

United States of America v. Magnesium Corp. of America, et al.

Case No. 2:01CV0040B

Consent Decree

Appendix No. 10

Second Amended
Worker Health Order

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA, Plaintiff, v. MAGNESIUM CORPORATION OF AMERICA, ET AL. Defendants.	Case No. 2:01CV0040B SECOND AMENDED ORDER REGARDING WORKER HEALTH Judge [RESERVED] Magistrate Judge Donald O. Nuffer
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Based upon the execution of a Consent Decree resolving this case (the “Consent Decree”), which includes this Second Amended Worker Health Order as an Appendix, as lodged with the Court, by Plaintiff/Intervenors United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC, and Local 8319 (collectively “USW”), and Defendant US Magnesium LLC (“USM”) (collectively, the “Parties”), having agreed as follows with no objections from Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) or Defendants the Renco Group, Inc. (“Group”), the Ira Rennert Revocable Trust (“Trust”) and Ira Rennert (“Rennert”) and GOOD CAUSE appearing therefor,

IT IS HEREBY ORDERED THAT:

This Second Amended Worker Health Order is an appendix to and part of the Consent Decree, but shall take effect upon the Effective Date of the Consent Decree and shall supersede the Amended Worker Health Order entered in this case on October 27, 2005.

1. Definitions. Certain defined terms designated with initial capitals that are used herein are defined in the Consent Decree (such as “Days”). Whenever the terms set forth below are used in this Order, the following definitions shall apply:
 - a. “Appropriate Dual Cartridge Respirator” means a respirator that meets or exceeds the NIOSH certification requirements for the COCs identified in this Order for USM Workers in Maximum Protection Areas (“MPAs”) or performing Maximum Protection Tasks (“MPTs”) that incorporate dual HEPA/chlorine cartridges and do not create a greater hazard to worker health and safety.
 - b. “Clean Air Station” means (1) a booth, control room or other enclosed area within an MPA supplied with filtered air under positive pressure, or (2) an uncontaminated area sheltered from the weather that is outside, but immediately adjacent, and convenient to, an MPA or location where MPTs are performed, where USM Workers can temporarily remove their respirators.
 - c. “Contaminants of Concern” or “COCs” means dioxins, furans, hexachlorobenzene, and polychlorinated biphenyls. Dioxins, furans, and polychlorinated biphenyls will be calculated together using the World Health Organization toxicity equivalence factor and toxicity equivalence scheme published in 2005. *See Recommended Toxicity Equivalence Factors (“TEFs”) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds*, EPA, 2010.
 - d. “Maximum Protection Area” or “MPA” means an area where a USM Worker will be provided MPA Work Clothes and comply with applicable Personal

Hygiene Protocols (“PHPs”). For purposes of this Order, MPAs in the USM Facility consist of the melt reactor building and the electrolytics buildings. A detailed list of MPAs is set forth in Attachment A. If USM adds new melt reaction or electrolytics operations associated with magnesium production in a new or expanded building, the new or expanded building will be added to the list of MPAs in Attachment A. USM is developing a potential alternative magnesium chloride production process which, if successful, will replace the current melt reaction process with a melting process that operates without the addition of coke (carbon) or chlorine gas and would eliminate the formation of COCs. If the new process proves successful, USM may propose, pursuant to Paragraph 2(b), that areas where the new melting operations occur are not MPAs.

- e. “MPA Work Clothes” means full-body outer protective work clothing, including appropriate coveralls and tee-shirts.
- f. “Maximum Protection Task” or “MPT” means any task that involves contact with or removal of solids in ductwork and associated process equipment in the melt/reactor and electrolytic buildings such that workers will be subject to MPT PHPs. A current list of MPTs is set forth in Attachment A, which shall be updated to include tasks on ductwork or associated process equipment added to the facility after the date of this WHO that are similar to tasks set forth in Attachment A.
- g. “Personal Hygiene Protocols” or “PHPs” means a series of personal protective measures to limit workers’ and their families’ exposure to COCs. Such

protocols consist of: a separate PHP for each MPT; an MPA Work Clothes PHP; an MPA Work Clothes Laundry PHP; a Dual Locker and Shower Facility PHP; and a Main Locker and Shower Facility PHP. A PHP may consist of, or reference, a relevant JSA, RMS or SOP.

