



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

MAR 14 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Adam M. Kushner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Dear Mr. Kushner:

Enclosed is a file-stamped Amendment to a Consent Agreement and Final Order (CAFO Amendment), which amends the resolution to case docket no. CAA-05-2013-0010. As indicated by the filing stamp on its first page, we filed the CAFO Amendment with the Regional Hearing Clerk on ~~_____~~ **MAR 14 2014** _____.

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 "Brian Dickens".

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.)	
<hr/>)	

WHEREAS, the United States Environmental Protection Agency, Region 5 and Gopher Resource, LLC (Respondent or Gopher) entered into a Consent Agreement and Final Order (CAFO) in the above-referenced matter, which was filed with the Regional Hearing Clerk on February 20, 2013;

WHEREAS, under the CAFO, Gopher agreed to complete an "early compliance" Supplemental Environmental Project (SEP), consisting of operating a Dry Scrubbing System (defined in Paragraph 53 of the CAFO) to limit its sulfur dioxide (SO₂) emissions to the SO₂ Emission Rate (originally defined in Paragraph 55 of the CAFO), beginning on or before September 30, 2014, and until the NAAQS Compliance Date (originally defined in Paragraph 55 of the CAFO);

WHEREAS, as an alternative to the Dry Scrubbing System, Gopher requested additional time under the SEP to investigate the use of a sorbent polymer composite membrane technology ("SPC Technology") for removal of SO₂ from process gases generated at Gopher's Facility;

WHEREAS, the results of a laboratory bench-top study of the SPC Technology, performed on behalf of Gopher in the fall of 2013, were positive and indicate that the technology may be suitable for application for removal of SO₂ from process gases at Gopher's Facility;

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WHEREAS, Gopher currently is conducting a pilot test of the SPC Technology to determine whether the technology would be a technically and economically feasible means of removing SO₂ from process gases generated at Gopher's Facility;

WHEREAS, Gopher anticipates that the pilot test of the SPC Technology will take approximately eight months to complete;

WHEREAS, if it proves to be technically and economically feasible, Gopher's use of the SPC Technology would result in additional environmental benefits as compared with the Dry Scrubbing System, including eliminating the need to dispose of spent lime, reducing electricity consumption, and producing sulfuric acid for reuse or sale;

WHEREAS, to account for the SO₂ emissions resulting from the delay associated with investigating the potential use of the SPC Technology at its Facility and as set forth below, Gopher has agreed to further reduce its emissions of sulfur dioxide beyond the emission reductions it agreed to as part of the original SEP;

WHEREAS, in light of the foregoing, the parties agree that amending the CAFO to allow Gopher additional time to investigate whether the SPC Technology could be used as an alternative to the Dry Scrubbing System under the SEP is in their interest and in the public interest;

NOW, THEREFORE, the parties hereby amend Paragraphs 52-55, 57-60, 63, 66-67, and 72.d. of the CAFO as follows. Except as specifically set forth herein, all provisions of the CAFO shall remain in full force and effect.

Amendment to Consent Agreement and Final Order

1. Paragraph 52 of the CAFO is replaced as follows:

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 either a SPC System or 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 SPC System or Dry Scrubbing System before the applicable Compliance Date (described in Paragraph 55 below), and shall not include either (i) the design or installation of the SPC System or 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.

2. Paragraph 53 of the CAFO is replaced as follows:

At its Facility, Respondent must complete the SEP by selecting one of the following control technology options:

- a. **SPC System Option:** Respondent currently is conducting a pilot test to determine whether Sorbent Polymer Composite technology ("SPC System") would be a technically and economically feasible means for removing sulfur dioxide from the process gases at the Facility. Respondent expects the pilot test to be completed on or about June 30, 2014. No later than thirty (30) calendar days after completion of the pilot test, Respondent will submit a written report that summarizes the results of the pilot test. No later than sixty (60) days after completion of the pilot test, Respondent shall submit a report notifying EPA of its decision to select either the SPC System or the Dry Scrubbing System as the control technology it will use to comply with this SEP. If Respondent selects the SPC System, it must begin operating the SPC System, designed to achieve a sulfur dioxide removal efficiency of at least 95 percent by weight, on or before October 31, 2015. The reports

required by this paragraph shall be submitted to EPA as specified in Paragraph 48.

