

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of Corrective Action for a Hazardous Waste Management Facility, pursuant to Article 27, Title 9 and Article 71, Title 27 of the Environmental Conservation Law of the State of New York by:

ArcelorMittal Tecumseh Redevelopment, Inc.
4020 Kinross Parkway
Richfield, Ohio 44286

Corrective Measures Study
Order on Consent
File No. 03-73

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 Article 27, Title 9 and ECL Article 71, Title 27.

2. ArcelorMittal Tecumseh Redevelopment, Inc. ("Respondent"), a subsidiary of ArcelorMittal USA, Inc., owns and operates property located along the west side of Route 5 in Lackawanna, New York, (the "Lackawanna Facility") a portion of which is the subject of this Corrective Measures Study ("CMS") Order. For purposes of implementing this Order the portion of the property that is subject to this Order shall be referred to as the "CMS Site". The CMS Site is depicted on the map attached hereto as Attachment A.

3. Respondent's predecessor in interest, Bethlehem Steel Corporation ("Bethlehem"), conducted operations that subject the CMS Site to ECL Article 27, Title 9, and the 6 NYCRR regulations promulgated pursuant thereto. The CMS Site 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. The Department maintains that the CMS Site is subject to interim status and corrective action pursuant to the Federal Resource Conservation and Recovery Act ("RCRA"), 42

U.S.C. §6901 et seq., and the regulations promulgated thereunder. The Department received final delegation of RCRA authority from EPA on May 29, 1986.

5. On November 18, 1980, a Part A hazardous waste RCRA application was submitted to the United States Environmental Protection Agency ("EPA") by Bethlehem. The CMS Site has not received a Part B permit and is considered an interim status facility for purposes of 6 NYCRR 373-1.3.

6. On August 13, 1990, the EPA issued to Bethlehem an Administrative Order on Consent Docket No. II RCRA 90-3008(h)-0201, pursuant to Section 3008(h) of RCRA, which required Bethlehem and its successors to conduct a RCRA Facility Investigation ("RFI").

7. On October 15, 2001 Bethlehem filed for protection under the United States Bankruptcy Code, and 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)), sold certain assets, including its Lackawanna Facility, to ISG Acquisition Inc.. ISG Acquisition Inc. caused Bethlehem to convey the Facility to Respondent pursuant to a Bargain and Sale Deed With Covenants Against Grantor's Acts dated May 6, 2003.

8. As part of its cleanup obligations, Respondent completed and submitted the RFI to the Department and EPA on January 7, 2005. On August 21, 2006, the EPA notified Respondent that its obligations under the RFI Order were terminated. The results of the RFI confirm that there has been a release of hazardous waste or constituents into the environment and a Corrective Measures Study must be performed.

9. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See e.g., ECL 3-0301.1(I).

10. Pursuant to ECL Section 71-2727(3)(b), the Commissioner of the Department may issue orders requiring corrective action, or such other measures as he deems necessary to protect human health and the environment, for all releases of hazardous waste or constituents from a Facility

which has interim status according to regulations adopted pursuant to Title 7 or 9 of Article 27 of this chapter.

11. Pursuant to 6 NYCRR 373-1.2(e), an enforceable document, such as an Order on Consent, can be issued in lieu of a post-closure permit, subject to the requirements set forth in 6 NYCRR 373-3.7(k).

12. Respondent consents to the issuance of this Order to fulfill certain obligations under ECL Article 27, Title 9, ECL 71-2727, and 6 NYCRR 373 relating to corrective action at the CMS Site and closure/post-closure for two hazardous waste management units at the CMS Site.

13. The Department finds that resolution of issues relating to the performance of corrective action at the CMS Site, undertaken in accordance with the terms of this Order, is in the public interest.

14. The Department and Respondent agree that the goals of this Order are to establish the terms and conditions under which the Respondent will (i) undertake the Corrective Measures Study portion of a RCRA corrective action program in a timely and effective manner at the CMS Site, to protect human health and the environment, (ii) provide financial assurances for completing such corrective actions, (iii) comply with closure/post-closure requirements in lieu of obtaining a post-closure permit for HWM-1A and HWM-1B (SWMUs S-13 and S-16), and (iv) provide financial assurances for completing such closure/post-closure requirements.

