UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JW ALUMINUM COMPANY, Defendant.	Civil Action No. 2:17-cv-02490-DCN COMPLAINT

The United States of America, by the authority of the Attorney General of the United States, acting at the request of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

This is a civil action against JW Aluminum Company ("Defendant") to obtain injunctive relief and the assessment of civil penalties for violations of: a) the federal emissions standards for hazardous air pollutants at Section 112 of the Clean Air Act ("CAA"), 42 U.S.C. § 7412, as implemented by the regulations for general provisions, secondary aluminum production and surface coating of metal coil at 40 C.F.R. Part 63, Subparts A, RRR and SSSS; b) the federal new source performance standards at Section 111 of the CAA, 42 U.S.C. § 7411, as implemented by the regulations for general provisions and metal coil surface coating at 40 C.F.R. Part 60, Subparts A and TT; and c) permits issued by the South Carolina Department of Health and Environmental Control (the "Department") pursuant to South Carolina regulations, S.C. Code Regs. R. 61-62.70, and Title V of the CAA, 42 U.S.C. §§ 7661–7661f. The violations alleged in this complaint occurred or are occurring at a secondary aluminum production facility located at

435 Old Mount Holly Road, Mount Holly, South Carolina, and owned and operated by Defendant (the "Mt. Holly Facility").

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). This Court also has jurisdiction over the parties to this action.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the violations alleged in this complaint occurred or are occurring at the Facility, which is located within this District.

AUTHORITY AND NOTICE

3. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the CAA, 42 U.S.C. § 7605, and 28 U.S.C. §§ 516 and 519.

4. Notice has been given to Defendant and the State of South Carolina of the findings of violation as alleged in this complaint, and more than 30 days have elapsed since such notice was provided.

DEFENDANT

5. Defendant is a Delaware corporation, operating as a foreign corporation in good standing in South Carolina.

6. Defendant is a wholly-owned subsidiary of Wellspring Capital Management LLC.

7. Defendant is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

The Clean Air Act

8. The primary purpose of the CAA is to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

National Emission Standards for Hazardous Air Pollutants

9. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), requires EPA to promulgate regulations establishing national emissions standards for categories of major sources and area sources of hazardous air pollutants ("HAPs").

10. The CAA provides that a "major source" is a stationary source that emits or has the potential to emit more than 10 tons per year of any single HAP or more than 25 tons per year of any combination of HAPs. 42 U.S.C. §§ 7412(a)(1) and 7661(2)(A); 40 C.F.R. § 63.2. A "stationary source" is any building, structure, facility, or installation that emits or may emit any air pollutant. 42 U.S.C. §7412(a)(3) (by reference to 42 U.S.C. § 7411(a)); 40 C.F.R. § 63.2.

11. Emission standards promulgated pursuant to Section 112 of the CAA are referred to as maximum achievable control technology ("MACT") standards. EPA's MACT standards for HAP sources are generally set forth at 40 C.F.R. Part 63.

12. The CAA contemplates that implementation and enforcement authority for federal MACT standards may be delegated to individual states. 42 U.S.C. § 7412(*l*)(1). But EPA retains the authority to enforce federal MACT standards within a state after implementation and enforcement authority has been delegated to that state. 42 U.S.C. § 7412(*l*)(7).

The Secondary Aluminum Production MACT ("Subpart RRR")

13. Pursuant to Section 112 of the CAA, EPA promulgated MACT standards for secondary aluminum production ("Subpart RRR"), 65 Fed. Reg. 15690 (March 23, 2000), which are set forth at 40 C.F.R. Part 63, Subpart RRR. 40 C.F.R. §§ 63.1500–63.1520.

14. The Department has been delegated authority to implement and enforce Subpart RRR. 60 Fed. Reg. 32913 (June 26, 1995); 40 C.F.R. § 63.99.

15. Subpart RRR applies to "affected sources" located at a "secondary aluminum production facility" that is a "major source" of HAPs. 40 C.F.R. § 63.1500(b). These "affected sources" include each new or existing secondary aluminum processing unit (which in turn consists of all group 1 furnaces and in-line fluxers at the facility). 40 C.F.R. §§ 63.1500(b)(1) and (8); 63.1503.

16. A "secondary aluminum production facility" is defined in Subpart RRR as any establishment using clean charge, aluminum scrap, or dross from aluminum production as a raw material and performing one or more of the following processes: scrap shredding; scrap drying, delacquering or decoating; thermal chip drying; furnace operations such as melting, holding, sweating, refining, fluxing or alloying; recovery of aluminum from dross; in-line fluxing; or dross cooling. 40 C.F.R. § 63.1503.

17. An "emission unit" is defined in Subpart RRR as a group 1 furnace or in-line fluxer. 40 C.F.R. § 63.1503.

18. A "group 1 furnace" is defined in Subpart RRR as a furnace of any design that melts, holds or processes aluminum that contains paint, lubricants, coatings or other foreign materials with or without reactive fluxing, or processes clean charge with reactive fluxing. 40 C.F.R. § 63.1503.

19. Affected sources on which construction or reconstruction was commenced prior to February 11, 1999 are "existing affected sources," required to meet Subpart RRR's requirements by March 24, 2003. 40 C.F.R. § 63.1501(a); 40 C.F.R. § 63.2.

20. Emissions regulated under Subpart RRR include dioxin and furan ("D/F"), particulate matter ("PM"), and hydrogen chloride ("HCl").

The Surface Coating of Metal Coil MACT ("Subpart SSSS")

21. Pursuant to Section 112 of the CAA, EPA promulgated MACT standards for surface coating of metal coil ("Subpart SSSS"), 65 Fed. Reg. 44616 (July 18, 2000), which are set forth at 40 C.F.R. Part 63, Subpart SSSS. 40 C.F.R. §§ 63.5080–63.5209.

22. The Department has been delegated authority to implement and enforce Subpart SSSS. 60 Fed. Reg. 32913 (June 26, 1995); 40 C.F.R. § 63.99.

23. Subpart SSSS applies to major sources of HAPs at which a coil coating line is operated, 40 C.F.R. § 63.5090, and establishes HAP emission and operating limitations for affected coil coating lines, 40 C.F.R. § 63.5120-21.

24. A "coil coating line" is defined in Subpart SSSS as a process and the collection of equipment used to apply an organic coating to the surface of metal coil. 40 C.F.R. § 63.5110.

25. Subpart SSSS does not apply to coil coating lines on which 85% of the metal coil coated is less than 0.15 millimeters (0.006 inches) thick. 40 C.F.R. § 63.5090(b)(2).

