

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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www.dec.ny.gov

November 15, 2018

**SENT VIA FIRST CLASS MAIL AND VIA
ELECTRONIC MAIL**

Mr. Thomas M. Tuori, Esq.
Harter Secrest & Emery, LLP
1600 Bausch and Lomb Place
Rochester, NY 14604-2711

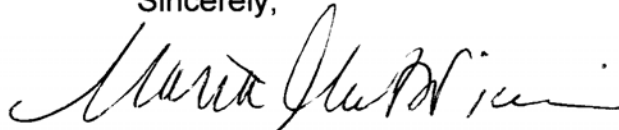
**RE: Order on Consent
File No.: 18-23
Site Name: Bethlehem Steel
Site No.: 915009**

Dear Mr. Tuori:

Enclosed is a copy of the fully executed Order on Consent in relation to the Benzol Yard Source Control Interim Corrective Measure for the Bethlehem Steel site located at 3555 Lake Shore Drive, Lackawanna, Erie County and Tecumseh Redevelopment, Inc.

If you have any further questions or concerns relating to this matter, please contact Karen Draves at 716-851-7189.

Sincerely,



Maria Mastroianni
Remediation Bureau
Office of General Counsel

cc: Keith A. Nagel
Tecumseh Redevelopment, Inc.
4020 Kinross Lakes Parkway
Richfield, OH 44286-900

Paul H. Werthman, PE
Benchmark Env. Engineering & Science
2558 Hamburg Turnpike, Ste. 300
Lackawanna, NY 14218



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Implementation of Corrective Action for a Hazardous Waste Management Facility, Pursuant to Article 27, Titles 9 and 13; and Article 71, Title 27 of the Environmental Conservation Law of the State of New York by:

Tecumseh Redevelopment, Inc.
4020 Kinross Lakes Parkway
Richfield, Ohio 44286-9000

Benzol Yard Source Control
Interim Corrective Measure
Order on Consent
File No. 18-23

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation ("Department") is responsible for enforcing the Environmental Conservation Law of the State of New York ("ECL").
2. 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 Interim Corrective Measure ("ICM") Order on Consent (the "Order").
3. The Lackawanna Facility was home to Bethlehem Steel's iron and steel making operations from the early 1900's until most of the operations ceased in the 1980's. The coke plant operations continued until September 2001.
4. A portion of the Facility is now subject to environmental remediation and corrective action under the Resource Conservation and Recovery Act Program

("RCRA"), the State Superfund Program ("SSF"), and analogous provisions under the New York State Environmental Conservation Law ("ECL").

5. Respondent signed Interim Order on Consent File No. 03-73 on November 4, 2004, to address groundwater near Solid Waste Management Unit ("SWMU") P-11, the location of the former Benzol Plant (the "Benzol Yard Order").

6. Respondent signed Corrective Measures Study Order on Consent, File No. 03-73¹ (the "CMS Order") on June 29, 2009, to undertake a Corrective Measures Study and to provide financial assurances for completing corrective action and closure/post-closure requirements at the Lackawanna Facility.

7. Respondent signed Expedited Corrective Action Order on Consent File No. 16-55 on August 25, 2017, (the "OU-04 Order") to implement corrective action and remedial measures for groundwater at Operable Unit 4 ("OU-04" or "OU-4") that includes SWMU P-11 and SWMU-P11A.

8. The OU-04 Order related only to groundwater at these SWMU's and noted that other media, such as soils, soil vapor and other issues would be addressed in subsequent Orders.

9. The OU-04 Order terminated the Benzol Yard Order 03-73.

10. The OU-04 Order and the CMS Order remain in effect and are supplemented by this Order.

11. The Department and Respondent agree that the goal of this Order is for Respondent to implement groundwater source area controls in the form of Soil Vapor Extraction ("SVE"), working in concert with groundwater pumping (pursuant to the OU-

¹ These Orders, while given the same number, are two separate and distinct Orders.