15. 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 CMS Site except that Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, except as provided in Section VII, and agrees not to contest the validity of this Order or its terms. Respondent consents 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 complete the corrective action activities in accordance with the Corrective Measures Study Workplan which is attached to this Order as **Appendix CMS-A**. 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 Appendix CMS-A and all attachment thereto. For purposes of implementing this Order the terms "Corrective Measures Study Workplan," "Appendix CMS-A," and "Appendix A Workplan" shall have the same meaning and shall include all attachments to the Corrective Measures Study Workplan. Appendix CMS-A and all attachments thereto shall be incorporated in, and become an enforceable part of, this Order.

B. Once the Commissioner has made the final selection of the corrective measure(s), Respondent and the Department shall enter into a new Order addressing implementation of the final selected corrective measure(s), which Order shall be negotiated in good faith, shall include a schedule to implement the final selected corrective measure(s), shall provide for financial assurance for the corrective measure(s), and shall provide for post-closure care of any HWMUs or SWMUs to be closed in place.

II. Financial Assurances

A. Providing Financial Assurance:

By December 31, 2009, Respondent shall provide a total of Twenty-Five Million Dollars (\$25,000,000) in financial assurance for (a) closure/post-closure costs for the regulated units SWMU S-13 (Coal Tar Sludge Landfill) and SWMU S-16 (Lime Stabilized Spent Pickle Liquor Sludge); (b) Interim Measures undertaken pursuant to Interim Order on Consent No. 03-73, Second Interim Order on Consent No. 03-73, and Order on Consent 05-32; © additional SWMU closure costs, if any, that are not identified in Section IIA.(a) and (b); and (d) the Corrective Measures Study set forth

in Appendix CMS-A of this Order. Respondent must provide financial assurance in accordance with 6 NYCRR Section 373-3.8. While complying with the requirements of 6 NYCRR Section 373-3.8, Respondent shall add the words, "and/or corrective action" wherever the words, "closure/post closure" appear in financial assurance instrument wording. Respondent shall thereafter modify the sentence stating that the wording of the financial assurance instrument is identical to the wording provided in the regulations by adding the phrase, "with the exception of including the words, and/or corrective action."

B. Modification of Amount of Financial Assurance:

1. On an annual basis, beginning one year after the effective date of this Order, Respondent must submit to the Department a corrective action cost estimate for (a) closure/post-closure costs for the regulated units SWMU S-13 and SWMU S-16; (b) Interim Measures undertaken pursuant to Interim Order on Consent No. 03-73, Second Interim Order on Consent No. 03-73, and Order on Consent 05-32; (c) additional SWMU closure costs, if any, that are not identified in Section II B.1.(a) and (b); and (d) the Corrective Measures Study set forth in Appendix CMS-A of this Order. The Department will review each cost estimate and notify Respondent, in writing, of the Department's approval, rejection, or modification of the cost estimate. If the Department does not approve the cost estimate, the Department will notify the Respondent in writing of the estimate's deficiencies and specify a due date for submittal of a revised cost estimate.

2. If the cost estimate is greater than the amount of financial assurance then in effect, the Respondent must, within sixty (60) days from the date of the submission of the new cost estimate, provide additional financial assurance in accordance with 6 NYCRR Section 373-3.8, in an amount that is the difference between the new cost estimate and the existing financial assurance then in effect.

3. If the estimated cost is less than the amount of financial assurance then in effect, Respondent may, at the same time that Respondent submits the annual cost estimate, or at any other

time agreed to by the Department, submit a written proposal to the Department to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining work to be performed and the basis upon which such cost was calculated. In the event that the Department requires additional information concerning the remaining work to be performed, the Department shall notify Respondent in writing. Respondent shall have fifteen (15) days after receiving the Department's notification that additional information is needed to submit in writing a revised proposal that addresses all of the additional information requested by the Department. If Respondent provides sufficient information to the Department concerning the cost of the remaining work to be performed the Department shall issue a written decision within sixty (60) days regarding the amount of financial assurance required under this Order. After receiving the Department's written decision, Respondent may reduce the amount of the financial assurance only in accordance with, and to the extent permitted by such written decision. If Respondent elects to satisfy the requirement of 6 NYCRR 373-3.8 by establishing a closure/post-closure trust fund and the value of the fund is greater than the cost of the remaining work the Department will instruct the trustee to release such excess funds to Respondent.