- h. “Job Safety Analysis” or “JSA” is a written analysis of the safety and health factors associated with a specific task. A JSA includes an explanation of the hazards associated with the task, including hazards from potential exposure to COCs; an analysis of the risk of harm under normal and upset conditions; a list of proper precautions and why the precautions are necessary, including precautions to minimize worker exposure to COCs; a list of the required tools and protective equipment; descriptions of the qualifications of the person or persons assigned to the task; conditions that might make the job unsafe; and what to do in emergency, upset or unusual conditions.
- i. “Risk Management Standard” or “RMS” is a written safety policy that is implemented to provide a safe and healthy workplace. For consistency within USM’s QualTrax document control system, PHP(s) may be loaded to the document management system as an RMS(s).
- j. “Standard Operating Procedure” or “SOP” is a description of a specific task, a set of written instructions for properly carrying out the task, a list of the required PPE and tools for the task, and required cleanup or hygiene procedures after the task is completed. An SOP may reference a relevant JSA, RMS or PHP.

- k. “USM Worker” means any employee of USM performing production, maintenance, construction or support activities at the USM Facility.
 - l. “Contract Worker” means any employee of a contractor or subcontractor doing contract work at the USM Facility.
2. Maximum Protection Areas and Tasks. A list of MPAs and a current list of MPTs are set forth in Attachment A.
- a. If USM, at any time, identifies or, as a result of changes in operations adds, any task that meets the definition of MPT that is not listed in Attachment A, then USM shall implement protective procedures for that task as of the date it identifies such task or as of the date of such operational change, and shall notify USW of the changes to Attachment A within thirty (30) Days.
 - b. Any USM proposal to eliminate any MPA or MPT identified in Attachment A shall be submitted in writing to USW. The proposal shall be supported by environmental monitoring or other pertinent data in accordance with the Change Plan pursuant to Paragraph 15. USM shall continue to implement protective procedures for the MPA or MPT until agreement has been reached concerning the proposed change to Attachment A.
 - c. USW may request that USM add a task to Attachment A that meets the definition of MPT as a result of operational changes at the Facility. USM, within sixty (60) Days of such a request, shall either comply with the request or submit to USW a written explanation as to why it contends that

the task need not be added to Attachment A as an MPT. USW's request shall be based on pertinent underlying data or argument and USM's counter-proposal shall be supported by environmental monitoring or other pertinent data in accordance with the Change Plan pursuant to Paragraph 15. USM shall implement protective procedures for the tasks included in the USW request commencing no later than thirty (30) Days following the initial request and until there is agreement concerning changes, if any, that should be made to Attachment A.

3. Respirators. USM shall continue to provide Appropriate Dual-Cartridge Respirators or, as necessary, NIOSH-Certified supplied-air respirators to all USM Workers who work in MPAs and/or perform MPTs.
4. Clean Air Stations. The Clean Air Station Plan to allow periodic breaks from respirator use by USM Workers who work in MPAs and/or perform MPTs has been agreed to by the Parties and will be implemented by USM within thirty (30) Days from the lodging of the Consent Decree. The Clean Air Station Plan identifies the location of (i) all MPAs including all areas where MPTs are performed and (ii) all available clean air stations throughout the USM Facility.
5. Methods of Cleaning Dust. The use of compressed air to clean dust is prohibited in MPAs or while performing MPTs. Except as specified in the next sentence, dry sweeping of dust in MPAs or while performing MPTs at the USM Facility is prohibited and has been replaced by methods that do not create airborne particles (*i.e.*, use of vacuums, wet mopping). Cleaning of cell salt accumulations on the tops of the electrolytic cells or from electrolytic off-gas ducts using scrapers, stiff

bristle brushes or other brushing or sweeping methods will continue to be permitted as long as it does not create airborne particles.