26. The compliance date for existing affected sources (upon which construction or reconstruction was commenced before July 18, 2000) under Subpart SSSS was June 10, 2005. 40 C.F.R. § 63.1510(a).

New Source Performance Standards

27. Section 111(f) of the CAA, 42 U.S.C. § 7411(f), directs EPA to establish standards of performance for new sources that, in EPA's determination, cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. These regulations, the "New Source Performance Standards," are promulgated at 40 C.F.R. Part 60. A source subject to a New Source Performance Standard may not operate in violation of that standard. 42 U.S.C. § 7411(e).

28. EPA has promulgated New Source Performance Standards for metal coil surface coating ("NSPS Subpart TT"), 46 Fed. Reg. 1102 (January 5, 1981), which are set forth at 40 C.F.R. Part 60 Subpart TT.

29. NSPS Subpart TT establishes volatile organic compound ("VOC") emissions limitations for affected facilities within metal coil surface coating operations, 40 C.F.R. § 60.462, and requires initial and then monthly performance testing of each affected facility, 40 C.F.R. § 60.463.

Title V Permits

30. Title V of the CAA, entitled "Permits," 42 U.S.C. §§ 7661-7661f, establishes a permitting program designed to include applicable requirements of the CAA and state air regulations into a single operating permit for each source subject to the CAA, and to provide for permitting of sources of HAPs.

31. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), requires each state to submit a Title V permitting program to EPA for approval. EPA gave full, final approval of the State of South Carolina's Title V permit program effective July 26, 1995. 40 C.F.R. Part 70, App. A.

32. The State of South Carolina's Title V permit program requires certain sources to obtain a Title V permit, including sources that qualify as "major sources" under Section 112 of the CAA, and sources subject to a standard or other requirement under Section 112 of the CAA. S.C. Code Regs. R. 61-62.70.3(a); 61-62.70.1(b).

33. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), a violation of a permit issued under Title V is a violation of the CAA.

PERMITTING HISTORY

34. Defendant was issued Part 70 Air Quality Permit No. TV-0420-0033 (the "Title V Permit") by the Department on January 17, 2000.

35. The Title V Permit was renewed effective October 1, 2006 (the "Renewed Title V Permit"). The Renewed Title V Permit incorporates the applicable provisions of 40 C.F.R. § 63 Subparts A and RRR and NSPS Subparts A and TT by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

36. Defendant submitted a Title V Permit renewal application to the Department in 2011, which has yet to be granted.

GENERAL ALLEGATIONS

The Mt. Holly Facility

37. Defendant owns and operates the Mt. Holly Facility.

38. Jim Walter Metals, a division of the Jim Walter Corporation, began operations at the Mt. Holly Facility in 1979. In 1987 Jim Walter Metals became JW Aluminum Company, which has operated the Mt. Holly Facility continuously since that time.

39. The Mt. Holly Facility emits, and has emitted during all times relevant to this Complaint, total HAPs in excess of the CAA's "major source" threshold. 42 U.S.C.

§§ 7412(a)(1) and 7661(2)(A); 40 C.F.R. § 63.2. Accordingly, the Mt. Holly Facility is a "major source" for purposes of the CAA.

40. At the Mt. Holly Facility, Defendant processes scrap aluminum and aluminum ingots into aluminum sheets of varying thicknesses, which it then packages into coils. Defendant begins the production process by charging aluminum ingots and scrap aluminum into one of its melting furnaces (or aluminum ingots into the one holding furnace not fed by a melting furnace). The molten aluminum alloy is then transferred into one of Defendant's holding furnaces, where flux is added to remove impurities. The holding furnace is then tapped to allow molten aluminum alloy to continuously feed the casting operation in which aluminum coils are formed. Prior to each casting operation, the molten aluminum alloy flows through an in-line degassing station, where additional flux is added to remove impurities. After casting is complete, the resultant aluminum coil is passed through one or more rolling mills until the desired thickness is achieved. Defendant maintains annealing ovens at the Mt. Holly Facility, which are used to homogenize aluminum coil. Finally, some of the aluminum coil produced at the Mt. Holly Facility is coated in Defendant's coating line.

41. The Mt. Holly Facility is an establishment using clean charge and aluminum scrap as raw material upon which it performs furnace operations and in-line fluxing, and is therefore a "secondary aluminum production facility" under Subpart RRR, as defined at 40 C.F.R. § 63.1503.

Secondary Aluminum Production at the Mt. Holly Facility

42. Defendant operates four sidewell reverbatory melting furnaces at the Mt. Holly Facility (the "Melting Furnaces"), identified in the Renewed Title V Permit as MF-1 through

MF-4. The Melting Furnaces are used to melt down both aluminum ingots (clean charge) and scrap aluminum (aluminum containing paint, lubricants, coatings, or other foreign materials).

43. Defendant uses solid salt flux, a type of reactive chlorine flux, in the Melting Furnaces.

44. Because the Melting Furnaces are used to melt down scrap aluminum, and because Defendant uses reactive flux in the Melting Furnaces, the Melting Furnaces are "group 1 furnaces" under Subpart RRR, as defined at 40 C.F.R. § 63.1503, and are identified as such in the Renewed Title V Permit. See Renewed Title V Permit at pg. 20, Table 5.10.

45. The Melting Furnaces are not equipped with "add-on air pollution control devices," as that term is defined at 40 C.F.R. § 63.1503, in that they are not equipped with equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

46. Defendant operates five holding furnaces at the Mt. Holly Facility (the "Holding Furnaces"), identified in the Renewed Title V Permit as HF-1 through HF-5.

47. Holding Furnaces HF-1, HF-2, HF-3, and HF-5 receive molten aluminum alloy from the Melting Furnaces, and are then tapped to continuously feed aluminum to the casting operation. Gaseous flux consisting of a mixture of Argon and sulfur hexafluoride (SF_6) is injected into these Holding Furnaces during transfer of aluminum from the Melting Furnaces.

48. Holding Furnace HF-4 is not fed by a Melting Furnace, but receives only aluminum ingots (clean charge), which are melted down in Holding Furnace HF-4. Holding Furnace HF-4 is then tapped to continuously feed aluminum to the casting operation as with the other Holding Furnaces. Gaseous flux consisting of a mixture of Argon and sulfur hexafluoride is injected into Holding Furnace HF-4 at all times during its operation.

