



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

SEP 27 2006

REPLY TO THE ATTENTION OF:

AE-17J

Wanda Schumacher, President  
Del's Metal Co.  
1605 1<sup>st</sup> Street  
P.O. Box 3586  
Rock Island, IL 61204-3586

Re: In the Matter of Del's Metal Co.  
CAA Docket No. **CAA-05-2006-0032**

Dear Ms. Schumacher:

I have enclosed a complaint filed against Del's Metal Co., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production facilities at 40 C.F.R. Part 63, Subpart RRR.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Michael R. Berman, Associate Regional Counsel, U.S. Environmental Protection Agency, (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312)886-6837.

Sincerely yours,

A handwritten signature in cursive script that reads "Cheryl L. Newton".

Cheryl L. Newton, Acting Director  
Air and Radiation Division

Enclosures

cc: William J. Anaya  
Julie Armitage IEPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

\_\_\_\_\_) Docket No. CAA-05-2006-0032  
IN THE MATTER OF: )  
)  
) Proceeding to Assess a Civil  
Del's Metal Co. ) Penalty under Section 113(d)  
Rock Island, IL ) of the Clean Air Act,  
) 42 U.S.C. §7413(d)  
Respondent. )  
)  
)

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Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. §7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Del's Metal Co. (Del's Metal), a corporation, doing business in Illinois.

Statutory and Regulatory Background

4. The Administrator of U.S. EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under Section 112 of the Act, 42 U.S.C. §7412.

5. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production at 40 C.F.R. §§1500 through 1520 (Secondary Aluminum Production NESHAP or subpart RRR).

6. Subpart RRR at 40 C.F.R. §63.1500, applies to the owner or operator of each secondary aluminum production facility as defined in §63.1503.

7. Subpart RRR, at 40 C.F.R. §63.1503, defines a secondary aluminum production facility 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: ... furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying),...

8. The NESHAP for Secondary Aluminum Production pertaining to dioxin and furan (D/F) emissions and associated testing, operating, monitoring, reporting, and recordkeeping requirements applies to sweat furnaces, located at a secondary aluminum production facility that is an area source of hazardous air pollutants (HAPs) as defined in §63.2. 40 C.F.R. §63.1500(c).

9. Subpart RRR at 40 C.F.R. §63.1503, defines sweat furnaces as furnaces used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point iron remains in solid form.

10. Subpart RRR, at 40 C.F.R. §63.1505(a), requires an owner or operator of a new or existing affected source to comply with each applicable limit in this section.

11. Subpart RRR, at 40 C.F.R. §63.1505(f), requires that the owner or operator of a sweat furnace shall comply with the emission standard of paragraph (f)(2) of this section, which specifies that on and after March 24, 2003, the compliance date

established by 40 C.F.R. §63.1501, the owner or operator of a sweat furnace at a secondary aluminum production facility that is a major or area source must not discharge or cause to be discharged to the atmosphere emissions in excess of 0.80 nanogram of D/F [dioxins/furans] TEQ per dscm ( $3.5 \times 10^{-10}$  gr per dscf) at 11 percent oxygen unless the owner or operator maintains an afterburner meeting certain standards.

12. Subpart RRR, at 40 C.F.R. §63.1511(a), specifies that the owner/operator must submit a site-specific test plan prior to conducting any performance testing.

13. Subpart RRR, at 40 C.F.R. §63.1511(b), specifies that the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). It goes on to say the owner or operator of any existing affected source for which an initial performance test is required to demonstrate compliance must conduct this initial performance test no later than the date for compliance established by 40 C.F.R. §63.1501(a).

14. Subpart RRR, at 40 C.F.R. §63.1510(a), specifies that on and after the compliance date established by 40 C.F.R. §63.1501, the owner or operator of a new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in 40 C.F.R. §63.1510.

15. Subpart RRR, at 40 C.F.R. §63.1510(b), specifies that the owner or operator must prepare and implement for each new or

existing affected source and emission unit, a written operation, maintenance, and monitoring (OM&M) plan, which must be submitted to the permitting authority by March 24, 2003 and must include the information specified by 40 C.F.R. §63.1510(b).

