



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

FEB 20 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory A. Fontaine, Esq.
Leonard, Street and Deinard
150 South 5th Street
Suite 2300
Minneapolis, Minnesota 55402

Dear Mr. Fontaine:

Enclosed are a file-stamped Consent Agreement and Final Order (CAFO) and a copy of the executed Administrative Consent Order, which resolve case docket no. CAA-05-2013-0010. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on FEB 20 2013.

Pursuant to paragraph 47 of the CAFO, Gopher Resource, LLC (Gopher) must pay the civil penalty within 30 days of FEB 20 2013. Gopher's payment must include the docket number, CAA-05-2013-0010.

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 "Charles Hill for BD".

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

Enclosure

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2013-0010
)	
Gopher Resource, LLC)	Proceeding to Assess a Civil Penalty
Eagan, Minnesota,)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
Respondent.)	
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REGIONAL OFFICE
U.S. EPA/REGION 5
2013 FEB 20 PM 2:30

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Gopher Resource, LLC, a limited liability company doing business in Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest. In resolving this matter by settlement through this CAFO and the Administrative Consent Order of even date herewith captioned "In the Matter of Gopher Resource, LLC, Eagan, Minnesota" (the

“Administrative Consent Order”), Respondent neither admits nor denies the factual allegations in this matter.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO and the terms of the above-referenced Administrative Consent Order.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of the EPA (Administrator) a plan which provides for the implementation, maintenance, and enforcement of all national primary or secondary standards established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans, referred to as State Implementation Plans (SIPs), are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new or modified sources.

10. Section 110(n)(1) of the Act, 42 U.S.C. § 7410(n)(1), provides that any provision of any applicable SIP that was approved or promulgated by the Administrator pursuant to Section 110 of the Act, as in effect prior to November 15, 1990, shall remain in effect as part of such SIP, except to the extent that a revision to such provision is approved or promulgated by the Administrator.

11. On May 13, 1988, EPA approved 6 Minnesota Code of Agency Rules (MCAR) S 4.4303 as part of the federally enforceable SIP for Minnesota (effective June 13, 1988). 53 Fed. Reg. 17033.

12. 6 MCAR S 4.4303 provided that no person may construct, modify, reconstruct, or operate an emission facility or control equipment without obtaining an air emission facility permit from the Minnesota Pollution Control Agency (MPCA).

13. On May 2, 1995, EPA approved Minnesota Rules (Minn. R.) 7007.0150, 7007.0500, and 7007.0600 as part of the federally-enforceable SIP for Minnesota (effective July 3, 1995). 60 Fed. Reg. 21447.

14. Minn. R. 7007.0150, 7007.0500, and 7007.0600 replaced the prior Minnesota SIP provisions governing air emissions permits, including 6 MCAR S 4.4303. *See* 60 Fed. Reg. 27411.

15. Minn. R. 7007.0150, Subpart 1 provides that no person may operate an emissions unit, emission facility, or stationary source except in compliance with an air emission permit from MPCA.

16. Minn. R. 7007.0500, Subparts 2.C.(3) and (6) require that applicants for a permit to operate an emission unit, emission facility, or stationary source identify and describe all emission points in sufficient detail to determine the applicability of all applicable requirements, and to provide emission-related information on fuels, fuel use, raw materials, product rates, and operating schedules.

17. Minn. R. 7007.0600, Subpart 1 provides that a complete application for a permit to operate an emissions unit, emission facility, or stationary source must include all information

required by Minn. R. 7007.0500 and that this information must be sufficient to evaluate the subject stationary source and its application and to determine all applicable requirements.

18. Minn. R. 7007.0600, Subpart 2 provides that any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for a permit or permit amendment shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

19. Title V of the Act, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all applicable requirements are included in the Title V operating permit for the source.

20. Pursuant to 40 C.F.R. § 70.1(b), all sources subject to the Title V operating permit program, including “major sources,” shall have a permit to operate that ensures compliance by the source with “all applicable requirements.”

21. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.