49. The Holding Furnaces are not equipped with "add-on air pollution control devices," as that term is defined at 40 C.F.R. § 63.1503, in that they are not equipped with equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

50. Subpart RRR defines "reactive fluxing" as "the use of any gas, liquid or solid flux (other than cover flux) that results in a HAP emission." 40 C.F.R. § 63.1503.

51. Subpart RRR expressly identifies Argon as not reactive. 40 C.F.R. § 63.1503. Subpart RRR does not expressly identify sulfur hexafluoride as not reactive. Id.

52. When sulfur hexafluoride is exposed to elevated temperatures or flame it can decompose and form hydrogen fluoride, a HAP under Section 112(a) of the CAA. During fluxing in the Holding Furnaces, the gaseous flux is exposed to elevated temperatures and flame, and Defendant's use of flux containing sulfur hexafluoride in its Holding Furnaces could thus result in emissions of hydrogen fluoride.

53. Because the Holding Furnaces process clean charge with reactive fluxing, the Holding Furnaces are "group 1 furnaces" under Subpart RRR, as defined at 40 C.F.R. § 63.1503.

54. Defendant operates ten in-line fluxers at the Mt. Holly Facility (the "In-line Fluxers"). As molten aluminum alloy passes from a Holding Furnace to one of Defendant's ten casters, it passes through the In-line Fluxer attached to that caster. The In-line Fluxers inject gaseous flux consisting of a mixture of Argon and sulfur hexafluoride into the molten aluminum alloy that passes through them.

55. Defendant is, and was at all times relevant to this Complaint, the "owner" and "operator," within the meaning of 40 C.F.R. § 63.2, of the Mt. Holly Facility, the Melting Furnaces, the Holding Furnaces and the In-Line Fluxers.

The Aluminum Coil Coating Line at the Mt. Holly Facility

56. Defendant operates a coating line at the Mt. Holly Facility (the "Aluminum Coating Line"). The Aluminum Coating Line processes some, but not all, aluminum coil produced at the Mt. Holly Facility. The Aluminum Coating Line first removes excess rolling mill lubrication oil from the aluminum coil. A water-based surface coating is then applied to the aluminum coil. Finally, the coated aluminum coal is cured in infrared ovens.

57. On February 24, 1997, Defendant received a construction permit from the Department authorizing it to coat thicker aluminum coil (equal to or greater than 0.15 millimeter (0.006 inch)) and to install a wet scrubber on its Aluminum Coating Line. The Department construction permit specified that the revised process would be subject to NSPS Subpart TT.

58. On February 24, 1997, Defendant notified the Department in writing that it intended to begin coating thicker aluminum coil (equal to or greater than 0.15 millimeter (0.006 inch)) in March of 1997, and hoped to reach maximum production in April of 1997. The Aluminum Coating Line has at times relevant to this Complaint routinely used to coat aluminum coil that is more than 0.15 millimeter (0.006 inch) thick.

59. The Aluminum Coating Line applies organic coatings to the surface of aluminum coil, and is thus a "coil coating line" under Subpart SSSS, as defined at 40 C.F.R. § 63.5110, and an "existing affected source" under Subpart SSSS as defined at 40 C.F.R. § 63.5100.

60. The Aluminum Coating Line has at times relevant to this Complaint been a "metal coil surface coating operation" under NSPS Subpart TT, as defined at 40 C.F.R. § 60.461, in that it is, or was at times relevant to this Complaint, an application system used to apply an organic coating to the surface of aluminum coil with a thickness equal to or greater than 0.15 millimeter (0.006 inch).

61. The Aluminum Coating Line has a single coating application system and curing oven, and is therefore a "finish coat operation" as defined in NSPS Subpart TT, 40 C.F.R. § 60.461.

62. The Aluminum Coating Line is equipped with a wet scrubber, a device designed to capture and reuse water soluble solvents including 2-dimethylaminoethanol, butyl cellosolve and ethylene glycol, which are VOCs, thereby controlling VOC emissions from the Aluminum Coating Line. Defendant operates the wet scrubber continuously while the Aluminum Coating Line is in operation.

63. Because the Aluminum Coating Line is equipped with the wet scrubber, a continuous emission control device, it is, or was at times relevant to this Complaint, subject under NSPS Subpart TT to an emission limit of 0.14 kilograms of VOCs per liter of coating solids applied (0.14 kg VOC/*l*). 40 C.F.R. § 60.462(a)(2); Renewed Title V Permit, pg. 22, Condition 5.E.10.

EPA Compliance Evaluations and Notice of Violation for the Mt. Holly Facility

64. EPA conducted on-site compliance evaluations at the Mt. Holly Facility on June 9-10, 2004 (the "2004 Compliance Evaluation") and March 19-20, 2008 (the "2008 Compliance Evaluation"). On May 8, 2008, EPA issued a Notice of Violation to Defendant enumerating violations observed during the 2008 EPA Compliance Evaluation and upon reviewing documents provided to EPA by Defendant.

FIRST CLAIM FOR RELIEF

(Failure to Conduct Timely and Adequate Performance Testing for the Melting Furnaces)

65. Paragraphs 1 through 64 are incorporated by reference.

66. Subpart RRR requires that the owner or operator of an affected source or emission unit conduct performance testing to demonstrate compliance with all applicable emission, equipment, work practice or operation standards for that source or unit. 40 C.F.R. § 63.1511(b). The owner or operator must also conduct a repeat performance test every five years following the initial performance test. 40 C.F.R. § 63.1511(e).

67. The owner or operator of each group 1 furnace that processes scrap other than clean charge must conduct performance testing that includes measurement of PM, D/F, and HCl. 40 C.F.R. § 63.1512(j)(2). Performance testing for continuous processes must consist of three separate runs, of a minimum of three hours per run (unless the relevant test method provides a specific time period for testing). 40 C.F.R. § 63.1511(b)(2).

68. During performance testing, the owner or operator of a group 1 furnace must establish operating parameters for total reactive chlorine flux injection rate. 40 C.F.R. §§ 63.1511(g), 1510(j) and 1512(o). The procedures for establishing these operating parameters, provided at 40 C.F.R. § 63.1512(o), require in part that the owner or operator record the identity, composition and total weight of each addition of solid reactive flux during performance testing, and determine the total reactive chlorine flux injection rate for the three test runs.

