

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Forest City Facility LLC) **No. APCP-2023-011**
)
)
 Proceeding Under the)
 Missouri Air Conservation Law)

ADMINISTRATIVE ORDER ON CONSENT

NOTICE TO THE RESPONDENT

The issuance of this Administrative Order on Consent No. APCP-2023-011 (Order) by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because Forest City Facility LLC (Respondent) was found to have violated Missouri Air Conservation Law, Chapter 643, of the Revised Statutes of Missouri (RSMo), and its implementing regulations. This Order is issued under Sections 643.060(4), 643.080, and 643.085, RSMo. Failure to comply with this Order is, by itself, a violation of the Missouri Air Conservation Law under Section 643.151.3, RSMo.

FINDINGS OF FACT

1. Forest City Facility LLC is an active limited liability company registered with the Missouri Secretary of State, in good standing.
2. The Respondent is a secondary lead smelting plant located at 25102 Liberty Road, Forest City, Holt County, Missouri.

3. The Respondent is subject to the requirements of 40 CFR Part 63 Subpart X, "National Emission Standards For Hazardous Air Pollutants From Secondary Lead Smelting."

4. The Respondent's blast furnace is subject to the total hydrocarbon emission limitations defined in 40 CFR 63.543(c) and Table 2 of 40 CFR Part 63 Subpart X. Respondent's blast furnace was constructed before June 9, 1994, and is therefore subject to a total hydrocarbon emission limitation of 360 ppmv corrected to four percent carbon dioxide (CO₂) expressed as propane.

5. Pursuant to section 63.543(h) of Subpart X. 63.543(h), the Respondent is required to routinely demonstrate that total hydrocarbon emissions from the blast furnace are no greater than the 360 ppmv corrected to four percent CO₂ expressed as propane limitation. The required routine compliance demonstration is a performance test which must be completed no later than 12 calendar months following the previous performance test.

6. Pursuant to section 63.550(e)(14) of 40 CFR Part 63 Subpart X, a report of the total hydrocarbon performance test must be submitted within 60 days of completing the performance test.

7. The Department has been delegated authority to enforce the requirements of 40 CFR Part 63 Subpart X. The requirements of 40 CFR Part 63 Subpart X are incorporated by reference in 10 CSR 10-6.075, "Maximum Achievable Control Technology Regulations." As a result, any violation of 40 CFR Part 63 Subpart X is also a violation of 10 CSR 10-6.075.

8. On April 16, 2020, and April 17, 2020, the Respondent conducted a total hydrocarbon performance test of the blast furnace. The performance test was conducted to satisfy the routine total hydrocarbon compliance demonstration requirement of section 63.543(h). On June 18, 2020, the Respondent submitted the report associated with this performance test to the Department. The report showed the three run average of the total hydrocarbon emissions corrected to four percent CO₂ expressed as propane from the blast furnace was 330.9 ppmv during this performance test, demonstrating compliance with the applicable requirement.

9. On June 25, 2021, the Respondent conducted a total hydrocarbon performance test of the blast furnace. The performance test was intended to satisfy the routine total hydrocarbon compliance demonstration requirement of section 63.543(h).

10. Per section 63.550(e)(14) of 40 CFR Part 63 Subpart X, the Respondent was required to submit the report from the June 25, 2021, performance test to the Department on or before August 24, 2021. The Respondent did not submit the report to the Department until January 28, 2022, 156 days after the due date, in violation of 40 CFR Part 63 Subpart X and 10 CSR 10-6.075.

11. The June 25, 2021, performance testing report showed that the three run average of the total hydrocarbon emissions corrected to four percent CO₂ expressed as propane from the blast furnace was 643.44 ppmv during the performance test. The average emissions measured exceeded the total hydrocarbon emission limitation of 360 ppmv for the blast furnace, in violation of 40 CFR Part 63 Subpart X and 10 CSR 10-6.075.

12. On August 26, 2021, Respondent notified the Department that it would be conducting a new total hydrocarbon performance test of the blast furnace as soon as possible.

13. On August 31, 2021, and September 1, 2021, the Respondent retested total hydrocarbon emissions from the blast furnace. The report associated with this performance test was submitted to the Department within 13 days of the completion of testing, on September 14, 2021. The report showed the three run average of the total hydrocarbon emissions corrected to four percent CO₂ expressed as propane from the blast furnace was 333.1 ppmv during this performance test, demonstrating compliance with applicable requirements.