6. Personal Hygiene Protocols for MPTs. Within thirty (30) Days from the lodging of the Consent Decree and in consultation with affected USM Workers and USW, USM will finalize the MPT PHP (SOP) for Cleaning of Grizzly Box 04 based on the agreement in principle reached by the Parties. Upon USW approval of that MPT PHP, USM will use that procedure as a template for other MPT PHPs listed in Attachment A and submit them to USW on a schedule agreed to by the Parties. Each MPT PHP will specify personal protective equipment and procedures for that MPT to limit USM Workers' and their families' exposure to COCs. The PHPs may consist of, or reference, relevant JSAs, RMSs and SOPs which, if applicable, shall be made available in final form to USW. Within sixty (60) Days of a new MPT being added to Attachment A pursuant to Paragraph 2, USM shall submit to USW a PHP for such MPT.
7. Signage. The USM Signage Plan has been approved and will be implemented within thirty (30) Days from the date of this Order. USM will post signs throughout the USM Facility in accordance with this plan. Any changes to this plan must be submitted to USW for their review before being implemented.
8. MPA Work Clothes. USM shall provide MPA Work Clothes to all USM Workers who work in MPAs. The categories of workers who work in MPAs are identified in Attachment A. The MPA Work Clothes PHP has been agreed to by the Parties. This PHP describes procedures and controls for donning, doffing and wearing MPA Work Clothes in a manner to limit USM Workers' and their families'

potential exposure to COCs, and to ensure that MPA Work Clothes are not worn by USM Workers outside of the USM Facility. On or before sixty (60) Days from the date of this Order, USM shall implement the MPA Work Clothes PHP.

9. Laundering of MPA Work Clothes. Within thirty (30) Days from the lodging of the Consent Decree, USM and USW will make a good faith effort to reach an agreement in principle on the MPA Work Clothes Laundry PHP for laundering MPA Work Clothes worn by USM Workers who work in MPAs. The laundering may be done on-site, or off-site by a qualified outside laundry service. If the laundering is done on-site, the MPA Work Clothes Laundry PHP shall describe:
 - a. USM's work-site laundry resources (including a diagram designating the location of laundry facilities) to launder MPA Work Clothes and towels issued by USM for use in the showers;
 - b. Laundry procedures to reduce exposure to COCs by USM Workers and their families; and
 - c. How and where laundry effluent will be disposed (including facility diagram).

If the laundering is done off-site, the MPA Work Clothes Laundry PHP shall include the qualifications of the outside service to safely launder contaminated clothing, and descriptions of how the contaminated clothing will be collected and the clean clothing distributed to USM Workers.

10. New Dual Locker and Shower Facility. Within thirty (30) Days of the lodging of the Consent Decree, USM and USW will make a good faith effort to reach agreement on a Scope of Work with a projected construction schedule for a New

Dual Locker and Shower Facility. On or before one hundred eighty (180) Days from the date of this Order, USM shall submit to USW for approval a Dual Locker Room and Shower Facility Plan for a new locker and shower facility for men and women with separate locker rooms for street and work clothing and equipment. The new Dual Locker and Shower Facility will be designed to reduce the potential for cross-contamination between USM Workers' work and personal clothing and provide USM Workers who work in MPAs and/or perform MPTs ready access to shower facilities via "dirty" and "clean" locker rooms. The Dual Locker Room and Shower Facility Plan shall include:

- a. A Construction Plan with specifications and facility diagrams for the new dual locker room and shower facility for men and women, including a construction schedule;
- b. A Dual Locker and Shower Facility PHP that specifically describes:
 - i. How USM will provide ready access to showers, and sufficient paid time, for USM Workers who work in MPAs to shower at the end of each work shift;
 - ii. How USM's shuttle van program facilitates USM Workers' use of the new shower facility at the end of their shift;
 - iii. Procedures mandating that USM Workers who perform MPTs shower immediately upon completing an MPT; and
 - iv. Procedures for use of the new dual locker and shower facility to reduce the potential for cross-contamination between USM Workers' work and personal clothing.

USM and USW will meet and make a good faith effort to finalize the proposed procedures for use of the new Dual Locker and Shower Facility prior to completion of new dual locker and shower facility construction. USM shall implement the Dual Locker Room and Shower Facility Plan on the approved schedule agreed upon by USM and USW. USM shall implement the procedures at the same time that the Dual Locker and Shower Facility is opened for use per the schedule set forth in the Dual Locker Room and Shower Facility Plan.

