

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPA-5-13-113(a)-MN-01
)	
Gopher Resource, LLC)	Proceeding Under Sections 113(a)
Eagan, Minnesota)	and 114(a) of the Clean Air Act
)	42 U.S.C. § 7413(a) and § 7414(a)
)	

Administrative Consent Order

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency (“EPA”), Region 5, is issuing this Order to Gopher Resource, LLC (“Gopher”) under Sections 113(a)(1) and (a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1) and (a)(3) and § 7414(a)(1).
2. 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 Administrative Consent Order and the Consent Agreement and Final Order (“CAFO”) of even date herewith captioned “In the Matter of Gopher Resource, LLC, Eagan, Minnesota, Respondent”, Gopher neither admits nor denies the factual allegations in this matter.
3. Gopher consents to the terms of this Consent Order and the above-referenced CAFO.

Statutory and Regulatory Background

4. 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.

5. 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.

6. 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.

7. 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).

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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."

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.”

22. 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.

23. 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.

24. 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.

25. 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).

26. Under Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. §§ 7413 (a)(1) and (a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP or a Title V operating program requirement or permit. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

27. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

28. EPA alleges the following facts and resulting violations. Gopher neither admits nor denies the factual allegations.

29. Gopher has owned and operated a secondary lead smelting facility located at 3385 Dodd Road, Eagan, Minnesota (the “Facility”), at all times relevant to this Order.

30. Gopher's Facility is an "emission source" as used in Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1).

31. Gopher's Facility is an "emission facility" as used in 6 MCAR S 4.4303 and Minn. R. 7007.0150, 7007.0500, and 7007.0600.

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

33. Gopher'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.

34. Gopher 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).

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

36. 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 34 above.

37. Gopher 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.

38. On April 14, 1995, Gopher 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 34 above as Air Emission Permit No. 03700016-002) to Respondent on August 15, 2002 (the "Title V Permit").

39. On February 16, 2007, Gopher applied for a reissuance of the Title V Permit. MPCA reissued Respondent's Title V Permit (referenced in Paragraph 34 above as Air Emission Permit No. 03700016-003) on June 29, 2010.

40. Gopher's applications to obtain, modify, or reissue the Title V Permit did not include information relating to the four oxygen burners at the Facility's East Reverberatory Furnace. Gopher did not supplement its applications to obtain, modify, or reissue the Title V Permit with information relating to the four oxygen burners at the Facility's East Reverberatory Furnace.

41. Gopher violated the Minnesota SIP by not obtaining a permit prior to installing the four oxygen burners on the East Reverberatory Furnace on or about April 6, 1990.

42. By not including information relating to 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 about the four oxygen burners on the East Reverberatory Furnace, Gopher violated the Minnesota SIP and Title V of the Act.

43. On June 24, 2011, EPA issued to Gopher a Notice and Finding of Violation alleging that it violated the Minnesota SIP and Title V of the Act by failing to obtain an air emission facility permit prior to installing the four oxygen burners on its East Reverberatory Furnace on or about April 6, 1990, by omitting information related to the four oxygen burners in its

applications for its Title V permits, and by failing to supplement its applications for a Title V permit with information related to the four oxygen burners.

44. On numerous occasions since June 24, 2011, representatives of Gopher and EPA have discussed the June 24, 2011 Notice and Finding of Violation and the potential for resolution.

Compliance Program

45. As stated in Table 2 of the Technical Support Document in the Title V Permit, Gopher currently utilizes sodium carbonate scrubbing (CE 010) as a sulfur dioxide control measure for the East Reverberatory Furnace (EU007) and the blast furnace (EU009) (“Soda Ash Injection System”). Gopher has been evaluating its Soda Ash Injection System to determine how it may be operated to improve the control of sulfur dioxide emissions from the Facility.

46. Within seven (7) calendar days of the effective date of this Consent Order, Gopher will, at all times thereafter, operate the soda ash slurry supply valve for its Soda Ash Injection System at a minimum of fifteen percent (15%) open and limit its emissions of sulfur dioxide from the Main Stack (SV 003) and all of the Associated Items listed on page A-21 of the Title V Permit to 500 pounds per hour of sulfur dioxide, calculated using a 24-hour block average, provided that Gopher may, but will not be required to, operate its Soda Ash Injection System after commencing operation of the Dry Scrubbing System in accordance with the CAFO.

47. Within thirty (30) calendar days of the effective date of this Consent Order, Gopher must apply to the MPCA for a modification of its Title V Total Facility Operating Permit, and obtain a modification of its Title V Total Facility Operating Permit (or other appropriate form of MPCA authorization, so long as such authorization is federally-enforceable) within one year of the effective date of this Consent Order, that requires Gopher to, at all times until commencing operation of the Dry Scrubbing System in accordance with the CAFO, operate the soda ash

slurry supply valve for its Soda Ash Injection System at a minimum of fifteen percent (15%) open and to limit its emissions of sulfur dioxide from the Main Stack (SV 003) and all of the Associated Items listed on page A-21 of the Title V Permit to 500 pounds per hour of sulfur dioxide, calculated using a 24-hour block average. Gopher must submit a copy of its application to modify its Title V Permit to EPA at the addresses listed in Paragraph 52 below, within seven (7) calendar days of submitting the application to MPCA.