16. Subpart RRR at 40 C.F.R. §63.1515(b), requires that each owner or operator of an existing affected source must submit a notification of compliance status report within 60 days after March 24, 2003 according to the requirements of this section. 40 C.F.R. §63.1515(b).

17. Subpart RRR, at 40 C.F.R. §63.1516(a), requires that each owner or operator must develop and implement a written plan as described in this section and 40 C.F.R. §63.6(e)(3), containing specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and including corrective actions to address malfunctions.

18. Subpart RRR, at 40 C.F.R. §63.1517(a), requires that as required by 40 C.F.R. §63.10(b), the owner or operator shall maintain files of all information, including all reports and notifications, required by the general provisions of Subpart A and this subpart (40 C.F.R. Part 63, Subparts A and RRR).

19. Subpart A, at 40 C.F.R. §63.6(e)(3), specifies that the owner/operator is required to have a startup, shutdown, and malfunction (SSM) plan on-site that conforms with the requirements of this section.

20. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up

to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. §7413(d)(1), and 40 C.F.R. Part 19 (2004).

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

#### **General Allegations**

23. Del's Metal owns and operates a secondary aluminum production facility (Rock Island facility or facility) at 1605 1<sup>st</sup> Street, Rock Island, Illinois that meets the definition of a Secondary Aluminum Production facility, as defined by 40 C.F.R. §63.1503.

24. Del's Metal's Rock Island facility was an area source of Hazardous Air Pollutants as defined at 40 C.F.R. §63.2 from March 24, 2003 to August 1, 2005.

25. Del's Metal's Rock Island facility was an affected source as defined at 40 C.F.R. §63.2 from March 24, 2003 to August 1, 2005.

26. Del's Metal's Rock Island facility was an existing source as defined at 40 C.F.R. §63.2 from March 24, 2003 to August 1, 2005.

27. Del's Metal owns and operated two sweat furnaces at its Rock Island facility (sweat furnaces).

28. Del's Metal owns and operated two sweat furnaces at its Rock Island facility as defined by 40 C.F.R. §63.1503.

29. Del's Metal owned and operated two sweat furnaces at its Rock Island facility from before March 24, 2003 to August 1, 2005.

30. Del's Metal's sweat furnaces did not have afterburners.

31. An operating permit was issued to Del's Metal for its two sweat furnaces by the Illinois Environmental Protection Agency on May 1, 1996.

32. Del's Metal's sweat furnaces were subject to the requirements at 40 C.F.R. Part 63 RRR.

33. Del's Metal sweat furnaces were subject to the requirements of 40 CFR Part 63, subpart RRR pertaining to dioxin and furan (D/F) emissions and associated testing, operating, monitoring, reporting and recordkeeping requirements. 40 C.F.R. §63.1500(c).

34. Del's Metal submitted to the Illinois Environmental Protection Agency its National Emission Standards for Hazardous Air Pollutants: Secondary Aluminum Production, Initial

Notification Report, dated June 21, 2000, stating that its Rock Island facility operates a sweat furnace.

35. Del's Metal submitted its National Emission Standards for Hazardous Air Pollutants: Secondary Aluminum Production, Initial Notification Report, dated June 21, 2000, and did not claim that the Rock Island facility used no materials other than clean charge and materials generated in the facility.

36. Del's Metal was required to either conduct an initial performance test of its sweat furnaces in compliance with 40 C.F.R. §63.1511(b) or install afterburners on its sweat furnaces in compliance with 40 C.F.R. §63.1505(f)(1) in order to comply with the requirements of subpart RRR.

37. Since Del's Metal did not have or install afterburners on its sweat furnaces in compliance with 40 C.F.R. §63.1505(f)(1), it was required to test its sweat furnaces in compliance with 40 C.F.R. §63.1511(b).

38. Del's Metal was required to comply with the requirements of 40 CFR subpart RRR by March 24, 2003. 40 C.F.R. §63.1501(a).

39. U.S. EPA inspected Del's Metal Rock Island facility on June 15, 2005.

40. Del's Metal informed U.S. EPA by letter, dated August 5, 2005 that they have discontinued operating their sweat furnaces effective August 1, 2005.