11. Improvements to Main Locker and Shower Facilities. Within thirty (30) Days of the lodging of the Consent Decree, USM and USW will make a good faith effort to reach agreement on a Scope of Work with a projected construction schedule for a Main Locker and Shower Improvement Plan. Within ninety (90) Days from the date of this Order, USM shall submit to USW for approval a Main Locker and Shower Improvement Plan for improvements to the existing locker and shower facilities with separate lockers for street and work clothing and equipment. The improvements to the existing locker room and shower facilities will be designed to reduce the potential for cross-contamination between workers' work and personal clothing and provide USM Workers who do not work in MPAs or perform MPTs ready access to shower facilities with dual lockers for "work" and "personal" clothes. The Main Locker and Shower Improvement Plan shall include:

- a. A Construction Plan with specifications and facility diagrams for improvement of the existing locker room and shower facilities that provide for dual lockers for every USM Worker and at least nine (9) new shower heads with a construction schedule;

- b. A Main Locker and Shower Facility PHP that specifically describes:
 - i. How USM will provide ready access to showers, and sufficient paid time, for USM Workers who do not work in MPAs or perform MPTs to shower at the end of each work shift;
 - ii. How USM's shuttle van program facilitates USM Workers' use of the improved shower facility at the end of their shift; and
 - iii. Procedures for use of the main locker rooms and shower facilities by USM Workers who do not work in MPAs or perform MPTs at the end of their shift to minimize the potential for cross-contamination between USM Workers' work and personal clothing.

USM and USW will meet and make a good faith effort to finalize the proposed procedures under the Locker and Shower Improvement Plan prior to completion of the improvements to the Main Locker and Shower Facility. USM shall implement the Locker and Shower Improvement Plan on the schedule agreed upon by USM and USW. USM shall implement the procedures at the time that the improvements to the main locker and shower facilities are complete.

12. Lunchrooms and Break Rooms. USM has made or shall make the following specific improvements to USM lunchroom and break room facilities:

- a. For the lunchroom in Utilities on the 2nd floor of the Chemical Maintenance Building, USM has reinstalled a wall in this room to separate the locker side from the lunch side. Utilities personnel will access the locker area through a door from the interior staircase, then enter the

lunchroom through a door in the new wall. An exterior door from an outside staircase into the lunchroom continues to exist but will be restricted to egress or “emergency use only.”

- b. For cell service, north end of the building, USM shall, within 30 days from the date of this Order, install a new door on the north side of the building to provide direct access to the Cell Service restroom without passing through the lunchroom and provide cubbies outside the restroom door.

Any changes to these improvements must be submitted by USM to and approved by USW prior to implementation.

13. Worker Training Program. On or before sixty (60) Days from the date of this Order, USM, USW and the Rocky Mountain Center for Occupational and Environmental Health, University of Utah School of Medicine, Division of Occupational and Environmental Health (“RMCOEH”) shall meet to develop the USM Worker Training Program designed to minimize the potential exposure of USM Workers at the USM Facility and their families to COCs, together with a schedule for training all USM Workers at the USM Facility. The Worker Training Program shall be designed for and implemented with all USM Workers, irrespective of whether the employee works in an MPA or performs an MPT. The Worker Training Program shall be provided jointly by the Rocky Mountain Center for Occupational and Environmental Health, University of Utah School of Medicine, Division of Occupational and Environmental Health, USM, and USW, or a third-party subject to both Parties’ approval, and shall specify method of training, the training curricula, and the required training schedule both for

comprehensive initial training and annual refresher training for USM Workers who work in MPAs and/or perform MPTs, members of the joint safety and health committee, officers of the local union, and any other persons designated by USM or USW. The Plan also shall address initial and refresher training for all other USM Workers.