4. In the event of a dispute, Respondent may invoke the dispute resolution mechanism provided in Section VII of this Order. Respondent shall not be required to post additional financial assurance or be entitled to reduce the amount of financial assurance, or seek a release of funds, until a final decision is rendered by the Director or his designee.

C. Liability Requirements:

Respondent must have and maintain liability coverage in accordance with 6 NYCRR Section 373-3.8(h).

D. Adjustment for Inflation:

While this Order remains in effect, the financial assurance, including financial assurance for

corrective action, will be subject to adjustment for inflation as provided for in 6 NYCRR Section 373-3.8(c)(2) and Section 373-3.8(e)(2).

III. Submittals

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

B. All documents that Respondent submits are subject to DEC approval. 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 Corrective Measures Study Workplan 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 (60) days 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 (21) days. If the issues are

not resolved to the Department's satisfaction, the Department shall so notify Respondent in writing within five days of the end of such twenty-one (21) day period. Respondent will thereafter be in violation of this Order unless, within thirty (30) days of receipt of the Department's written notice stating that issues regarding the submission have not been resolved, it invokes the dispute resolution mechanism set forth in Section VII of this Order.

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 other relevant data or facts, that further work is necessary.

E. In the event the Department establishes provisions for submission of electronic data deliverables for environmental sampling, Respondent shall, within ninety (90) days of receipt of such notice, provide all future data submissions in the form prescribed by the Department.

F. All approved work plans, reports, and remedial activities submitted under this Order shall be deemed to have fulfilled the corresponding requirements of 6 NYCRR Part 375.

IV. Stipulated Penalties

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

2. 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 the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation.

Such sums shall be due and payable within fifteen (15) days after receipt of notification from the Department assessing the penalties. If such payment is not received within fifteen (15) days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine (9) per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified 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 the Regional Attorney, Office of General Counsel, N.Y.S.D.E.C., 270 Michigan Avenue, Buffalo, New York 14203-2999. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per-Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1,500
31st day and thereafter	\$ 4,500

V. Entry Upon CMS Site

Respondent hereby consents to entry to the CMS Site, and areas in the vicinity of the CMS Site 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 for purposes of inspecting, sampling, and testing and to ensure Respondent's compliance with this Order. The Department shall abide by the health and safety rules in effect at the CMS Site. The Department may be accompanied by an employee, consultant, contractor, or agent of Respondent. Upon request, Respondent shall provide the Department with suitable office space at or near the CMS Site, 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 work performed under this Order.

VI. 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 fifteen (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 within the fifteen (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 of Hazardous Waste and Radiation Management, at the respective addresses provided in Section XI. 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 that the event is a defense to compliance with this Order. The Department shall not unreasonably deny or delay acknowledgment of such demonstration.

VII. 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. To invoke these procedures, Respondent must, within thirty (30) days of receipt of notice of the Department's action or determination, or within a time period otherwise specified in

this Order, 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, and Respondent must be available to meet within fourteen (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 or her specific comments as soon as reasonably practicable after the meeting.

D. Upon receipt of the Director's specific comments on the disputed issue or issues, Respondent shall take whatever action is required under this Order as modified by the Director's comments (if any) pursuant to Section VII C. 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 Section 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 Section. 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 Section IV. The Director, in his or her 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. If Respondent prevails on the disputed issue or issues, stipulated penalties shall not be assessed.

F. 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.

VIII. Department Reservation 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.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative 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 CMS Site, including Respondent's defenses, if any, should the Department attempt to recover natural resource damages.

IX. Indemnification

To the fullest extent permitted by law, 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 this Order by Respondent and/or any of Respondent's employees, servants, agents, successors, or assigns. This indemnification does not extend to claims or causes of action arising from or on account of grossly negligent acts or the intentional misconduct of any employee of the Department performing work at the CMS Site.

X. Notification of Proposed Transfer

A. Within thirty (30) days after the effective date of this Order, Respondent shall file a copy of this Order with the Erie County Clerk, Buffalo, New York, to give notice of this Order to

all parties who may acquire an interest in the CMS Site. Respondent shall provide the Department with a certification by the Erie County Clerk indicating that a copy of the Order has been filed in the Office of the Erie County Clerk, in Buffalo, New York.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership-interest in the CMS Site during the term of this Order, Respondent shall, not fewer than sixty (60) days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability to them of this Order and all attachments, and 6 NYCRR Part 373-3. Respondent shall further advise the transferee in writing that the CMS site will, in the future, be subject to an Environmental Easement.

