

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of
Violations of Environmental Conservation Law,
Article 19

- by -

ORDER ON CONSENT

File No. R4-2009-0127-8

N H Kelman, Inc.
41 Euclid St.
Cohoes, New York 12047

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the State pursuant to ECL Article 19.
2. Respondent, NH Kelman, Inc., is located at 41 Euclid Street in Cohoes, New York ("facility").
3. Respondent is a person as defined in ECL §33-0101 (33).
4. Respondent operates two secondary aluminum sweat furnaces which are used for melting aluminum, which are an air contamination source as defined in 6 NYCRR § 200.1 (d).
5. Department staff inspected the facility on August 4, 2008 and September 5, 2008 ("inspections").
6. During the inspections, Department staff requested to review the afterburner temperature records and malfunction/maintenance records for the afterburners. On both occasions, Respondent failed to provide Department staff with those records.
7. Regulations at 40 CFR § 63.1516 (a) provide that:
 - a) *Startup, shutdown, and malfunction plan/reports. The owner or operator must develop a written plan as described in §63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. The owner or operator shall also keep records of each event as required by §63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in §63.6(e)(3). In addition to the information required in §63.6(e)(3), the plan must include:*

- (1) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended; and*
- (2) Corrective actions to be taken in the event of a malfunction of a process or control device, including procedures for recording the actions taken to correct the malfunction or minimize emissions.*

8. Respondent violated regulations at 40 CFR § 63.1516 (a) by failing to provide afterburner temperature records to Department staff, within a reasonable time.

9. Regulations at 40 CFR 63.1517 (2) provide that:

For each affected source with emissions controlled by an afterburner:

- (i) Records of 15-minute block average afterburner operating temperature, including any period when the average temperature in any 3-hour block period falls below the compliant operating parameter value with a brief explanation of the cause of the excursion and the corrective action taken; and*
- (ii) Records of annual afterburner inspections.*

10. Respondent violated regulations at 40 CFR 63.1517 (2) by failing to provide Department staff with records of afterburner malfunctions/maintenance, within a reasonable time.

11. ECL Section 71-2103(1) provides that: “Except as provided in section 71-2113, any person who violates any provision of Article Nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

12. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. With respect of the aforesaid violations, a civil penalty in the amount of **THREE THOUSAND DOLLARS (\$3,000)** is assessed against the Respondent for the above violations which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

III. This Order is binding upon the Respondent, their agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

V. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VI. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Air Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

VIII. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

IX. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, their employees, their servants, their agents, their successors or their assigns.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

XII. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(1) If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within twenty (20) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. This shall be considered a violation of the Order. The Respondent reserves its right to contest the alleged violation.

DATED: _____, 2009
Rotterdam, New York

Commissioner Alexander B. Grannis
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 30 days of the receipt of this Order, Respondent shall submit for each smelter afterburner, all available records of 15 minute average operating temperature, including any period when average temperature in any 3-hr block period falls below complaint operating parameter value with a brief explanation of cause and corrective action taken; records of annual inspection. Record submittal shall begin January 1, 2008 and proceed monthly for 6 months after the date of the executed Order.

2. Within 30 days of the effective date of the Order, Respondent shall submit records for each smelter; occurrence and duration of each Startup, Shutdown and Malfunction (SSM) or malfunction of operation of process and control equipment. Record submittal shall begin January 1, 2008 and proceed monthly for 6 months after the date of the executed Order.