14. Subsequent annual performance testing of the blast furnace to demonstrate compliance with the total hydrocarbons emissions limits of 360 ppmv corrected to four percent CO₂ expressed as propane were conducted on April 13, 2022 and April 19, 2023. Results from both the April 13, 2022 and April 19, 2023 performance tests demonstrated compliance with total hydrocarbon emission limits.

15. The Respondent completed a valid compliant total hydrocarbon performance test of the blast furnace on April 17, 2020. The Respondent was required to complete the routine 40 CFR Part 63 Subpart X total hydrocarbon testing no later than 12 calendar months following the previous performance test, or April 30, 2021. The Respondent did not complete a valid compliant total hydrocarbon performance test of the blast furnace until September 1, 2021, 123 days after the due date, in violation of 40 CFR Part 63 Subpart X and 10 CSR 10-6.075.

16. On April 4, 2022, after reviewing both of the total hydrocarbon test reports for the June 25, 2021, and September 1, 2021, performance tests, the Department's Air Pollution Control Program issued a Letter of Warning (LOW) to the Respondent, for exceeding the 40 CFR Part 63 Subpart X total hydrocarbon emission limitation during the June 25, 2021, performance test.

17. The April 4, 2022, LOW offered the Respondent the opportunity to claim the total hydrocarbon excess emissions were a result of start-up, shutdown, and/or malfunction (SSM) conditions as defined in 10 CSR 10-6.050, "Start-Up, Shutdown, and Malfunction Conditions." In response to the LOW, the Respondent did not claim that SSM conditions caused the excess emissions.

18. On July 13, 2022, the Department issued Referral Notice of Violation (RNOV) No. AP22015 to the Respondent. The RNOV upgraded the LOW issued on April 4, 2022, and also cited the failure to submit the June 25, 2021, test report within the 40 CFR Part 63 Subpart X required time frame.

19. On August 9, 2022, the Respondent issued a response to RNOV No. AP22015. The Respondent acknowledged the requirement to submit test reports within 60 days of completing a performance test and stated the blast furnace was retested on August 31-September 1, 2021, and tested below the 40 CFR Part 63 Subpart X total hydrocarbon emission limitation.

20. On August 30, 2022, the Department issued RNOV No. AP22015-Amended to the Respondent for exceeding the 40 CFR Part 63 Subpart X total hydrocarbon emission limitation and for failure to submit the June 25, 2021, performance test report within the 40 CFR Part 63 Subpart X required time frame.

21. On February 2, 2022, the Department issued RNOV No. AP23003 to the Respondent for failure to complete annual 40 CFR Part 63 Subpart X total hydrocarbon testing by April 30, 2021. The RNOV stated that no response was required.

22. The amount of the administrative penalty is assessed according to the criteria of 10 CSR 10-6.230, "Administrative Penalties." From a gravity-based analysis, it has been determined that the failure to submit the testing report 60 days after the June 25, 2021, testing, a violation of 10 CSR 10-6.075, is a moderate potential for harm and a minor extent of deviation from the requirement. The violation of 10 CSR 10-6.075 that occurred at Forest City Facility LLC on August 25, 2021, was a moderate potential for harm because the Respondent's actions had a moderate impact on the Department's ability to implement the regulation and was a minor extent of deviation because the Respondent did submit the testing report on January 28, 2022, although it was 156 days past the due date. The Department acknowledges that the Respondent scheduled a retest immediately upon learning of the results of the June 25, 2021 test and expedited the test reporting (Respondent submitted the test report for the August 31-September 1, 2021 testing to the Department on September 14, 2021). Using the gravity-based matrix and finding the extent of deviation as minor and the potential for harm as moderate, and considering adjustment factors including fairness and equity, the assessed penalty is \$1,075.

23. The amount of the administrative penalty is assessed according to the criteria of 10 CSR 10-6.230, "Administrative Penalties." From a gravity-based analysis, it has been determined that the failure to operate within the hydrocarbon emission limitation, a violation of 10 CSR 10-6.075, is a moderate potential for harm and a major

extent of deviation from the requirement. The violation of 10 CSR 10-6.075 that occurred at Forest City Facility LLC on June 25, 2021, was a moderate potential for harm because the Respondent's actions had a moderate risk exposure and was a major extent of deviation because the Respondent was aware of the total hydrocarbon emission limitation requirements. Using the gravity-based matrix and finding the extent of deviation as major and the potential for harm as moderate, and considering adjustment factors including fairness and equity, the assessed penalty is \$5,825.