- b. **Dry Scrubbing System Option:** If Respondent does not select the SPC System, it must begin operating a dry scrubbing system, designed to achieve a sulfur dioxide removal efficiency of at least 95 percent by weight, on or before June 30, 2015. The dry scrubbing system 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.

3. Paragraph 54 of the CAFO is replaced as follows:

On or before June 30, 2015, for the Dry Scrubbing System or on or before October 31, 2015, for the SPC System, whichever is selected in accordance with Paragraph 53, Respondent must operate the SPC System or 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.

4. Paragraph 55 of the CAFO is replaced as follows:

Respondent will operate the SPC System or the Dry Scrubbing System as follows:

- a. **SPC System Compliance Date:** If Respondent selects the SPC System in accordance with Paragraph 53, beginning on or before October 31, 2015, and until October 31, 2018, 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 SPC System to meet

its sulfur dioxide emissions from the Emission Units listed in Paragraph 54 above to the SO₂ Emission Rate described below. The later of October 31, 2018, 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 "SPC System Compliance Date."

- b. **Dry Scrubbing System Compliance Date:** If Respondent selects the Dry Scrubbing System in accordance with Paragraph 53, beginning on or before June 30, 2015 and until June 30, 2018, 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 the SO₂ Emission Rate described below. The later of June 30, 2018, 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 "Dry Scrubbing System Compliance Date."
- c. **SO₂ Emission Rate:** Respondent shall operate the selected control technology to limit its sulfur dioxide emissions from the Emission Units listed in Paragraph 54 above to an emission rate calculated as follows:
- i. Using the data from its SO₂ Continuous Emission Monitoring System, Respondent shall track its actual hourly sulfur dioxide emissions (using a 24-hour block average) and use this number to calculate the tons of actual sulfur dioxide emissions from September 30, 2014, until the date the Dry Scrubbing System or SPC System begins to operate.
 - ii. Respondent shall then calculate the value "E" as follows:

$$E = \frac{[D \times C \times (250 \text{ pounds per hour}) \times (24 \text{ hours per day})]}{(2000 \text{ pounds per ton})}$$

Where:

D = the number of days between September 30, 2014 and the date the Dry Scrubbing System or SPC System begins to operate, excluding any dates that the East Reverberatory Furnace (EU007) did not operate

C = an assumed capacity factor of 0.9

iii. Respondent shall then calculate the value "F" as follows:

$$F = A - E$$

Where:

A = actual sulfur dioxide emissions calculated in accordance with Paragraph 55.c.i.

iv. If F is equal to or less than zero, the SO₂ Emission Rate is 225. The SO₂ Emission Rate shall be kept in pounds per hour and must be calculated using a 24-hour block average.

v. If F is greater than zero, Respondent shall then calculate the value "ER" as follows:

$$ER = \frac{[F \times (2000 \text{ pounds per ton})]}{[(3 \text{ years}) \times (365 \text{ days per year}) \times (24 \text{ hours per day})]}$$

Respondent shall then subtract ER from 225. The resulting number shall be the SO₂ Emission Rate. The SO₂ Emission Rate shall be kept in pounds per hour and must be calculated using a 24-hour block average.

vi. If Respondent selects the Dry Scrubbing System option in accordance with Paragraph 53, Respondent must continuously use or operate the Dry Scrubbing System to limit emissions to the SO₂ Emission Rate by June 30, 2015, and continuing until the Dry Scrubbing System Compliance Date.

vii. If Respondent selects the SPC System option in accordance with Paragraph 53, Respondent must continuously use or operate the SPC System to limit emissions to the SO₂

Emission Rate by October 31, 2015, and continuing until the SPC System Compliance Date.

viii. On or after the Dry Scrubbing System Compliance Date or the SPC System Compliance Date, whichever is applicable, Respondent shall no longer be required to comply with the SO₂ Emission Rate 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 established in this Paragraph.

