

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
Corrective Action for a Hazardous Waste
Management Facility, pursuant to Article 27,
Titles 9 and 13 of the Environmental Conservation
Law of the State of New York by:

INTERIM ORDER ON CONSENT
File No. 03-73

Tecumseh Redevelopment, Inc.

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Order is issued pursuant to the Department's authority under that law, including ECL 3-0301, ECL Article 27, Title 9, and ECL Article 71, Title 27.
2. Tecumseh Redevelopment, Inc. ("Respondent") owns and operates property located along the west side of Route 5, Lackawanna, New York ("Facility"), a portion of which will be the subject of this Order.
3. Respondent's predecessor in interest at the Facility, Bethlehem Steel Corporation ("Bethlehem"), conducted operations that subject the Facility to ECL Article 27, Title 9, and the 6 NYCRR regulations promulgated pursuant thereto. The Facility is a hazardous waste management facility, as that term is defined at 6 NYCRR 370.2(b)(89), and is subject to the New York State laws and regulations governing hazardous waste.

4. Bethlehem filed for protection under the United States Bankruptcy Code and Respondent acquired the Facility following a purchase pursuant to an Asset Purchase Agreement that was approved by the United States Bankruptcy Court for the Southern District of New York on April 23, 2003 (Case No. 01-15288 (Jointly Administered)). Respondent thereafter assumed the related cleanup obligations.

5. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution pursuant to ECL 3-0301(1)(i).

6. The Department maintains that the Facility is subject to interim status and corrective action pursuant to the Federal Resource Conservation and Recovery Act ("RCRA") and the regulations promulgated thereunder.

7. On November 18, 1980, a Part A hazardous waste application under the RCRA was submitted to the United States Environmental Protection Agency ("EPA") by Bethlehem.

8. The Department received final delegation of RCRA authority from EPA as of May 29, 1986. The Facility has not received a Part B permit and is considered an interim status facility for purposes of 6 NYCRR 373-1.3.

9. Pursuant to ECL 71-2727(3)(b), whenever on the basis of any information the Commissioner determines that there is or has been a release of hazardous waste or constituents into the environment from a facility which has or has had interim status but which did not receive a final status permit, the Commissioner may issue an order requiring corrective action.

10. Respondent consents to the issuance of this Order to fulfill part of its

obligation under ECL Article 27, Title 9 and ECL 71-2727(3)(b) to perform corrective action at the Facility. The Department intends to issue a final order(s) relative to the performance of corrective action at the entire Facility.

11. The Department and Respondent agree that the goal of this Order is for Respondent to implement the Interim Corrective Measures (ICM) Work Plan dated May 2004, Revised August, 2004, for the Benzol Plant Tank Storage Area (SWMU P-11) ("ICM Work Plan for SWMU P-11") prepared by TurnKey Environmental Restoration LLC on behalf of Respondent and approved by the Department on August 13, 2004.

12. Respondent consents to the issuance and entry of this Order and agrees to be bound by its terms. Respondent reserves all rights and defenses it may have regarding liability or responsibility for conditions at the Facility, except that Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to enforce this Order, except as provided in Section VI, and agrees not to contest the validity of this Order or its terms. Respondent has consented to the issuance of this Order in good faith without trial or adjudication of any issue of fact or law.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Corrective Action

A. Respondent shall implement the ICM Work Plan for SWMU P-11, which is attached to this Order and is incorporated herein, along with the activities described in Schedule A of this Order, in accordance with their terms. Nothing in this Order shall be construed to require Respondent to conduct any work, or to take any action, other than as set forth in the ICM Work Plan for SWMU P-11 and Schedule A.

II. Enforcement and Force Majeure

Respondent shall neither suffer any penalty under this Order nor be subject to any proceeding or action, and shall not be deemed to be in violation of this Order, if it cannot comply with any requirement of this Order because of the action of a national, state, or local government body or court, an act of God, war, strike, riot, catastrophe, fire, or any other fact or circumstance beyond Respondent's reasonable control (a "Force Majeure Event"). Respondent shall, within 15 days of when it obtains knowledge that a Force Majeure Event will prevent or delay compliance with this Order, notify the Department in writing. Failure to give such notice with the 15 day period constitutes a waiver of any claim that Respondent's failure to comply is attributable to a Force Majeure Event. Written notification shall be sent to the Regional Hazardous Materials Engineer and the Director, Bureau of Hazardous Waste and Radiation Management at the respective addresses provided in Paragraph IX. Respondent shall include in such notice, to the extent known at the time, the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Respondent shall have the burden of demonstrating by a preponderance of the evidence that a force majeure event has occurred and, consequently, is a defense to compliance with this Order. The Department shall not unreasonably deny or delay such approval.

III. Stipulated Penalties

A. Respondent's failure to comply with any term of this Order, constitutes a violation of this Order and the ECL. If Department staff determines that Respondent has failed to comply with this Order, the Department staff shall notify Respondent in

writing. Payment of any penalty shall not in any way alter Respondent's obligation to comply with any term of this Order or to complete performance under the terms of this Order. The payment of stipulated penalties as set forth below shall not limit the Department's right to seek such other relief as may be authorized by law.