22. Pursuant to Section 503 of the Act, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), every owner or operator of a Part 70 source, including a “major source,” is required to timely submit an accurate and complete Title V permit application, including information required to be submitted with the application.

23. Pursuant to Section 501(2)(B) of the Act, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, and Minn. R. 7007.0200, a “major source” is defined, in part, as any stationary source that directly emits or has the potential to emit one hundred tons per year or more of any air pollutant.

24. Pursuant to Section 504(a) of the Act 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.5, every Title V operating permit is required to contain all applicable emission limitations, standards and requirements, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a SIP.

25. Pursuant to 40 C.F.R. § 70.2, an “applicable requirement” includes any standard or other requirement provided for in the applicable SIP approved or promulgated by EPA that implements the relevant requirements of the Act, including any SIP revisions.

26. 40 C.F.R. § 70.5(a)(2) defines “complete application” to include information that is “sufficient to evaluate the subject source and its application and to determine all applicable requirements.”

27. 40 C.F.R. § 70.5(c) provides that a source may not omit from its Title V permit application information needed to determine the applicability of, or to impose, any applicable requirement.

28. Pursuant to 40 C.F.R. § 70.5(b), an applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

29. 40 C.F.R. § 70.3 provides that the requirements of Part 70 apply to any “major source” located in a state that has received whole or partial approval of its Title V program.

30. EPA approved Minnesota’s Title V operating program on an interim basis on June 16, 1995, and fully approved the program on December 4, 2001. 60 Fed. Reg. 31637 (June 16, 1995), and 66 Fed. Reg. 62967 (Dec. 4, 2001). Minnesota’s Title V operating permit program

regulations are codified at Minn. R. 7007, and are federally enforceable pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

31. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for SIP violations that occurred until January 30, 1997, \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred after January 30, 1997 through March 15, 2004, \$32,500 per day of violation up to a total of \$270,000 for SIP violations that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day of violation up to a total of \$295,000 for SIP violations that occurred after January 12, 2009.

32. 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 the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

33. 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 CAFO.

Factual Allegations and Alleged Violations

34. Respondent has owned and operated a secondary lead smelting facility located at 3385 Dodd Road, Eagan, Minnesota (the "Facility"), at all times relevant to this CAFO.

35. Respondent's Facility has the potential to emit more than 100 tons per year of sulfur dioxide.

36. Respondent's Facility is a "major source" within the meaning of Section 501(2)(B) of the Act, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, and Minn. R. 7007.0200.

37. Respondent obtained the following air emission control permits in connection with its operation of the Facility: Air Emission Permit No. 675-83-OT-4; Air Emission Permit No. 675-91-OT-5 (issued June 18, 1991 and thereafter amended); Air Emission Permit No. 03700016-002 (issued August 15, 2002 and thereafter amended); and Air Emission Permit No. 03700016-003 (issued June 29, 2010).

38. On or about April 6, 1990, Respondent installed four new oxygen burners on the Facility's East Reverberatory Furnace.

39. The oxygen burners and the East Reverberatory Furnace are part of an emission facility as used in 6 MCAR S 4.4303, and are an emissions unit, emission facility, or stationary source as used in Minn. R. 7007.0150, 7007.0500, and 7007.0600, and the East Reverberatory Furnace has been included in the permits referenced in Paragraph 37 above.

40. Respondent did not obtain an amendment to its then applicable air emission facility permit from the MPCA prior to installing the four new oxygen burners on the Facility's East Reverberatory Furnace.

41. By not obtaining an amendment to its then-applicable air emission facility permit from the MPCA prior to installing the four new oxygen burners on the Facility's East Reverberatory Furnace, Respondent violated 6 MCAR S. 4.4303 and the Act.

42. On April 14, 1995, Respondent applied for a Title V Total Facility Operating Permit from MPCA. On April 3, 2002, Respondent submitted a modification to the April 14, 1995 permit application. The MPCA issued a Title V Total Facility Operating Permit

(referenced in Paragraph 37 above as Air Emission Permit No. 03700016-002) to Respondent on August 15, 2002 (the "Title V Permit").