69. The Renewed Title V Permit requires Defendant to conduct performance testing on its group 1 furnaces in accordance with 40 C.F.R. §§ 63.1512(j) and 63.1511(g), and to conduct retesting every five years in accordance with 40 C.F.R. § 63.1511(e). Renewed Title V Permit, pg. 47-48, Conditions 6.B.51 and 6.B.53. In addition, the Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

Melting Furnace MF-1

70. During the July 9-10, 2002 testing on Melting Furnace MF-1, the test runs conducted for PM and HCl were each one hour, rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. §§ 63.1512(j)(2) and 63.1511(b)(2). Defendant also failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o).

71. During the July 26-27, 2005 testing on Melting Furnace MF-1, the test runs conducted for PM and HCl were each two hours, rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. §§ 63.1511(e), 63.1512(j)(2) and 63.1511(b)(2). Defendant also failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o).

Melting Furnace MF-2

72. During the May 28-29, 2003 testing on Melting Furnace MF-2, the test runs conducted for PM and HCl were each two hours, rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. § 63.1512(j)(2) and 63.1511(b)(2). Defendant also failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o).

73. Defendant failed to conduct repeat performance testing on Melting Furnace MF-2 within five years following the initial performance test (i.e. by May 29, 2008), in violation of 40 C.F.R. § 63.1511(e) and the Renewed Title V Permit.

Melting Furnace MF-3

74. During the March 24-25, 2003 testing on Melting Furnace MF-3, the test runs conducted for PM and HCl were each one hour, rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. §§ 63.1512(j)(2) and 63.1511(b)(2). Defendant also failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o).

75. During the February 20-21, 2007 testing on Melting Furnace MF-3, the test runs conducted for PM and HCl were each one hour, rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. §§ 63.1511(e), 63.1512(j)(2) and 63.1511(b)(2), and the Renewed Title V Permit. Defendant also failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o), and the Renewed Title V Permit.

Melting Furnace MF-4

76. During the May 6, 1999 and April 26, 2001 testing on Melting Furnace MF-4, no testing was conducted for HCl, in violation of 40 C.F.R. §§ 63.1512(j)(2). The test runs conducted for D/F were each two hours, and the test runs for PM were each two hours (May 1999 testing) or one hour (April 2001 testing), rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. §§ 63.1512(j)(2) and 63.1511(b)(2). And Defendant failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o).

77. During the November 7, 2007 (for PM) and March 18, 2008 (for HCl) testing on Melting Furnace MF-4, no testing was conducted for D/F, in violation of 40 C.F.R. § 63.1512(j)(2) and the Renewed Title V Permit. The test runs were each one hour, rather than the three hours required by Subpart RRR, in violation of 40 C.F.R. §§ 63.1511(e), 63.1512(j)(2) and 63.1511(b)(2), and the Renewed Title V Permit. And Defendant failed to record the type and quantity of each addition of solid flux, and failed to calculate or record the total reactive chlorine flux injection rate for the three test runs, in violation of 40 C.F.R. §§ 63.1511(g) and 63.1512(o), and the Renewed Title V Permit.

78. Subject to further opportunity for discovery or investigation, the violations alleged in this Claim for Relief may continue or reoccur unless restrained by an order of this Court.

79. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

SECOND CLAIM FOR RELIEF

(Failure to Conduct Performance Testing for the Holding Furnaces)

80. Paragraphs 1 through 64 are incorporated by reference.

81. Subpart RRR requires that the owner or operator of an affected source or emission unit to conduct performance testing to demonstrate compliance with all applicable emission, equipment, work practice or operation standards for that source or unit. 40 C.F.R. § 63.1511(b).

The owner or operator must also conduct a repeat performance test every five years following the initial performance test. 40 C.F.R. § 63.1511(e).

82. The owner or operator must, for each group 1 furnace that processes only clean charge, conduct performance testing that includes measurement of PM and HCl. 40 C.F.R. § 63.1512(j)(1). The owner or operator of a group 1 furnace which is not equipped with an add-on pollution control device, and which processes only clean charge, must conduct emission tests to simultaneously measure emissions of PM and HCl at the furnace exhaust outlet. 40 C.F.R. § 63.1512(e)(2). The Renewed Title V Permit requires Defendant to conduct performance testing on its group 1 furnaces in accordance with 40 C.F.R. § 63.1512(j). Renewed Title V Permit, pg. 47, Condition 6.B.51.

83. The Holding Furnaces are group 1 furnaces as defined at 40 C.F.R. § 63.1503, which are not equipped with add-on air pollution control devices and which process only clean charge.

84. Defendant never performed initial or repeat performance testing for PM or HCl on the Holding Furnaces, in violation of 40 C.F.R. §§ 63.1511(b), 63.1511(e), 63.1512(j)(1) and 63.1512(e)(2), and the Renewed Title V Permit.

85. Subject to further opportunity for discovery or investigation, the violations alleged in this Second Claim for Relief may continue or reoccur unless restrained by an order of this Court.

86. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009,

$37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

THIRD CLAIM FOR RELIEF

(Failure to Conduct Performance Testing for the In-line Fluxers)

87. Paragraphs 1 through 64 are incorporated by reference.

88. The owner or operator must conduct performance testing on each in-line fluxer that uses reactive flux materials, and that testing must include measurement of PM and HCl. 40 C.F.R. § 63.1512(j)(3). The owner or operator must also conduct a repeat performance test every five years following the initial performance test. 40 C.F.R. § 63.1511(e).

89. Defendant has not conducted initial or repeat performance testing on the In-line Fluxers for PM and HCl, in violation of 40 C.F.R. §§ 63.1511(b), 63.1511(e) and 63.1512(j)(3), and the Renewed Title V Permit.

90. Subject to further opportunity for discovery or investigation, the violations alleged in this Third Claim for Relief may continue or reoccur unless restrained by an order of this Court.

91. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

FOURTH CLAIM FOR RELIEF

(Failure to Properly Label Melting Furnaces, Holding Furnaces and In-Line Fluxers)

92. Paragraphs 1 through 64 are incorporated by reference.

93. Subpart RRR requires the owner or operator to post, on each group 1 furnace, group 2 furnace and in-line fluxer, an easily visible label identifying the unit by type, specifying applicable emission limits, and identifying applicable operational standards and control methods, such as the type of charge and flux materials to be used, and applicable operating parameter ranges and requirements as incorporated in the facility's operation, maintenance and monitoring plan. 40 C.F.R. § 63.1506(b).

94. Subpart RRR further requires owners to inspect the label on each emission unit at least once per calendar month, 40 C.F.R. § 63.1510(c), and to maintain records of those monthly inspections, 40 C.F.R. § 63.1517(b)(13).