B. If Respondent fails to comply with the ICM Work Plan for SWMU P-11, then Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of any term or condition of this Order. All penalties begin to accrue on the first day Respondent is in violation of a term or condition of this Order and continue to accrue through the final day of correction of any violation. Unless disputed as set forth below, such sums shall be due and payable within fifteen days after receipt of notification from the Department assessing the penalties. If such payment is not received within fifteen days after Respondent receives such notification from the Department, interest shall be payable at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by check or money order made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to Regional Attorney, N.Y.S.D.E.C., 270 Michigan Avenue, Buffalo, NY 14203-2999. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. The payment of stipulated penalties as set forth above shall not limit the Department's right to seek such other relief as may be authorized by law. Stipulated penalties shall be due and payable according to the following schedule:

<u>PERIOD OF NONCOMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st day through 15th day	\$ 250
16th day through 30th day	\$ 1,000
31st day and each day thereafter	\$ 5,000

IV. Submissions

A. All reports and submissions required by this Order shall be made to the Regional Hazardous Materials Engineer and the Director, Bureau of Hazardous Waste and Radiation Management at the respective addresses provided in Paragraph IX. Respondent shall be responsible for the content of any submissions made pursuant to this Order.

B. The Department shall review each of the submissions Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submission was done, in accordance with the ICM Work Plan for SWMU P-11 and this Order and with generally accepted technical/scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of each submission. All Department-approved submissions shall be incorporated into and become an enforceable part of this Order. Approval by the Department shall not be unreasonably withheld or delayed by the Department.

C. If the Department disapproves a submission, it shall so notify Respondent in writing and specify the reasons for its disapproval. Within sixty days, unless the notice specifies a different deadline, after receiving written notice that Respondent's submission has been disapproved, Respondent shall make a revised submission to the

Department that addresses all of the Department's stated reasons for disapproving the first submission. After receipt of the revised submission, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submission, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submission, the Department and Respondent will conduct good faith negotiations to resolve the issues between them during the course of the next twenty-one days. If the issues are not resolved to the Department's satisfaction, the Department shall so notify Respondent in writing within such twenty-one day period and Respondent shall be in violation of this Order, unless it has invoked the dispute resolution mechanism set forth below in Paragraph VI within thirty days of receipt of the Department's written notice that issues have not been resolved.

D. Respondent shall modify and/or amplify and expand a submission upon the Department's direction to do so if the Department reasonably determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Reservations of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities including, but not limited to nor exemplified by, the right to recover natural resource damages against any party, including Respondent and Respondent's defenses thereto.

B. Nothing contained in this Order shall be construed to prohibit the

Commissioner or the Commissioner's designee from exercising any summary abatement powers pursuant to ECL 71-0301.

C. Except as specifically set forth herein, nothing in this Order shall be construed as a waiver by Respondent of any rights, claims, defenses, or agreements it now has or may have in the future regarding the Facility.

VI. Dispute Resolution

A. The Parties shall use their reasonable best effort and negotiate in good faith to resolve any disputes regarding this Order.

B. If any dispute shall arise between Respondent and the Department regarding the implementation or interpretation of any provision of this Order or any revised submittal, Respondent may invoke the dispute resolution procedures contained in this Section.

C. In order to invoke these procedures, within 30 days of receipt of notice of the Department's action or determination, Respondent must submit a written request to meet with the Director of the Division of Solid and Hazardous Materials ("the Director") to discuss the Department's action or determination. The Director or the Director's designated agent must contact Respondent to schedule a meeting within 14 days thereafter. At the meeting, Respondent shall be given an opportunity to present its response to the Department's action or determination, and the Director shall have the authority to modify and/or withdraw such action or determination. The Director shall notify Respondent, in writing, of his specific comments as soon as reasonably practicable after the meeting.

D. Upon receipt of such notification, Respondent shall take whatever action is

required under this Order in accordance with the Director's comments and pursuant to a schedule determined during the meeting with the Director. If Respondent fails to take the required action, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

E. The invocation of dispute resolution procedures under this Paragraph shall not, of itself, extend, postpone, or affect in any way any obligation of Respondent under this Order, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute pursuant to this Paragraph. Notwithstanding the stay of payment set forth above, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. In the event Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph III above. The Director, in his sole discretion, may waive stipulated penalties when Respondent does not prevail on the disputed issue if the Director determines that Respondent had a reasonable basis for believing it would prevail on the disputed issue.

C. The Director's written specific comments shall be the Department's final decision. Nothing in this Order shall diminish or otherwise affect Respondent's statutory rights of appeal with respect to the Department's final decision.