43. On February 16, 2007, Respondent applied for a reissuance of the Title V Permit. MPCA reissued Respondent's Title V Permit (referenced in Paragraph 37 above as Air Emission Permit No. 03700016-003) on June 29, 2010.

44. Respondent's applications to obtain, modify, or reissue the Title V Permit did not include information regarding the installation of four oxygen burners at the Facility's East Reverberatory Furnace. Respondent never supplemented its applications to obtain, modify, or reissue the Title V Permit with information regarding the installation of four oxygen burners at the Facility's East Reverberatory Furnace.

45. By not including information concerning the four oxygen burners on the Facility's East Reverberatory Furnace in the applications to obtain, modify, or reissue the Title V Permit, and by not supplementing its applications for the Title V Permit to include information relating to the four oxygen burners on the East Reverberatory Furnace, Respondent violated Minn. R. 7007.0150, Minn. R. 7007.0500, Subparts 2.C.(3) and (6), Minn. R. 7007.0600, Subparts 1 and 2, and Title V of the Act.

Civil Penalty

46. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$75,000.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$75,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and send it to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read: "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

48. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Gary Steinbauer at the following addresses when it pays the penalty:

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

Gary Steinbauer (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

49. This civil penalty of \$75,000 is not deductible for federal tax purposes.

50. If Respondent does not pay timely the civil penalty or any stipulated penalties due under Paragraph 68, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act,

42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

52. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by significantly reducing the amount of sulfur dioxide emitted from its Facility. The SEP, described in further detail below, is considered an "early compliance" SEP because Respondent has agreed to operate a Dry Scrubbing System (defined in Paragraph 53 below) before the compliance date that is anticipated, but has not yet been established, for EPA's revised Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010). The penalty mitigation that Respondent is receiving for the performance of the SEP includes only the calculated economic benefit lost by Respondent for performance of the SEP, which herein is defined to include only the specified amount set forth in Paragraph 56 below to operate the Dry Scrubbing System before the applicable NAAQS Compliance Date (which is described in Paragraph 55 below), and shall not include either (i) the design or installation of the Dry Scrubbing System or any costs or activities

associated therewith or (ii) any capital or operating costs other than as set forth in Paragraph 56 below.

53. At its Facility, Respondent must complete the following: On or before September 30, 2014, Respondent must begin operating a dry scrubbing system, designed to achieve a sulfur dioxide removal efficiency of at least 95 percent by weight, that includes, without limitation, the following components: (1) reaction tower, (2) fabric filter, (3) recirculation system, (4) fresh reagent storage and delivery system, and (5) induced draft fan (collectively, the "Dry Scrubbing System"), as generally described in a letter, dated October 13, 2011, from iES Engineers to Mr. John Tapper of Gopher Resource, LLC. The parties acknowledge that the description of the Dry Scrubbing System in the October 13, 2011 letter was a conceptual, preliminary description, and that the actual Dry Scrubbing System will be subject to further engineering and design which may result in additions and other changes to the description provided by iES Engineers.

54. On or before September 30, 2014, Respondent must operate the Dry Scrubbing System to control sulfur dioxide emissions from the following Emissions Units (EUs) at the Facility as listed on page A-21 of Respondent's Title V Permit: 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.

55. Beginning on or before September 30, 2014 and until September 30, 2017 or the date that Respondent receives a federally-enforceable permit or permit amendment from the MPCA that includes a sulfur dioxide emission limit imposed to comply with the Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010), whichever is later, Respondent must, at all times, operate the Dry Scrubbing System to limit its sulfur dioxide emissions from the Emission Units listed in Paragraph 54 above to 250 pounds per

hour, calculated using a 24-hour block average (“SO₂ Emission Rate”). The later of September 30, 2017 or the date that Respondent receives a federally-enforceable permit or permit amendment from the MPCA that includes a sulfur dioxide emission limit imposed to comply with the Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010) is hereinafter referred to as the “NAAQS Compliance Date.” On or after the NAAQS Compliance Date, Respondent shall no longer be required to comply with the SO₂ Emission Rate limit established in this Paragraph, and instead shall comply with the terms and conditions of said permit or permit amendment it receives from the MPCA that includes a sulfur dioxide emission limit imposed to comply with the Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010), regardless of whether said limit is higher or lower than the SO₂ Emission Rate limit established in this Paragraph.