95. The labeling and label inspection requirements at 40 C.F.R. §§ 63.1506(b), 63.1510(c), and 63.17(b)(3), are incorporated into the Renewed Title V Permit. Renewed Title V Permit, pg. 52, Condition 6.B.60. In addition, the Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

96. At the time of the 2008 Compliance Evaluation, the labels on the Melting Furnaces did not include reactive flux injection rate limits, in violation of 40 C.F.R. § 63.1506(b) and the Renewed Title V Permit.

97. At the time of the 2008 Compliance Evaluation, the labels on the Holding Furnaces incorrectly identified the Holding Furnaces as group 2 furnaces, in violation of 40 C.F.R. § 63.1506(b) and the Renewed Title V Permit.

98. At the time of the 2008 Compliance Evaluation, the In-line Fluxers did not have labels, in violation of 40 C.F.R. § 63.1506(b) and the Renewed Title V Permit.

99. Defendant's label inspection records indicate that Defendant conducted required label inspections late on several occasions. These late inspections constitute violation of 40 C.F.R. § 63.1517(b)(13) and the Renewed Title V Permit.

100. Subject to further opportunity for discovery or investigation, the violations alleged in this Fourth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

101. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

FIFTH CLAIM FOR RELIEF

(Failure to Properly Record the Weight of Feed/Charge to the Melting Furnaces and Holding Furnaces)

102. Paragraphs 1 through 64 are incorporated by reference.

103. Subpart RRR requires the owner or operator of an affected source or emission unit that is subject to an emission limit in kg/Mg (lb/ton) or µg/Mg (gr/ton) of feed/charge, including group 1 furnaces, to install and operate a device to measure and record the total weight of feed/charge to, or the aluminum production from, the affected source over the same operating

cycle or time period used in the performance test. 40 C.F.R. §§ 63.1506(d) and 63.1510(e). Group 1 furnaces are subject to this requirement. 40 C.F.R. §§ 63.1505(i)(1), (3), and (4).

104. The Renewed Title V Permit incorporates these requirements. Title V Permit, pg. 53, Condition 6.B.61. In addition, the Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

105. Defendant has, at times relevant to this Complaint, measured and recorded the weight of feed/charge to the Melting Furnaces on a daily basis, rather than for the time period used during performance testing for each Melting Furnace, in violation of 40 C.F.R. § 1506(d)(1) and the Renewed Title V Permit. Defendant has thus, at times relevant to this Complaint, failed to measure and record the weight of feed/charge to the Holding Furnaces for the time period used during performance testing for each Holding Furnace, in violation of 40 C.F.R. § 1506(d)(1) and the Renewed Title V Permit.

106. Subject to further opportunity for discovery or investigation, the violations alleged in this Fifth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

107. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

SIXTH CLAIM FOR RELIEF

(Failure to Record and Maintain Record of Reactive Flux Usage and Total Reactive Flux Injection Rates for the Melting Furnaces, Holding Furnaces and In-line Fluxers)

108. Paragraphs 1 through 64 are incorporated by reference.

109. Subpart RRR requires the owner or operator of a group 1 furnace to record, for each 15-minute block period during the time period used in performance testing during which reactive fluxing occurs, the time, weight, and type of flux for each addition of solid reactive flux. 40 C.F.R. § 63.1510(j)(3)(ii). The owner or operator must also calculate and record the total reactive flux injection rate for each time period used in performance testing. 40 C.F.R. § 63.1510(j)(4). Pursuant to 40 C.F.R. § 63.1517(b)(5), the owner or operator of a group 1 furnace must maintain records of the total reactive flux injection rate and related calculations (including records of the identity, composition, and weight of each addition of gaseous, liquid or solid reactive flux).

110. The Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

111. Defendant has, at times relevant to this Complaint, measured and recorded usage of solid salt flux in its Melting Furnaces on a monthly basis using purchase records. Defendant has thus, at times relevant to this Complaint, failed to record, or maintain record of, each addition of solid flux to each Melting Furnace for each 15-minute block period during the time period used in performance testing of that Melting Furnace, and failed to calculate and record the total reactive flux injection rate for each Melting Furnace for each time period used in performance

testing of that Melting Furnace, in violation of 40 C.F.R. §§ 63.1510(j)(3) and 63.1517(b)(5), and the Renewed Title V Permit.

112. Defendant has, at times relevant to this Complaint, measured and recorded usage of gaseous reactive flux (containing sulfur hexafluoride) in its Holding Furnaces and In-line Fluxers on a monthly basis using purchase records. Defendant has thus, at times relevant to this Complaint, failed to calculate and record the total reactive flux injection rate for each Holding Furnace and In-line Fluxer for each time period used in performance testing of that Holding Furnace or In-line Fluxer, in violation of 40 C.F.R. §§63.151(j)(3) and 63.1517(b)(5), and the Renewed Title V Permit.

113. Subject to further opportunity for discovery or investigation, the violations alleged in this Sixth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

114. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

SEVENTH CLAIM FOR RELIEF

(Failure to Include Required Information in Operation, Maintenance & Monitoring Plan)

115. Paragraphs 1 through 64 are incorporated by reference.

116. Subpart RRR requires the owner or operator to prepare and implement a written operation, maintenance, and monitoring plan ("OM&M Plan") for each affected source and

emission unit. 40 C.F.R. § 63.1510(b). The OM&M Plan must include all of the information required at 40 C.F.R. § 63.1510(b)(1)–(8).

117. Pursuant to 40 C.F.R. § 63.1510(o), the owner or operator of a group 1 furnace that is not equipped with an add-on air pollution control device must submit a site-specific monitoring plan for that furnace with its OM&M Plan.

118. These requirements are contained in the Renewed Title V Permit. Renewed Title V Permit, pg. 49, Condition 6.B.54. In addition, the Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

119. Defendant's OM&M Plan dated December 2007 did not include the following, in violation of 40 C.F.R. §§ 63.1510(b) and the Renewed Title V Permit: (a) information describing operating levels or ranges for the reactive flux injection rates for the Melting Furnaces; (b) a monitoring schedule for each affected source and emission unit at the Mt. Holly Facility (including the Melting Furnaces, the Holding Furnaces, and the In-line Fluxers); (c) calibrations and certification of accuracy for each monitoring device, including the production (feed/charge weight) scale and the solid flux weight scale; (d) procedures for monitoring process parameters; (e) corrective actions to be taken should process or operating parameters deviate from established operating values or ranges; (f) a maintenance schedule for each process; (g) documentation of the work practice and pollution prevention measures used to achieve compliance with applicable emission limits; and (h) a site specific monitoring plan for each group 1 furnace not equipped with an add-on pollution control device (i.e. the Melting Furnaces and Holding Furnaces).