5. Paragraph 56 of the CAFO is replaced as follows:

Respondent certifies that it will spend approximately \$410,765 to operate the Dry Scrubbing System from on or before June 30, 2015 until June 30, 2018, or approximately \$187,372 to operate the SPC System from on or before October 31, 2015 until October 31, 2018. The parties acknowledge that Respondent may expend more than the applicable amounts to design, construct and operate the Dry Scrubber System or SPC System for the specified time periods, but any such expenditure (whether in capital costs, operating expenses, or any other direct or indirect costs) above \$410,765 for the Dry Scrubbing System or \$187,372 for the SPC System shall not be considered part of the performance of the SEP hereunder.

6. Paragraph 57 of the CAFO is replaced as follows:

Beginning on the effective date of this CAFO and continuing thereafter until the Dry Scrubbing System or the SPC 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).

7. Paragraph 58 of the CAFO is replaced as follows:

Beginning on the date that the Dry Scrubbing System or the SPC 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 or the SPC 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 or SPC 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.
- e. In the first report submitted pursuant to this Paragraph, Respondent shall also submit the calculations performed pursuant to Paragraph 55.c.i., ii., iii., and v. In this report, Respondent shall clearly identify the hourly emission limit it calculates pursuant to Paragraph 55.c.iv or 55.c.v.

8. Paragraph 59 of the CAFO is replaced as follows:

The first semi-annual report referenced in Paragraph 58 must cover the period from the date Respondent commences operation of the Dry Scrubbing System or SPC System. The 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. If the SPC System is selected, the first report must cover the period from October 31, 2015 to December 31, 2015. Respondent must provide a semi-annual report for each reporting period until either the Dry Scrubbing System Compliance Date or the SPC System Compliance Date, whichever is applicable.

9. Paragraph 63 of the CAFO is replaced as follows:

Respondent must submit a SEP completion report to EPA by sixty (60) calendar days following the Dry Scrubbing System

Compliance Date or the SPC System 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).

10. Paragraph 68 of the CAFO is replaced as follows:

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 fails to install the Dry Scrubbing System by June 30, 2015 or the SPC System by October 31, 2015, whichever is applicable, Respondent must pay an additional penalty for each calendar day the Dry Scrubbing System or SPC System is not installed as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$1500	1 st through 60 th day
\$2500	61 st through 120 th day
\$5000	121 st day and beyond

- b. If Respondent installs the Dry Scrubbing System by June 30, 2015 or the SPC System by October 31, 2015, whichever is applicable, but fails to continuously operate the selected control technology and 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 Dry Scrubbing System Compliance Date or the SPC System 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 53.a., 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

11. Paragraph 72.d. of the CAFO is replaced as follows:

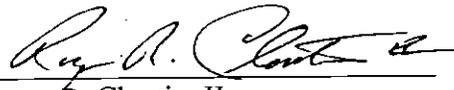
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP or in installing and commencing operation of the Dry Scrubbing System or the SPC System in accordance with the requirements of this CAFO. An event which causes or may cause 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 or the SPC 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.

[Signature page follows.]

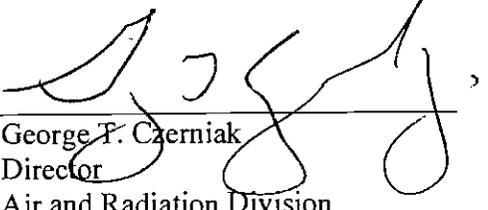
Gopher Resource, LLC, Respondent

3/4/14
Date


Roger R. Cloutier II
Senior Vice President and Chief
Financial Officer
Gopher Resource, LLC

United States Environmental Protection Agency, Complainant

3/10/14
Date


George F. 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.

Final Order

The foregoing Amendment to the 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.

3/11/2014
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 Amendment to 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 Amendment 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 Amendment 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

On the 14 day of March 2014.


Loretta Shaffer
Administrative Professional Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 70091680 0000 7670 0528

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MARCH 14 2014
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
CHICAGO, ILLINOIS 60604