56. Respondent certifies that it will spend \$91,631 to operate the Dry Scrubbing System from on or before September 30, 2014 until September 30, 2017. The parties acknowledge that Respondent may expend more than this amount to design, construct and operate the Dry Scrubber System, but any such expenditure (whether in capital costs, operating expenses, or any other direct or indirect costs) above \$91,631 shall not be considered part of the performance of the SEP hereunder.

57. Respondent must continuously use or operate the Dry Scrubbing System to limit emissions to the SO₂ Emission Rate following its installation on or before September 30, 2014 until the NAAQS Compliance Date. Beginning on the effective date of this CAFO and continuing thereafter until the Dry Scrubbing System is operating to limit emissions to the SO₂ Emission Rate, Respondent must submit quarterly progress reports describing the work performed and any problems encountered during the preceding period, work to be performed

during the next reporting period, anticipated problems, and planned resolutions of past or anticipated problems. Respondent shall provide progress reports within one calendar month following the end of each calendar-year quarter (i.e., April 30, July 31, October 31, and January 31).

58. Beginning on the date that the Dry Scrubbing System is operating to limit emissions to the SO₂ Emission Rate, Respondent must provide the following information in a report filed semi-annually:

- a. Daily sulfur dioxide emission rate in pounds per hour, calculated using a 24-hour block average, from the Emission Units listed in Paragraph 54 above, 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 operation of the Dry Scrubbing System up to the level necessary to satisfy the SEP monetary requirement in Paragraph 56;
- d. Identification of any and all periods of time that the Dry Scrubbing System was not operated to limit emissions to the SO₂ Emission Rate and a statement of the cause(s) for any such periods of time.

59. The first semi-annual report referenced in Paragraph 58 must cover the period from the date Respondent commences operation of the Dry Scrubbing System, but no later than September 30, 2014, to December 31, 2014, and each subsequent semi-annual report must cover the subsequent 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 the NAAQS Compliance Date.

60. The semi-annual report referenced in Paragraph 58 must be postmarked or delivered no later than January 31 or July 31, whichever is the first date following the end of the applicable semiannual reporting period.

61. The authorized representative of Respondent signing this CAFO certifies as follows:

I certify that Gopher Resource, LLC is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Gopher Resource, LLC has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Gopher Resource, LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

62. EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

63. Respondent must submit a SEP completion report to EPA by 30 calendar days following the NAAQS Compliance Date. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized operation and maintenance costs expended up to the level necessary to satisfy the SEP monetary requirement in Paragraph 56 above, which may be documented by copies of invoices, purchase orders, cancelled checks or other customary business records that specifically

identify and itemize the individual costs for such operation and maintenance;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

64. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 48 above.

65. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

66. Following receipt of the SEP completion report described in Paragraph 63, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 68 below.

67. If EPA exercises option b. under Paragraph 66 above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent

will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 68 below.

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

- a. Except as provided in subparagraph c., below, if Respondent does not install and begin operating the Dry Scrubbing System according to the requirements of this CAFO, including the schedules in Paragraphs 53 through 55, Respondent must pay an additional penalty of \$850,000 within thirty (30) days of being notified of EPA's decision that Respondent failed to complete the SEP satisfactorily as provided in Paragraph 67.
- b. If Respondent fails to meet the SO₂ Emission Rate established in Paragraph 55 above, Respondent shall pay \$750 for each calendar day it is in violation of the SO₂ Emission Rate.
- c. If Respondent did not complete the SEP satisfactorily as required herein, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in Paragraph 56 above through the NAAQS Compliance Date, Respondent will not be liable for any stipulated penalty under subparagraph a., above.
- d. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 56 above, Respondent must pay an additional penalty of \$12,500.
- e. If Respondent did not submit timely the SEP completion report or any other report required by Paragraphs 58 through 60 and 63 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

69. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

70. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties due hereunder. Respondent will use the method of payment specified in Paragraph 47 above, and will pay interest and nonpayment penalties on any overdue amounts.