120. Subject to further opportunity for discovery or investigation, the violations alleged in this Seventh Claim for Relief may continue or reoccur unless restrained by an order of this Court.

121. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

EIGHTH CLAIM FOR RELIEF

(Failure to Develop and Maintain Site-Specific Monitoring Plans)

122. Paragraphs 1 through 64 are incorporated by reference.

123. Pursuant to Subpart RRR, the owner or operator of a group 1 furnace that is not equipped with an add-on air pollution control device must, in consultation with the permitting authority, develop a written site-specific monitoring plan. 40 C.F.R. § 63.1510(o).

124. Pursuant to 40 C.F.R. § 63.1517(b)(8), the owner or operator of a group 1 furnace that is not equipped with an add-on air pollution control device must maintain a copy of the approved site-specific monitoring plan for that furnace, along with records documenting conformance with the plan. 40 C.F.R. § 63.1517(b)(16) requires more generally that the owner or operator maintain current copies of all required plans, and documentation of conformance therewith.

125. The Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

126. The Melting Furnaces are group 1 furnaces not equipped with an add-on air pollution control device.

127. Defendant has failed to develop site-specific monitoring plans for the Melting Furnaces, in violation of 40 C.F.R. § 63.1510(o) and the Renewed Title V Permit. Because it failed to develop such plans, Defendant has also failed to maintain copies of site-specific monitoring plans for the Melting Furnaces, and documentation demonstrating conformance with those plans, in violation of 40 C.F.R. §§ 63.1517(b)(8) and 63.1517(b)(16) and the Renewed Title V Permit.

128. The Holding Furnaces are group 1 furnaces not equipped with an add-on air pollution control device.

129. Defendant has failed to developed site-specific monitoring plans for the Holding Furnaces, in violation of 40 C.F.R. § 63.1510(o) and the Renewed Title V Permit. Because it failed to develop such plans, Defendant has also failed to maintain copies of site-specific monitoring plans for the Holding Furnaces, and documentation demonstrating conformance with those plans, in violation of 40 C.F.R. §§ 63.1517(b)(8) and 63.1517(b)(16) and the Renewed Title V Permit.

130. Subject to further opportunity for discovery or investigation, the violations alleged in this Eighth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

131. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009,

$37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

NINTH CLAIM FOR RELIEF

(Failure to Submit a Complete Notice of Compliance Status Report)

132. Paragraphs 1 through 64 are incorporated by reference.

133. Pursuant to 40 C.F.R. §§ 63.1515(b) and 63.9(h), the owner or operator of an existing affected source to submit a "Notification of Compliance Status Report" ("NOCSR") within 90 days of the compliance date (March 24, 2003). A complete NOCSR must include the information specified in 40 C.F.R. §§ 63.1515(b)(1)–(10).

134. The Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

135. Defendant submitted a NOCSR for the Mt. Holly Facility on June 27, 2003.

136. Defendant's NOCSR did not contain a complete performance test report for Melting Furnace MF-4 as required by 40 C.F.R. § 63.1515(b)(1), in violation of 40 C.F.R. §§ 63.1515(b) and 63.9(h), and the Renewed Title V Permit.

137. Defendant's NOCSR did not contain performance test reports for the Holding Furnaces or the In-line Fluxers as required by 40 C.F.R. § 63.1515(b)(1), in violation of 40 C.F.R. §§ 63.1515(b) and 63.9(h), and the Renewed Title V Permit.

138. Defendant's NOCSR did not contain adequate unit labeling information for the Melting Furnaces, Holding Furnaces, or In-line Fluxers as required by 40 C.F.R.§ 63.1515(b)(3), in violation of 40 C.F.R. § 63.1515(b), and the Renewed Title V Permit.

139. Defendant's NOCSR did not include operating parameters and supporting documentation for total reactive chlorine flux injection rates for the Melting Furnaces as required

by 40 C.F.R. § 63.1515(b)(4), in violation of 40 C.F.R. §§ 63.1515(b) and 63.9(h), and the Renewed Title V Permit.

140. Defendant's NOCSR did not include site-specific monitoring plans for the Melting Furnaces as required by 40 C.F.R. § 63.1515(b)(9), in violation of 40 C.F.R. §§ 63.1515(b) and 63.9(h), and the Renewed Title V Permit.

141. Defendant's NOCSR did not include site-specific monitoring plans for the Holding Furnaces as required by 40 C.F.R. § 63.1515(b)(9), in violation of 40 C.F.R. §§ 63.1515(b) and 63.9(h), and the Renewed Title V Permit.

142. Subject to further opportunity for discovery or investigation, the violations alleged in this Ninth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

143. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

TENTH CLAIM FOR RELIEF

(Submission of Inaccurate Semiannual Reports and Failure to Keep Required Records)

144. Paragraphs 1 through 64 are incorporated by reference.

145. Pursuant to Subpart RRR, the owner or operator must submit a semiannual report documenting excess emissions, parameter monitoring exceedances and deviations from the operating requirements of Subpart RRR. 40 C.F.R. § 63.1516(b)(1). If no deviations from

operating parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period. 40 C.F.R. § 63.1516(b). These requirements are contained in the Renewed Title V Permit. Renewed Title V Permit, pg. 37, Condition 6.B.29.

146. Pursuant to Subpart RRR, the owner or operator of a group 2 furnace must include, in each semiannual report, a certification that it has complied with 40 C.F.R. § 63.1506(o), and that "Only clean charge materials were processed in any group 2 furnace during this reporting period, and no fluxing was performed or all fluxing performed was conducted using only nonreactive, non-HAP-containing/non-HAP-generating fluxing gases or agents, except for cover fluxes, during this reporting period." 40 C.F.R. § 63.1516(b)(2)(v). This requirement is contained in the Renewed Title V Permit. Renewed Title V Permit, pg. 38, Condition 6.B.30.

147. Pursuant to Subpart RRR, the owner or operator of an in-line fluxer using no reactive flux must include, in each semiannual report, a certification that it has complied with 40 C.F.R. § 63.1506(*l*) and that "Only nonreactive, non-HAP-containing, non-HAP generating flux gases, agents, or materials were used at any time during this reporting period." 40 C.F.R. §§ 63.1510(m), 63.1516(b)(2)(vi). This requirement is contained in the Renewed Title V Permit. Renewed Title V Permit, pg. 38, Condition 6.B.30.