48. Nothing in this Consent Order shall preclude Gopher from seeking at any time to amend its Title V Permit in any manner as allowed by applicable laws and regulations to replace the Soda Ash Injection System with an alternative emissions control system that limits sulfur dioxide emissions from the Main Stack (SV 003) and all of the Associated Items listed on page A-21 of the Title V Permit to 500 pounds per hour of sulfur dioxide, calculated using a 24-hour block average (a "Replacement Emissions Control System"). In the event that Gopher intends to seek to amend its Title V Permit to install a Replacement Emissions Control System, Gopher must notify EPA, at the addresses listed in Paragraph 52 below, at least 60 days prior to the date that it intends to submit the application to amend its Title V Permit to MPCA. After receiving and reviewing such a notification, EPA will notify Gopher as to whether such a Replacement Emissions Control System is a satisfactory alternative to meet the requirements of the Soda Ash Injection System as outlined in this Consent Order. In the event that EPA deems the Replacement Emissions Control System satisfactory and Gopher seeks such an amendment to its Title V Permit to replace the Soda Ash Injection System, Gopher must provide a copy of this permit amendment to the persons at the addresses listed in Paragraph 52 below, within seven (7) calendar days of submitting the application to MPCA.

49. Reductions in emissions of sulfur dioxide that result from the actions outlined in Paragraphs 46 and 47 of this Consent Order 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 or Prevention of Significant Deterioration programs.

Reporting Requirements

50. Within one calendar month of the end of each calendar quarter (i.e., April 30, July 31, October 31, and January 31), beginning on the first calendar quarter following the effective date of this Consent Order, Gopher must submit quarterly reports to EPA. The quarterly reports must include the following information:

- a. the date that it applied for a permit modification as required by Paragraph 47 above;
- b. the date, if any, that it received the Title V Permit modification as required by Paragraph 47 above;
- c. an electronic spreadsheet in Microsoft Excel or other similar format, saved on physical media such as compact disk, flash drive, or other similar media, that includes the sulfur dioxide concentration and emission rate, in parts per million and pounds per hour, respectively, of sulfur dioxide emissions, in one-hour averages, from the Main Stack (SV 003) and all of the Associated Items listed on page A-21 of the Title V Permit as Gopher is required to keep in accordance with its Title V Total Facility Operating Permit;
- d. an identification of any and all periods of time that Gopher failed to meet the emission limit set forth in Paragraphs 46 and 47 above, a statement of the cause(s) for any such periods of time, and a description of the corrective actions that were taken to come into compliance with the emission limit, or if there were no deviations from the emission limit set forth in Paragraphs 46 and 47 above, a certified statement by a representative of Gopher that, during the reporting period, its emissions of sulfur dioxide from the Main Stack (SV 003) and all of the Associated Items listed on page A-21 of the Title V Permit were limited to 500 pounds per hour of sulfur dioxide, calculated using a 24-hour block average;
- e. an identification of any and all periods of time that Gopher failed to meet the requirement set forth in Paragraphs 46 and 47 above that it operate the soda ash slurry supply valve for its Soda Ash Injection System at a continuous rate of at

least 15% open, a statement of the cause(s) for any such periods of time, and a description of the corrective actions that were taken to come into compliance with the requirement, or if there were no deviations from the requirement in Paragraphs 46 and 47 above, a certified statement by a representative of Gopher that the soda ash slurry supply valve for its Soda Ash Injection System was operated continuously at a minimum of fifteen percent (15%) open during the reporting period.

51. Gopher must submit all requested information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to section 113(c)(2) of the Act, and 18 U.S.C. §§ 1001 and 1341.

52. Gopher must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
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

General Provisions

53. This Consent Order does not affect Gopher's responsibility to comply with other federal, state and local laws.

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

55. This Consent Order does not affect the rights of EPA or the United States to pursue criminal sanctions for any violation of law or to enforce the terms and conditions of this Consent Order or the CAFO.

56. Subject to Paragraph 54 above, nothing in this Consent Order limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the Act, 42 U.S.C. § 7413, for Gopher's violation of the Minnesota SIP or the Act.

57. Failure to comply with this Consent Order may subject Gopher to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

58. The terms of this Consent Order are binding on Gopher, its assignees and successors. Gopher must give notice of this Consent Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above addresses, that it has given the notice.

59. Gopher 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 Gopher 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.

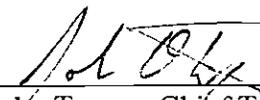
60. This Consent Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic recordkeeping efforts, please furnish electronic copies of required reports on CD or thumb drive. If not possible, provide your response to this Consent Order without staples; paper clips and binder clips, however, are acceptable.

61. EPA may use any information submitted pursuant to this Consent Order in any administrative, civil judicial, or criminal action.

62. Gopher stipulates that the EPA has jurisdiction to issue this Consent Order, and waives all objections and defenses it may have to the EPA's jurisdiction to enforce this Consent Order. Gopher agrees to the terms of this Consent Order.

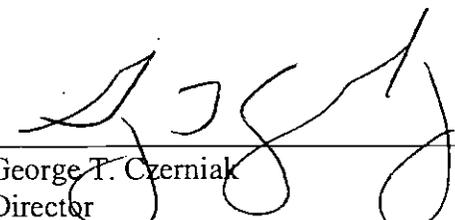
63. This Consent Order is effective on the date of signature by the Director of the Air and Radiation Division. This Consent Order will terminate one year from the effective date, provided that Gopher has complied with all terms of the Consent Order throughout its duration.

1/10/13
Date



John Tapper, Chief Technical Officer
Gopher Resource, LLC

2/19/13
Date



George T. Czerniak
Director
Air and Radiation Division