VII. Entry Upon the Facility

Respondent hereby consents to the entry upon the Facility and upon areas in the vicinity of the Facility that are under the control of Respondent upon reasonable notice and at times reasonable under the circumstances by any duly designated employee,

consultant, contractor, or agent of the Department or any State Agency having jurisdiction for purposes of inspection, sampling, and testing to ensure Respondent's compliance with this Order. The Department shall abide by the health and safety rules in effect at the Facility. The Department may be accompanied by an employee, consultant, contractor, or agent of Respondent. Upon request, Respondent shall provide the Department with reasonably suitable office space at or near the Facility, including access to a telephone, and shall permit the Department full access to all non-privileged records relating to matters addressed by this Order and to job meetings held in connection with the work performed under this Order.

VIII. Indemnification

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

IX. Modification

A. The terms of this Order constitute the complete and entire Order the Department issued to Respondent covering implementation of the ICM Work Plan for SWMU P-11. No term, condition, understanding, or Order purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submissions shall be construed as relieving Respondent of its obligation to obtain such

formal approvals as may be required by this Order.

B. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Department setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Regional Hazardous Materials Engineer, the Regional Attorney, and the Director of the Bureau of Hazardous Waste and Radiation Management of the New York State Department of Environmental Conservation at the respective addresses provided in Paragraph X.

X. Communications

All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or by hand delivery.

1. Communication from Respondent shall be sent to:

Regional Hazardous Materials Engineer
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

Director, Bureau of Hazardous Waste and Radiation Management
Division of Solid & Hazardous Materials
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7258

Regional Attorney
270 Michigan Avenue
Buffalo, New York 14203-2999

2. Communications to Respondent shall be sent to:

Mr. Keith A. Nagel
General Manager
Tecumseh Redevelopment, inc.
3250 Interstate Drive, 2nd Floor
Richfield, Ohio 44286-9000

and to

Mr. Paul H. Werthman
TurnKey Environmental Restoration, LLC
726 Exchange Street, Suite 624
Buffalo, New York 14210

and to

Mr. Dale E. Papajcik
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

B. The Department and Respondent reserve the right to designate additional or different addresses for communication on written notice to the other given in accordance with this Section.

XI. Termination and Satisfaction

Respondent's obligations under this Order shall be deemed satisfied and shall terminate upon their own terms upon Respondent's completion of ICM Work Plan for SWMU P-11 and the payment of any Stipulated Penalties due pursuant to Section III. For the avoidance of doubt, for purposes of this Paragraph Respondent's obligation under the ICM Work Plan for SWMU P-11 shall not include any post closure care monitoring, financial assurance, or other obligations and completion thereof, while independently enforceable by the Department, shall not be a prerequisite to termination of this Order.

XII. Miscellaneous

A. Respondent hereby certifies that it has fully and accurately disclosed or made available to the Department all relevant information known to Respondent and all

relevant information known to be in the possession or control of its officers, directors, employees, contractors, and agents that relates to, identifies or describes contamination at the Facility relative to the Benzol Plant Tank Storage Area (SWMU P-11).

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within fifteen days after the effective date of this Order or their selection by Respondent, whichever is later. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. Such approval shall not unreasonably be withheld, and shall be deemed granted if Respondent has not received from the Department a written notice of disapproval within fifteen days. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent pursuant to this Order, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling, tests or other data generated by Respondent with respect to implementation of this Order or conducted independently by Respondent. Respondent shall have the right to obtain split samples, duplicate samples, or both of all substances and materials sampled by the Department, and the Department shall promptly make available to Respondent the

results of all sampling, tests or other data generated by the Department with respect to this Order.

D. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform its obligations under this Order.

E. Respondent, Respondent's officers, successors (including successors-in-title) and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Order. Respondent shall require that its officers, directors, employees, servants, and agents comply with the relevant provision of this Order in the performance of their designated duties on behalf of Respondent.

F. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

H. All references to days in this Order are to calendar days unless otherwise specified. If a deadline falls on a weekend or holiday, such deadline shall automatically be extended until the next business day.

I. The Paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

J. The effective date of this Order shall be the date that the Commissioner or her designee serves a fully executed copy of this Order upon Respondent. The

Department will provide Respondent (or Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

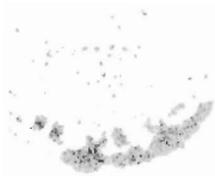
K. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

Dated: 11/26, 2004
Buffalo, New York

ERIN CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION



By: Gerald F. Mikol
Regional Director



CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Gordon Spelich

Title: VICE PRESIDENT

Date: 11-04-04

STATE OF OHIO)
)
)
COUNTY OF SUMMIT)

On the 4th day of November, in the year 2004, before me, the undersigned, personally appeared Gordon Spelich, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



SJE Heister
NOTARY PUBLIC
SJE E. HEISTER
Notary Public, State of Ohio
My Commission Expires 10/27/2007

SCHEDULE A

<u>Item</u>	<u>Date</u>
1. Substantially complete construction of the ICM.	1. Within 22 weeks after the effective date of the Order.
2. Submit a Groundwater Monitoring Plan to the Department.	2. Within 15 days after the effective date of the Order.
3. Submit to the Department an Operation & Maintenance Manual with inspection schedule.	3. Within 30 days of substantial completion of construction.