14. MPAs Smoking, Drinking and Eating Plan. The MPAs Smoking, Drinking and Eating Plans designed to prevent the accidental ingestion of COCs by banning smoking, eating and drinking in MPAs or while performing MPTs have been agreed to by the Parties and will be implemented by USM within thirty (30) Days of the lodging of the CD. The Eating and Drinking Plan shall ensure that USM Workers affected by this provision have ready access to clean drinking water and/or other fluids necessary for proper hydration. The Smoking Plan describes and identifies designated smoking areas, requires employees to wash hands before smoking, and includes a voluntary smoking cessation program to assist USM Workers who wish to stop smoking.

15. Change Plan. Within thirty (30) Days from the lodging of the Consent Decree, USM and USW will make good faith efforts to reach an agreement in principle on any revisions to the plan for making operational changes (“Management of Change Plan” or “Change Plan”), RMS-22.10, currently on QualTrax, that includes all processes, including but not limited to those that may be reasonably expected to increase potential exposure to COCs. The Change Plan shall include a description of how such changes will be described and assessed and reported to USW, and allow for USW to identify operational changes for consideration under

the Change Plan. No such change shall be implemented without a change analysis pursuant to the Change Plan. Where a change may be reasonably expected to increase potential exposure of USM Workers or their families to COCs, USM shall submit with the change analysis proposed revisions to the list of MPTs set forth in Attachment A, in compliance with Paragraph 2 of this Order. If a change to the process will reduce potential exposure of USM Workers to COCs or other chemicals, USM may propose changing practices consistent with continued safe operation.

16. Medical Monitoring Program. USM shall no longer be required by this Order to offer a medical monitoring program to USM employees at the USM Facility.
17. Access to and Revision of Plans and PHPs. USM will provide USW with all draft plans and PHPs required by this Order prior to USM loading the final version of such plans and PHPs onto its QualTrax (or comparable) document control management software system. USM will provide notice to USW when a new or revised plan or PHP has been loaded on QualTrax and USW shall have access to those plans and PHPs through that software system. USM or USW may propose revisions to those plans or PHPs by providing the proposed revision, and an explanation for the revision, to affected USM Workers and to the other Party at the regular management/union safety meeting or another meeting between the Parties. USW will provide comments or request a meeting to discuss the new or revised plan or PHP proposed by USM within thirty (30) Days from the date USW receives notice. USM will respond to USW's comments in writing or at a meeting with USW Designated Contacts (or other representatives designated by

USW) within thirty (30) Days of receiving USW's comments. If the Parties agree, the revised plan or PHP shall be loaded onto the QualTrax system within thirty (30) Days of the agreement. If no agreement is reached, USW may avail itself to the Dispute Resolution procedures set forth in this Order.

18. WHO Review; Reservation of Collective Bargaining Rights. USM and USW will jointly review all the provisions of this Order on an annual basis if either Party so requests, and may modify its terms by mutual consent. Any modification shall be filed with this Court. This Order, however, does not preclude USM and USW from agreeing to additional or enhanced worker health and safety strategies and requirements including, without limitation, providing a medical monitoring program to USM Workers or revising USM's smoking policies, through collective bargaining negotiations pursuant to the National Labor Relations Act of 1935 (49 Stat. 449) 29 U.S.C. §§ 151–169, that are separate and distinct from this Order.

19. USW Right-of-Entry. USM shall provide USW access to the Facility to allow for inspections of the facility related to this Order.

20. Designated Contacts. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this WHO, they shall be made via email to the following Designated Contacts:

To USM:

Rob Hartman
Environmental Manager
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116-2912
Email: rhartman@usmagnesium.com

M. Lindsay Ford
Parsons Behle & Latimer
South Main Street, Suite 1800
Salt Lake City, UT 84111
Email: lford@parsonsbehle.com

To USW:

Michael Wright
Director, Department of Health, Safety, and Environment
United Steelworkers
5 Gateway Center
Pittsburgh, PA 15222
Email: mwright@usw.org

Steve Sallman
Assistant Director, Department of Health, Safety, and Environment
United Steelworkers
5 Gateway Center
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Cody J. Brown
USW International Staff Representative
District 12 Sub 2
695 Jerry Street, Suite 208
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Chris Amis
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Woods Cross, UT 84087
Email: chrishuntut@hotmail.com

Joseph M. Santarella Jr.
Santarella & Eckert, LLC
7050 Puma Trail
Littleton, CO 80125
Email: jmsantarella.sellc@comcast.net

The Parties may change their Designated Contacts by providing notice in accordance with this section.