24. The amount of the administrative penalty is assessed according to the criteria of 10 CSR 10-6.230, "Administrative Penalties." From a gravity-based analysis, it has been determined the failure to demonstrate compliance with the hydrocarbon emission limitation for 123 days, a violation of 10 CSR 10-6.075, is a moderate potential for harm and a major extent of deviation from the requirement. The violation of 10 CSR 10-6.075 that occurred at Forest City Facility LLC from April 30, 2021, to September 1, 2021, was a moderate potential for harm because the Respondent's actions had a moderate impact on the Department's ability to implement the regulation and was a major extent of deviation because the Respondent failed to demonstrate compliance with the total hydrocarbon emission rate for 123 days. Using the gravity-based matrix and finding the extent of deviation as major and the potential for harm as moderate, and considering adjustment factors including fairness and equity, the assessed penalty is \$23,300.

25. The sum of the monetary penalties associated with these violations is \$30,200.

STATEMENT OF VIOLATIONS

The Department finds that the following violations of the Missouri Air Conservation Law, Chapter 643, RSMo, and its implementing regulations have occurred, thereby subjecting the Respondent to penalties as described in Sections 643.151 and 643.085, RSMo:

26. On August 25, 2021, as identified in Paragraph 10 above, the Respondent failed to submit the test report from the June 25, 2021, testing event within 60 days. The Respondent did not submit the test report until January 28, 2022, in violation of 40 CFR Part 63 Subpart X section 63.550(e)(14) and 10 CSR 10-6.705.

27. On June 25, 2021, as identified in Paragraph 11 above, the Respondent failed to test under permitted THC limit of THC 360 ppmv at four percent CO₂, in violation of 40 CFR Part 63 Subpart X section 63.543(c) and Table 2 and 10 CSR 10-6.075.

28. Between on April 30, 2021, and September 1, 2021, as identified in Paragraph 13 above, the Respondent failed to demonstrate compliance with the hydrocarbon emission limitation as required by 40 CFR Part 63 Subpart X section 63.5643(h). The Respondent only completed a valid compliant total hydrocarbon performance test on September 1, 2021, 123 days after the twelve calendar month deadline, in violation of 40 CFR Part 63 Subpart X section 63.543(h) and 10 CSR 10-6.075.

AGREEMENT

29. The Department and the Respondent desire to amicably resolve all claims that the Department might bring against the Respondent for the violations of the Missouri Air Conservation Law and regulations described above. The Department and the

Respondent agree that this Order resolves only the specific violations described herein, that this Order shall not be construed as a waiver or a modification of any requirements of the Missouri Air Conservation Law and regulations or any other source of law, and that this Order does not resolve any claims based on any failure by the Respondent to meet the requirements of this Order, or claims for past, present, or future violations of any statutes or regulations other than those specifically referenced herein.

30. The provisions of this Order apply to and bind the parties executing this Order, their agents, subsidiaries, successors, assigns, affiliates, and lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the parties agreeing hereto. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, do not affect the responsibilities of the Respondent under this Order. If the Respondent sells or otherwise transfers its business or the real estate that is the situs of the violation referenced in this Order, then the Respondent shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Respondent under this Order in writing. In such event, the Respondent shall provide 30 days prior written notice of such assumption to the Department.

31. The Respondent agrees to comply with the Missouri Air Conservation Law and regulations and, in particular, to refrain from further violations of 10 CSR 10-6.075, for all future operations.

PENALTY

32. To resolve the violations listed above, the Respondent agrees to a penalty in the amount of \$30,200, of which shall be paid by **certified check** made payable to the

“Holt County Treasurer, as trustee for the Holt County School Fund.” The penalty is reduced to \$24,160 (80 percent of the assessed penalty) if payment is received within 30 days of the date the Order is sent to the Respondent and the expectation of the Respondent’s full participation in the conference, conciliation, and persuasion process. The Respondent shall mail such payment along with the signed Order to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

CORRECTIVE ACTIONS BY RESPONDENT

The Respondent agrees to the following schedule of compliance:

33. The Respondent shall submit all performance test event reports no later than 60 days of the performance testing event completion while still complying with any requirements to submit reports sooner than 60 days.

34. The Department acknowledges that the Respondent completed performance testing of the blast furnace to demonstrate compliance with the total hydrocarbons emissions limits of 360 ppmv corrected to four percent CO₂ expressed as propane on April 13, 2022 and April 19, 2023 and that results from both performance tests demonstrated that the blast furnace is in compliance with total hydrocarbon emission limits. The Respondent shall conduct a total hydrocarbon performance test on the blast furnace by April 30, 2024 in accordance with all 40 CFR Part 63 Subpart X total hydrocarbon testing requirements. If no excess emissions of the 40 CFR Part 63 Subpart X total hydrocarbon emission limitations are observed during the four consecutive

performance tests (September 2021, April 2022, April 2023 and April 2024), then the Respondent has satisfactorily completed corrective actions required by this Order.