41. U.S. EPA issued a Finding of Violation to Del's Metal on November 16, 2005 alleging that Del's Metal violated the following provisions of the NESHAP for Secondary Aluminum

Production: 40 C.F.R. §§ 63.1511(b), 63.1515(b), 63.1517(a), 63.1510(b), and 63.1516(a).

**Count I**

42. Complainant incorporates paragraphs 1 through 41 of this complaint, as if set forth in this paragraph.

43. Del's Metal did not conduct an initial performance test of the sweat furnace(s) for dioxins and furans required by 40 C.F.R. §§63.1501(a) and 63.1511(b).

44. Del's Metal violated 40 C.F.R. §63.1511(b) when it failed to conduct an initial performance test at each of its sweat furnaces to demonstrate that each one met the emission standard for dioxins and furans, as specified in 40 C.F.R. §63.1505(f)(2).

**Count II**

45. Complainant incorporates paragraphs 1 through 41 of this Complaint, as if set forth in this paragraph.

46. Del's Metal did not submit a notification of compliance status within 60 days of the March 24, 2003 compliance date as required by 40 C.F.R. §63.1515(b).

47. Del's Metal violated 40 C.F.R. §63.1515(b) when it failed to submit a notification of compliance status within 60 days of the March 24, 2003, compliance date.

**Count III**

48. Complainant incorporates paragraphs 1 through 41 of this Complaint, as if set forth in this paragraph.

49. Del's Metal did not prepare, implement, and maintain a

written operation, maintenance, and monitoring plan, as required by 40 C.F.R. §§63.1510(b), 63.1517(a), and 63.10(b) as described at 40 C.F.R. § 63.1510(b).

50. Del's Metal violated 40 C.F.R. §§63.1510(b), 63.1517(a), and 63.10(b) when it failed to prepare, implement, and maintain a written operation, maintenance, and monitoring plan, as described at 40 C.F.R. §63.1510(b).

#### COUNT IV

51. Complainant incorporates paragraphs 1 through 41 of this Complaint, as if set forth in this paragraph.

52. Del's Metal did not develop, implement, and maintain a written startup, shutdown, and malfunction Plan as required by 40 C.F.R. §§63.1516(a), 63.1517(a), and 63.6(e)(3).

53. Del's Metal violated 40 C.F.R. §§63.1516(a), 63.1517(a), and 63.6(e)(3) when it failed to develop, implement, and maintain a written startup, shutdown, and malfunction Plan.

#### Proposed Civil Penalty

54. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. §7413(e).

55. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$100,548. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy

dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

56. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

**Rules Governing This Proceeding**

57. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

**Filing and Service of Documents**

58. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

59. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Michael R. Berman to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Michael Berman at (312) 886-6837. ORC Attorney's address is:

Michael R. Berman (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Penalty Payment**

60. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. EPA - Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Michael R. Berman and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Opportunity to Request a Hearing**

61. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. §7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a

hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 62 through 67 below.

**Answer**

62. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 58, above, and must serve copies of the written answer on the other parties.

63. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

64. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

65. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

66. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 61 above.

67. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

68. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Michael R. Berman at the address or phone number specified in paragraph 59, above.

69. Respondent's request for an informal settlement conference does not extend the 30 calendar-day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties

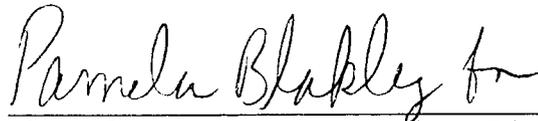
facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

70. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9-27-06

Date



Cheryl L. Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**CAA-05-2006-0032**

In the Matter of Del's Metal Co.  
Docket No. **CAA-05-2006-0032**

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [ ] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Wanda Schumacher, President  
Del's Metal Co.  
1605 1<sup>st</sup> Street  
P.O. Box 3586  
Rock Island, IL 61204-3586

William J. Anaya  
Arnstein & Lehr LLP  
120 S. Riverside Plaza - Suite 1200  
Chicago, IL 60606-3910

on the 27<sup>th</sup> day of September, 2006.

Shanee Rucker  
Shanee Rucker  
AECAB (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1447 8942

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