21. Reservation of Rights. USW reserves its rights to seek appropriate relief for any violations of this Order. This Order is without prejudice to EPA's rights and, as applicable, USW's rights to seek all legal and equitable remedies to address any imminent and substantial endangerment to the public or worker health or welfare arising at, or posed by, the USM Facility, whether related to violations of this Order or otherwise.
22. USM Notice of Non-Compliance. If USM anticipates that it will not be able to comply with any of this Order's requirements, USM shall notify USW Designated Contacts at least three (3) Days before USM is in non-compliance. USM shall provide oral notice to USW designated contacts within 24 hours of becoming aware of any failure to comply with any of this Order's requirements that was not reasonably foreseeable, with written confirmation to USW within one (1) week.
23. Notice to Employers of Contract Workers. USM shall not bring in Contractors to perform work in MPAs (except for limited construction or maintenance tasks by Contract Workers as specified in the USM/USW Collective Bargaining Agreement) or perform MPTs at the facility. USM presently requires that Contract Workers comply with Contractors' Security and Safety Rules that are available to USW on QualTrax. Among other things, these rules require that Contract Workers use at least the same level of protection as that used by USM Workers. USM shall further condition any such contract upon performance of the work in substantial conformity with the terms of this WHO.
24. Dispute Resolution. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism to resolve disputes between USW and USM

regarding any requirement of this Order. A Party's failure to seek resolution of a dispute under this Paragraph shall preclude that Party from raising any disputed issue as a defense to an action to enforce any obligations arising under this Order. Nothing in this Section shall affect the rights of USM or USW in collective bargaining under the National Labor Relations Act or the rights of the Parties to pursue legal remedies under other federal or state laws. Any and all disputes between the Parties regarding this Order shall be subject to the grievance and arbitration procedures set forth in the USM/USW Collective Bargaining Agreement, with grievances to be submitted initially at the third step of the grievance process. The decision of an arbitrator shall be final and binding. Nothing in this section precludes the Parties from first availing themselves to informal negotiations as set forth below, and, as a consequence, the filing deadlines of Article 13, Section 1 shall not apply to the initial filing of a grievance under this section.

- a. Informal Dispute Resolution. Any dispute between USW and USM may first be the subject of informal negotiations, which may include any third-party assisted, non-binding alternative dispute resolution process agreeable to USW and USM.
- b. The filing of a grievance or the invocation of dispute resolution under this Paragraph shall not, by itself, extend, postpone, or affect in any way any obligation of USM under this Order, unless and until final resolution of the dispute so provides.

**ATTACHMENT A: List of MPAs, MPTs and Categories of USM Workers Who
Work in MPAs and Perform MPTs**

Maximum Protection Areas

- Electrolytics Buildings 1-4
 - Building and basement areas
 - Electrolytics anode system equipment from the cooling boxes thru the Electrolytics Scrubber
 - Electrolytics buildings courtyards
- Reactor Building
 - Building areas (all floors)
 - Reactor off-gas system up to the CRB (includes off-gas tees, reamers, quench towers, scrubbers, ducting)

Maximum Protection Tasks

- Reactor
 - Main Reactor offgas system repair/maintenance/inspection
 - E.O.G. system ducting and repair from cells to scrubber
- Electrolytics
 - Anode system work
 - drag chain maintenance
 - anode dust pigging
 - grizzly box cleanout
 - Electrolytics scrubbing system service/maintenance/inspection
 - Electrolytics cell demolition (parts associated with cell off-gas)

Categories of Workers Who Work in MPAs and Perform MPTs

- Production Operators, Reactors
- Production Operators, Electrolytics
- Cell Service and Off-Gas Operators
- Utilities
- Maintenance, Reactors
- Maintenance, Hot End

- Service Maintenance (Brick Masons)
- Electricians
- Instrumentation Technicians
- Maintenance Welders