148. Pursuant to Subpart RRR, the owner or operator of an in-line fluxer for which it has certified that no reactive flux will be used must maintain copies of: a) operating logs that establish that no source of reactive flux was present at the in-line fluxer; b) a label affixed to the in-line fluxer indicating that no reactive flux may be used in it; or c) operating logs documenting each flux material used at the in-line fluxer during each operating cycle. 40 C.F.R.

§ 63.1517(b)(11). These requirements are contained in the Renewed Title V Permit. Renewed Title V Permit, pgs. 52 and 54, Conditions 6.B.60 and 6.B.63.

149. Defendant submitted semiannual reports certifying that a) the Holding Furnaces were being operated as group 2 furnaces, using "only nonreactive, non-HAP-containing/non-HAP-generating fluxing gases or agents" during the reporting period; and b) that the In-line Fluxers were being operated in compliance with 40 C.F.R. § 63.1506(*l*), and that "only nonreactive, non-HAP-containing, non-HAP generating flux gases, agents, or materials were used at any time during this reporting period." During each reporting period, however, Defendant used flux containing sulfur hexafluoride, which is or may be reactive, in the Holding Furnaces and In-line Fluxers. Accordingly, Defendant's certifications that the Holding Furnaces were being operated as group 2 furnaces were inaccurate, in violation of 40 C.F.R. §§ 63.1516(b), 63.1510(m), 63.1510(r)(2), and the Renewed Title V Permit.

150. Defendant submitted semiannual reports certifying that no reactive flux was used in the In-line Fluxers. However, at the time of the 2008 Compliance Evaluation, Defendant had not labeled the In-line Fluxers indicating that no reactive flux was to be used at them, and was not maintaining operating logs documenting that no reactive flux was being used at them, in violation of 40 C.F.R. § 1517(b)(11) and the Renewed Title V Permit.

151. Subject to further opportunity for discovery or investigation, the violations alleged in this Tenth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

152. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004,

$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

ELEVENTH CLAIM FOR RELIEF

(Submission of Inaccurate Annual Certifications of Compliance)

153. Paragraphs 1 through 64 are incorporated by reference.

154. Subpart RRR requires that owners and operators submit annual certifications of compliance certifying that any period of excess emissions that occurred during the year was reported as required by Subpart RRR, and that all monitoring, recordkeeping, and reporting requirements were met during the year. 40 C.F.R. § 1516(c).

155. The Renewed Title V Permit requires Defendant to submit an annual certification of compliance that meets the requirements of 40 C.R.F. 1516(c). Renewed Title V Permit, pg. 56, Condition 6.B.68. In addition, the Renewed Title V Permit incorporates all applicable provisions of Subpart RRR by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

156. Defendant submitted annual certifications of compliance in which it certified continuous compliance with Renewed Title V Permit conditions 5.E.10, 6.B.39, 6.B.51, 6.B.53, 6.B.54, 6.B.60, 6.B.61, 6.B.63, 6.B.66, 6.B.68, and 7.A.1.

157. As set forth with particularity in Claims for Relief 1 - 6, 8 - 10, and 12 - 15, Defendant was not in compliance with all cited conditions of the Renewed Title V Permit during periods covered by some or all of Defendant's annual certifications, and the annual certifications were thus inaccurate, in violation of 40 C.F.R. § 1516(c) and the Renewed Title V Permit.

158. Subject to further opportunity for discovery or investigation, the violations alleged in this Eleventh Claim for Relief may continue or reoccur unless restrained by an order of this Court.

159. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

TWELFTH CLAIM FOR RELIEF

(Failure to Maintain Record of Subpart SSSS Applicability Determination for the Aluminum Coating Line)

160. Paragraphs 1 through 64 are incorporated by reference.

161. Pursuant to 40 C.F.R. § 63 Subpart A, if the owner or operator of a source that falls within a source category regulated by a MACT standard determines that the source is excluded under the terms of the regulation and is therefore not subject to the MACT standard, the owner or operator must keep a signed, written record of this applicability determination for five years after the determination is made. 40 C.F.R. § 63.10(b)(3).

162. This requirement is included in the Renewed Title V Permit. Renewed Title V Permit, pg. 42, Condition 6.B.39. In addition, the Renewed Title V Permit incorporates all applicable provisions of 40 C.F.R. § 63 Subpart A by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

163. The Mt. Holly Facility is a major source of HAPs at which the Aluminum Coating Line, a "coil coating line" within the meaning of Subpart SSSS, is operated. Accordingly, the provisions of Subpart SSSS apply to any coil coating line located at the Mt. Holly Facility, unless that coil coating line meets one of the exclusions provided at 40 C.F.R. § 63.5090(b).

164. Defendant has represented to EPA that, the Aluminum Coating Line is subject to the exclusion at 40 C.F.R. § 63.5090(b)(2), because at least 85% (based on surface area) of the metal coil processed by the Aluminum Coating Line is less than 0.15 millimeter (0.006 inch) thick. However, Defendant has not maintained written record of an applicability determination showing that the Aluminum Coating Line is excluded from Subpart SSSS, in violation of 40 C.F.R. § 63.10(b)(3) and the Renewed Title V Permit.

165. Subject to further opportunity for discovery or investigation, the violations alleged in this Twelfth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

166. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

THIRTEENTH CLAIM FOR RELIEF

(Failure to Conduct NSPS Subpart TT Performance Testing and Failure to Calculate and Record Average VOC Concentrations for the Aluminum Coating Line)

167. Paragraphs 1 through 64 are incorporated by reference.

168. NSPS Subparts TT requires that an initial performance test be conducted for each affected facility within 60 days after the facility's maximum production rate is achieved, but not later than 180 days after initial startup of the facility, and that thereafter repeat performance tests be conducted monthly. 40 C.F.R. §§ 60.463(b); 60.464(a) and 60.8(a).

169. NSPS Subpart TT establishes an emission limit of 0.14 kilograms of VOCs per liter of coating solids applied (0.14 kg VOC/*l*) for each facility that uses a continuous emission control device. 40 C.F.R. § 60.462(a)(2). The methodology for determining monthly volume-weighted average VOC emissions to show compliance with this limit (conducting these calculations constitutes the monthly performance test required by 40 C.F.R. § 60.463(b)) is provided at 40 C.F.R. § 60.463(c)(3).