C. Respondent, its successors and assigns, shall retain liability for fulfilling the terms of this Order throughout the duration of the Order, even if during the duration of the Order Respondent, its successors and assigns, convey or transfer the whole or any part of their interest in the CMS Site.

XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, first class mail, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to:

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

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

Regional Attorney
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

2. Communication to Respondent shall be sent to:

Mr. Keith A. Nagel
Manager, Environmental Affairs
ArcelorMittal Tecumseh Redevelopment, Inc.
3250 Interstate Drive, 2nd Floor
Richfield, Ohio 44286-9000

and to

Mr. Paul H. Werthman
TurnKey Environmental Restoration, LLC
2558 Hamburg Turnpike
Suite 300
Lackawanna, New York 14218

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.

XII. Modifications

1. The terms of this Order constitute the complete and entire Order the Department issued to Respondent covering corrective action and remediation, as set forth in Appendix CMS-A, under ECL Article 27, Title 9 for the CMS Site. 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.

2. 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 New York State Department of Environmental Conservation at the addresses provided in Section XI. No change or modification to this Order shall become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative.

XIII. 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 the Corrective Measures Study Workplan in Appendix CMS-A and the payment of any Stipulated Penalties due pursuant to Section IV. For the avoidance of doubt, for purposes of this Section, Respondent's obligation under the Corrective Measures Study Workplan in Appendix CMS-A shall not include any post-closure care monitoring, post-closure financial assurance, or other obligations and completion thereof not specified in the Corrective Measures Study Workplan in Appendix CMS-A. The need for additional post-closure care monitoring, and post-closure financial assurance, while independently enforceable by the Department, shall not be a prerequisite to termination of this Order.

XIV. 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 which relates to, identifies or describes contamination of CMS Site soils and groundwater and any other environmental concerns.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, third party data validators, and ELAP Certified Analytical

Laboratories 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 thirty (30) 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 (15) days of Respondent submitting the credentials of the firms or individuals selected. 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, 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 and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. 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 notify the Department at least ten (10) working days in advance of any field activities to be conducted pursuant to this Order.

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

F. Respondent, its successors and assigns, shall be bound by this Order. Any change in ownership including, but not limited to, any transfer of assets or real or personal property at the CMS Site shall in no way alter Respondent's responsibilities under this Order.

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

H. Respondent shall submit a monthly progress report by the last Friday of each month outlining the work performed since the last report.

I. All references to “days” in this Order are to calendar days unless otherwise specified.

J. The Section 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.

K. The Effective Date of this Order shall be the date that the Commissioner or his designee signs this Order. 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 his designee signs it.

L. In the event of an inconsistency between the provisions of any attachment or appendix of this Order and any term, condition, or provision contained in Sections I through XIV of this Order, the term, condition, or provision contained in that Section, and not that in any attachment or appendix of this Order, shall control.

M. Respondent and Respondent’s corporate successors and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against New York State pursuant to Article 12 of the Navigation Law with respect to the CMS Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of the same has, or may have, with respect to the CMS Site.

N. The terms of any Orders on Consent Respondent has entered into with the Department pertaining to the CMS Site shall continue in full force and effect unless they conflict with or are otherwise addressed by the terms of this Order, in which case terms of this Order shall control.

DATED: June 30, 2009
Buffalo, New York

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: Abby M. Snyder
Abby M. Snyder
Regional Director

CONSENT BY RESPONDENT

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

By:

Keith A. Nagel
Keith A. Nagel

Title:

Director, Environmental Affairs & Real Estate

Date:

June 29, 2009

STATE OF OHIO

COUNTY OF SUMMIT

)
) s.s.:
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On this 29th day of June, 2009, before me personally came Keith A. Nagel, to me known, who being duly sworn, did depose and say that he resides in Richfield Ohio; that he is the Director, Environmental Affairs & Real Estate of Accelerata Real Estate Development, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.



Suzanne E. Dick
Notary Public

Commission expires:

October 29, 2012