

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of: _____)

Wolverine Tube, Inc. _____)

Decatur, Morgan County, Alabama _____)

Air Facility I. D. No. 712-0016 _____)

CONSENT ORDER NO. 03-041-CAP

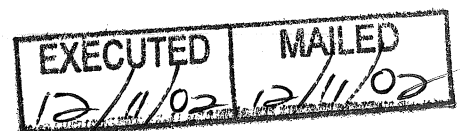
FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. Wolverine Tube, Inc. (hereinafter "Wolverine") operates a copper smelting plant (Air Facility ID No. 712-0016) located at 2100 Market Street N.E. in Decatur, Morgan County, Alabama.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 through 7671q, as amended. In addition, the Department is authorized to administer and



enforce the provisions of the Alabama Air Pollution Control Act, §§ 22-28-1 through 22-28-23, Code of Alabama 1975, as amended.

4. Pursuant to Major Source Operating Permit, 712-0016, Proviso No. 1 under Emission Monitoring for the Continuous Casting Shaft Furnace (13 TPH) w/ Scrubber and Southwire Shaft Furnace w/ Scrubber states, "Wolverine shall perform a daily inspection of the scrubber to verify proper operation. The following activities shall be performed: (a) Once per day monitor and record pressure drop across the throat of the scrubber."

5. Pursuant to Major Source Operating Permit, 712-0016, Proviso No. 1 under Recordkeeping and Reporting Requirements for the Continuous Casting Shaft Furnace (13 TPH) w/ Scrubber and Southwire Shaft Furnace w/ Scrubber states, "The source shall maintain a record of all inspections performed to satisfy the requirements of periodic monitoring. This shall include all problems observed and corrective actions taken. Each record shall be maintained for a period of 5 years."

6. On March 21, 2002, Wolverine contacted the Department to report that the pressure drop across the scrubber that controls the Continuous Casting Shaft Furnace and the Southwire Shaft Furnace had not been recorded from December 24, 2001, through March 14, 2002, as required by Wolverine's Major Source Operating Permit.

7. On March 27, 2002, the Department issued a Notice of Violation to Wolverine for the lack of periodic monitoring performed on the scrubber.

8. Based on the Notice of Violation response dated April 17, 2002, Wolverine stated that the employee specifically responsible for maintaining a record of the daily pressure drop across the scrubber was transferred to other job duties. As a result of the transfer, the differential pressure was not recorded.

9. Wolverine maintains that the required daily monitoring was performed and the scrubber was operating properly during the relevant period. In addition to Wolverine's direct knowledge that the scrubber operated properly during the period in question, the scrubber controls are designed such that if the differential pressure drops below 46 inches water column, the stack caps open automatically, an alarm activates, and the scrubber is shut down. Should this event occur, the clean scrap policy would be implemented by Wolverine.

10. Wolverine neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, Wolverine consents to the terms of this Order.

11. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the alleged violations cited hereinabove.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama 1975, as amended, and with the consent of Wolverine it is hereby ORDERED:

A. That Wolverine will operate and maintain a process monitoring station which will provide the ability to continuously monitor and automatically record the pressure drop across the scrubber. This data shall be maintained in a form suitable for inspection.

B. That there is assessed a civil penalty against Wolverine in the amount Three Thousand Dollars (\$3,000) to be paid to the Alabama Department of Environmental Management within thirty (30) days of the effective date of this Consent Order.

C. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Wolverine shall comply with all requirements of ADEM Air Permits that have been issued to it.

D. That this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Order.

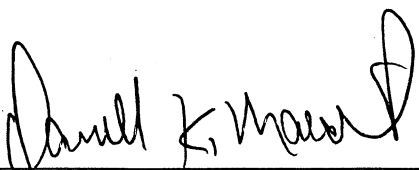
F. That Wolverine is not relieved from any liability if it fails to comply with any provision of the Consent Order.

G. That, for purposes of this Consent Order only, Wolverine agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. Wolverine also agrees that in any action brought by the Department to compel compliance with this Consent Order, as they relate to the violations cited, Wolverine shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Wolverine, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to be beyond the

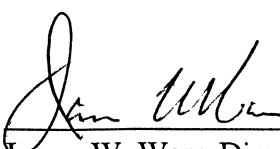
reasonable control of Wolverine) and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of thirty (30) days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Wolverine, the Department may extend the time as justified by the specific circumstances.

H. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in the Consent Order, then such future violations shall be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Wolverine Tube shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future Orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. That by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Wolverine does hereby waive any hearing on the terms and conditions of same.


(Signature)
DARRELL E. MAXWELL VICE PRESIDENT
U.S. TUBE OPERATIONS
(Please Print Name and Title of Authorized Officer)

Wolverine Tube, Inc.
Date: 12/6/2002


James W. Warr, Director
Alabama Department of
Environmental Management
Date: 11 Dec 2002