170. The Renewed Title V Permit incorporates the requirements of 40 C.F.R. §§ 60.8(a), 60.462(a)(2), 60.463(b) and 60.464(a), and identifies them as applying to the Aluminum Coating Line. Renewed Title V Permit, pgs. 22, 43 and 55, Condition 5.E.10, 6.B.40 and 6.B.45. In addition, the Renewed Title V Permit incorporates all applicable provisions of NSPS Subparts A and TT by reference. Renewed Title V Permit, pg. 56, Condition 7.A.1.

171. Defendant did not conduct initial performance testing on the Aluminum Coating Line until May 16 and 25, 1999, more than 180 days after the initial startup date of the Aluminum Coating Line following the 1997 modifications, in violation of NSPS Subparts TT and A, 40 C.F.R. §§ 60.463(b) and 60.8(a).

172. Subject to further opportunity for discovery or investigation, since the 1997 modification to the Aluminum Coating Line, Defendant has routinely failed to calculate the monthly volume-weighted average VOC emissions for the Aluminum Coating Line, and has thus

failed to conduct monthly performance testing on the Aluminum Coating Line in violation of 40 C.F.R. §§ 60.463(b) and 60.464(a) and the Renewed Title V Permit.

173. Subject to further opportunity for discovery or investigation, the violations alleged in this Thirteenth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

174. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

FOURTEENTH CLAIM FOR RELIEF

(Failure to Comply with NSPS Reporting and Recordkeeping Requirements for the Aluminum Coating Line)

175. Paragraphs 1 through 64 are incorporated by reference.

176. NSPS Subpart A requires that the owner or operator provide written notification to EPA of the actual date of initial startup of an affected facility, postmarked within 15 days of startup. 40 C.F.R. § 60.7(a)(3).

177. NSPS Subpart A requires that the owner or operator provide a written report to EPA containing the results of initial performance testing on an affected facility, within 60 days after the facility's maximum production rate is achieved, but not later than 180 days after initial startup of the facility. 40 C.F.R. § 60.8(a).

178. NSPS Subpart TT requires that the initial compliance report for affected facilities include the weighted average of the VOC content of coatings used during a period of one calendar month. 40 C.F.R. § 60.465(a).

179. NSPS Subparts A and TT requires the owner or operator to maintain on-site records of all data and calculations used to determine monthly VOC emissions from each affected facility for at least 2 years from the date of measurement. 40 C.F.R. §§ 60.465 and 60.7(f). The Renewed Title V Permit requires that such documents be retained for at least 5 years from the date of measurement. Renewed Title V Permit, pg. 55, Condition 6.B.65.

180. Defendant never provided EPA with written notice of the actual date of initial startup of the Aluminum Coating Line once modifications were complete, in violation of NSPS Subpart A, 40 C.F.R. § 60.7(a)(3) and the Renewed Title V Permit.

181. Defendant never submitted an initial compliance report to EPA containing the results of initial compliance testing for the Aluminum Coating Line, and the weighted average of the VOC content of coatings used in operation of the Aluminum Coating Line during a period of one calendar month, in violation of 40 C.F.R. §§ 60.8(a) and 60.465(a) and the Renewed Title V Permit.

182. Defendant failed to maintain on-site, for at least 2 years, records of data and calculations used to determine monthly VOC emissions for the Aluminum Coating Line as required by Subpart TT, in violation of 40 C.F.R. §§ 60.465 and 60.7(f), and failed to maintain such documents for at least 5 years in violation of the Renewed Title V Permit.

183. Subject to further opportunity for discovery or investigation, the violations alleged in this Fourteenth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

184. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

FIFTEENTH CLAIM FOR RELIEF

(Failure to Properly Certify the Aluminum Coating Line's Compliance with NSPS Subpart TT Volatile Organic Compound Emission Limits)

185. Paragraphs 1 through 64 are incorporated by reference.

186. NSPS Subpart TT requires that following initial performance testing, the owner or operator submit quarterly reports identifying each instance in which the volume-weighted average of the local mass of VOCs emitted to the atmosphere per volume of applied coating solids is greater than the applicable limit, or bi-annual reports if no exceedances occurred during the half. 40 C.F.R. § 60.465(c).

187. The certification requirements of 40 C.F.R. § 60.465(c) are incorporated into the Renewed Title V Permit. Renewed Title V Permit, pg. 55, Condition 6.B.66.

188. Defendant has submitted semiannual reports certifying compliance with the NSPS Subpart TT VOC emissions limitations for the Aluminum Coating Line. Each such certification was inaccurate, in violation of 40 C.F.R. § 60.465(c) and the Renewed Title V Permit, because Defendant certified compliance with a limit of 0.28 kilograms of VOCs per liter of coating solids applied (0.28 kg VOC/*l*), which is not the applicable standard under NSPS Subpart TT. As alleged above, the actual emissions limit for the Aluminum Coating Line is 0.14 kg VOC/*l*.

189. Subject to further opportunity for discovery or investigation, the violations alleged in this Fifteenth Claim for Relief may continue or reoccur unless restrained by an order of this Court.

190. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth in this Claim for Relief subject Defendant to injunctive relief and a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, the United States of America requests that this Court:

1. Order Defendant expeditiously to achieve and demonstrate, and thereafter maintain, compliance at the Mt. Holly Facility with the CAA, all applicable regulations promulgated pursuant thereto, and permits issued thereunder;

2. Enjoin Defendant from operating the Mt. Holly Facility in violation of the CAA, all applicable regulations promulgated pursuant thereto, and permits issued thereunder;

3. Order Defendant to pay a civil penalty of up to $27,500 per day for each violation occurring before March 16, 2004, $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, $37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and $95,284 per day for each violation occurring after November 2, 2015;

4. Award the United States its costs and fees in this action; and

5. Grant such other and further relief as the Court deems appropriate.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

BETH DRAKE
United States Attorney

September 18, 2017 By: s/ BROOK ANDREWS

BROOK B. ANDREWS (#10231)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, S.C. 29201
Telephone (803) 929-3056
Brook.Andrews@usdoj.gov

DAVIS H. FORSYTHE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
Tel: (303) 844-1391
Fax: (303) 844-1350
E-mail: davis.forsythe@usdoj.gov

ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

OF COUNSEL:

BONNIE SAWYER
Associate Regional Counsel
Air/Pesticides/Toxics Legal Support Branch
Office of Regional Counsel
EPA Region 4
61 Forsyth Street S.W.
Atlanta, GA 30303