STIPULATED PENALTIES

35. The following stipulated penalties apply to the Respondent until December 31, 2026.

36. If a total hydrocarbon performance test of the blast furnace, conducted per any applicable permit or federal, state, or local law or regulations, fails to demonstrate compliance with the total hydrocarbon emissions limit, Respondent shall be subject to the following stipulated penalties:

<u>Test Failure</u>	<u>Amount of Penalty</u>
First Test Failure	\$2,000
Second Test Failure	\$4,000
Third (and beyond) Test Failure	\$6,000

37. If the Respondent fails to submit a test event report within the time frame specified by the applicable permit or federal, state, or local law or regulations, the Respondent shall be subject to the following stipulated penalties per day:

<u>Days Beyond Testing Event</u>	<u>Amount of Penalty</u>
61-90 Days	\$1,000
91-120 Days	\$2,000
Beyond 120 Days	\$3,000

OTHER PROVISIONS

38. Within 15 days upon becoming aware that a deadline or milestone as set forth in this Order will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail: (i) identifying the deadline that will not be completed; (ii) identifying the reason for failing to meet the deadline; and (iii)

proposing an extension to the deadline. Within five days of notifying the Department, the Respondent shall submit to the Department, for review and approval, a written request containing the same basic provisions of (i), (ii), and (iii) listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department within the time frames specified in this paragraph may constitute a waiver of the Respondent's right to request an extension and may be grounds for the Department to deny an extension request.

39. This Order resolves the claims of the Department for the specific violations and concerns stated herein through the effective date of this Order.

40. The Department reserves all legal and equitable remedies available to enforce the provisions of this Order. This Order shall not be construed to limit the rights of the Department to obtain penalties or injunctive relief under the Clean Air Act, the Missouri Air Conservation Law or the implementing regulations, or under other federal or state laws, regulations, or permit conditions. The Department further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare of the environment arising at, or posed by the Respondent, whether related to the violations addressed in this Order or otherwise.

41. By signing this Order, all signatories assert that they have read and understand the terms of this Order, that they had the opportunity to consult with counsel, and that they have the authority to sign this Order on behalf of their respective parties.

42. This Order shall be construed and enforced according to the laws of the State of Missouri, and the terms stated herein shall constitute the entire and exclusive

agreement of the parties hereto with respect to the matters addressed herein. This Order may not be modified orally.

43. If any provision of this Order is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

44. Penalty payments under this Order, including any stipulated penalties, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i). For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), certain costs incurred by performance of this Order may qualify as restitution, remediation, or costs required to come into compliance with the law. Forest City Facility LLC is solely responsible for providing to the Department complete, accurate, and necessary information by the close of any applicable tax year to complete a Form 1098-F. Further, the Department shall not be responsible for any incomplete or inaccurate information nor the results of any tax audit. No portion of any penalties paid pursuant to this Order may be used to reduce any federal or state tax obligations, except as authorized by the Internal Revenue Service.

45. Nothing in this Order excuses the Respondent for any future non-compliance with the laws of the State of Missouri, and the Department expressly reserves the right to address future noncompliance in any manner authorized by law.

46. This Order will become final, effective, and fully enforceable upon the date the Department signs it. The Department shall send a fully executed copy of this Order to the Respondent for their records.

CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to this Order shall be directed to the following persons, subject to change upon written notification from either party:

For the Department:

Emily Stafford
Compliance and Enforcement Section
Air Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

For the Respondent:

Noah Jones
Plant Manger
Forest City Facility LLC
25102 Holt Road 250
Forest City, MO 64451

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RIGHT OF APPEAL

By signing this Order, the Respondent waives any right to appeal, seek judicial review, or otherwise challenge this Order pursuant to Sections 643.130, 643.085, or 621.250, RSMo, Chapters 536, 643, or 640, RSMo, 10 CSR 10-1.030, or any other source of law.

AGREED TO AND ORDERED:

**MISSOURI DEPARTMENT OF
NATURAL RESOURCES**



Kyra Moore Director
Division of Environmental Quality

Date: 10/20/2023

FOREST CITY FACILITY LLC



Noah Jones, Plant Manager

Date: 9-28-23