71. Any public statement that Respondent makes referring to the SEP must include the following language: "Gopher Resource, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Gopher Resource, LLC for alleged violations of the Minnesota State Implementation Plan and the Clean Air Act."

72. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 calendar days after learning of an event which caused or may cause a delay in completing the SEP. Such notice must be sent by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch and to Gary Steinbauer at the addresses provided in Paragraph 48 above. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this Paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP or in installing and commencing operation of the Dry Scrubbing System in accordance with the requirements of this CAFO. 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 purchasing and completing installation of the Dry Scrubber System and completing the SEP 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.

73. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

74. Reductions in emissions of sulfur dioxide that result from the SEP shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit or offset under the Clean Air Act's Nonattainment New Source Review and Prevention of Significant Deterioration programs.

General Provisions

75. This CAFO and the accompanying Administrative Consent Order resolve only Respondent's liability for federal civil penalties and injunctive or other equitable relief for the violations alleged in this CAFO and the Administrative Consent Order.

76. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law or to enforce the terms and conditions of this CAFO and the Administrative Consent Order.

77. This CAFO and the Administrative Consent Order do not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in Paragraph 75 above, compliance with this CAFO and the Administrative Consent

Order will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

78. Respondent certifies that it is complying fully with the Clean Air Act and its implementing regulations.

79. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

80. The terms of this CAFO bind Respondent, its successors and assigns.

81. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

82. Each party agrees to bear its own costs and attorneys’ fees in this action.

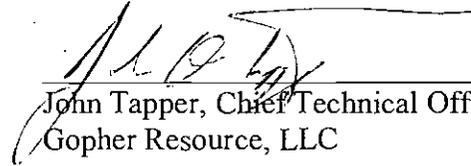
83. Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

84. EPA may use any information submitted pursuant to this CAFO in any administrative, civil judicial, or criminal action permitted hereunder.

85. This CAFO and the Administrative Consent Order constitute the entire agreement between the parties.

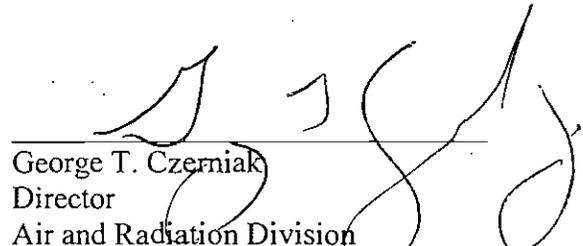
Gopher Resource, LLC, Respondent

1/10/13
Date


John Tapper, Chief Technical Officer
Gopher Resource, LLC

United States Environmental Protection Agency, Complainant

2/15/13
Date


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

Consent Agreement and Final Order
In the Matter of: Gopher Resource, LLC
Docket No. CAA-05-2013-0010

Final Order

This 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.

2-19-13

Date



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

Consent Agreement and Final Order
In the Matter of: Gopher Resource, LLC
Docket No. CAA-05-2013-0010

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA 05 2013 0010 with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Steven Yates, Environmental Health and Safety Manager
Gopher Resource, LLC
3385 Dodd Road
Eagan, Minnesota 55121

I certify that I mailed a copy of the CAFO by first-class mail, addressed as follows:

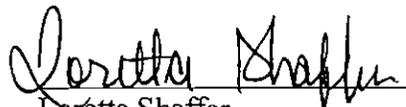
Jeff T. Connell, Manager
Compliance and Enforcement Section
Industrial Division
Minnesota Pollution Control Agency

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

RECEIVED
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
2013 FEB 20 PM 2:04

On the 20 day of February 2013.


Lorretta Shaffer
Administrative Professional Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 0874