facility at 680 West Avenue O in Palmdale, CA 93551 ("Facility"), where U.S. Pole has Group 1 furnaces located at a secondary aluminum production facility that is a major or area source of HAPs.
19. Accordingly, Respondent is subject to the Secondary Aluminum Standard.
20. On August 15, 2007, Complainant issued an Administrative Compliance Order ("Order") to U.S. Pole. Paragraphs 16-19 of that Order required U.S. Pole to prepare and to submit a site-specific test plan and to conduct a performance test as defined in 40 C.F.R. § 63.1511.
21. Based on review of relevant documents and information, Complainant has determined that Respondent has violated the CAA and the Secondary Aluminum Standard as set out below.

#### **V. SPECIFIC ALLEGATIONS**

#### **COUNT I -- FAILURE TO COMPLY WITH PERFORMANCE TEST REQUIREMENTS OF 40 C.F.R. § 63.1511**

22. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21.
23. From March 24, 2003, to present, U.S. Pole failed to submit a site-specific test plan in violation of Section 112 of the CAA, 42 U.S.C. § 7412, 40 C.F.R. 63.1511.

**COUNT II -- FAILURE TO CONDUCT INITIAL PERFORMANCE TEST REQUIRED BY 40 C.F.R. § 63.1511**

24. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21.
25. From March 24, 2003, to the present, U.S. Pole failed to conduct an initial performance test for dioxins and furans in violation of Section 112 of the CAA, 42 U.S.C. § 7412, 40 C.F.R. § 63.1511.

**VI. PROPOSED CIVIL PENALTY**

26. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to issue an administrative penalty order to enforce the requirements or prohibitions contained in Section 112 of the CAA, 42 U.S.C. § 7412, and any regulations promulgated thereunder. Such a penalty order may assess a civil penalty of up to \$25,000 per day of violation. The civil penalty amount has been increased pursuant to the Civil Monetary Penalty Inflation Adjustment Rule (as mandated by the Debt Collection Improvement Act of 1996) to: not more than \$27,500 per day for violations between January 30, 1997 and March 15, 2004; and not more than \$32,500 per day for violations after March 15, 2004. 40 C.F.R. Part 19; 69 Fed. Reg. 7121.

27. The proposed civil penalty is determined in accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e). For purposes of determining the amount of any CAA penalty to be assessed, Section 113(e) requires EPA to take into account the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

**VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

28. As provided by Section 113(d) of the CAA, U.S. Pole has a right to request a hearing on the issues raised in this Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. Note that a request for a hearing must be incorporated in a written answer ("Answer") filed with the Regional Hearing Clerk within thirty (30) days of service of this Complaint. See 40 C.F.R. § 22.15(a).

29. In its Answer, Respondent may contest, among other things, any material fact contained in the Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint as to which Respondent has any knowledge. Where Respondent has no knowledge as to a particular factual allegation and so

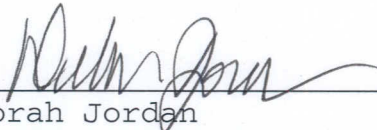
states, the allegation is deemed denied. The Answer shall also state: (1) the circumstances or arguments alleged to constitute the grounds of any defense, (2) the facts which Respondent disputes, (3) the basis for opposing any proposed relief and (4) whether a hearing is requested. Any failure of Respondent to admit, deny or explain any material fact contained in the Complaint constitutes an admission of that allegation.

**VIII. POSSIBILITY OF DEFAULT**

30. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations.

SO ISSUED this 26<sup>th</sup> day of September 2007:

Dated: 9/26/07

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



CERTIFICATE OF SERVICE

I certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing against U.S. Pole Company, Inc. (CAA69-2007-0091) ("Complaint") was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Complaint was placed in the United States Mail, certified mail, return receipt requested, addressed to the following agent authorized to receive service of process on behalf of U.S. Pole Company, Inc.:

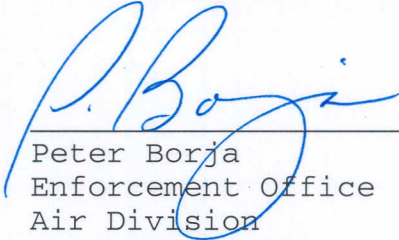
Mr. Joseph Straus  
President  
U.S. Pole Company, Inc.  
680 West Avenue O  
Palmdale, CA 93551

Certified Return Receipt No. 7005 2570 0001 8520 2741

In addition, the foregoing Complaint was telefaxed to Mr. Straus of U.S. Pole Company, Inc.

Dated: 9/26/07

By: \_\_\_\_\_

  
Peter Borja  
Enforcement Office  
Air Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105