04 Order), to remove volatile organic compounds from the vadose and smear zone at the Benzol Yard Source Control Area as evaluated and recommended in the document entitled "Evaluation of Source Area Control Measures– Coke Plant By-Products Solid Waste Management Unit Group," dated May 2016, prepared by Benchmark Environmental Engineering & Science, PLLC in association with TurnKey Environmental Restoration, LLC.

12. The construction of the SVE system and related interim cover system shall be in accordance with the plans and specifications entitled "*Coke Plant By-Products Solid Waste Management Unit Group Benzol Yard Source Control Interim Corrective Measure (ICM) Design Plans And Specifications*" (the "Plan"), dated April 2018, submitted by Benchmark Environmental Engineering & Science, PLLC to the Department. The Department acknowledges that it has already approved the Plan.

13. This Order is issued pursuant to the Department's authority under the ECL including:

- a. ECL Article 27, Title 9 that governs the regulation of industrial hazardous waste through the RCRA Program. RCRA EPA ID no. NYD002134880;
- b. ECL Article 27, Title 13 that governs the SSF Program. Site No. 915009; and
- c. ECL Article 71, Title 27 that governs the enforcement of the provisions of Article 27.

14. For the purposes of implementing this Order the portion of the property that is subject to this Order shall be referred to as the Benzol Yard Source Control Area.

15. The Benzol Yard Source Control Area, is depicted on the map attached hereto as Exhibit A

16. Respondent consents to the issuance of this Order to fulfill certain obligations under ECL Article 27, Titles 9 and 13, ECL § 71-2727, and 6 NYCRR Parts 373 and 375 relating to implementation of interim corrective measures at the Benzol Yard Source Control Area.

17. The Department finds that resolution of issues relating to the implementation of interim corrective measures at the Benzol Yard Source Control Area, undertaken in accordance with the terms of this Order, are in the public interest.

18. 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 Benzol Yard Source Control Area 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 Section XIII(B), 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. Interim Corrective Measures

Respondent shall implement Interim Corrective Measures consistent with the Plan.

A. Respondent shall complete the installation of Interim Corrective Measures for Soil Vapor Extraction at the Benzol Yard Source Control Area and initiate operation of the SVE system simultaneous with the completion of the work being done under the OU-04 Order. Requests for changes to the Interim Corrective Measures Plan must be made in writing. All requests for changes to the Plan are subject to Department approval.

B. Nothing in this Order shall be construed to require Respondent to conduct any work, or to take any action, that is inconsistent with the Plan, the Corrective Measure Order, or the OU-04 Order. The OU-04 Order, the Corrective Measure Order, and the Plan, all documents created thereunder, and all attachments thereto, shall be incorporated in, and become an enforceable part of, this Order.

II. Financial Assurances

A. Respondent must maintain financial assurances for the Benzol Yard Source Control Area Interim Corrective Measures in accordance with the terms of the CMS Order. The Department acknowledges that the corrective actions that Respondent will implement pursuant to this Order are intended to be interim, short-term measures; therefore, the Department agrees that the financial assurance obligations related to the Benzol Yard Source Control Area Interim Corrective Measures under this Order and/or the CMS Order shall (i) only include construction costs and operation and maintenance costs of the SVE and (ii) shall terminate when the Department agrees, in writing, that continued operation of the SVE system is no longer necessary or practicable as an interim source control measure. If the CMS Order is terminated and this Order remains in effect, Respondent must continue to provide financial assurances for the Benzol Yard

Source Control Area ICM and closure/post closure requirements either by maintaining the financial assurances established for the CMS Order, or by establishing new financial assurances in accordance with 6 NYCRR § 373-3.8 *et seq.* Under no circumstances will the CMS Order be terminated until Respondent has demonstrated that financial assurances for the remaining Benzol Yard Source Control Area work and closure/post closure requirements have been established.

B. 1. Pursuant to the terms of the CMS Order, Respondent must have and maintain liability coverage for the Benzol Yard Source Control Area in accordance with 6 NYCRR § 373-3.8 *et seq.*

2. If the CMS Order is terminated and this Order remains in effect, Respondent must continue to provide liability coverage for the Benzol Yard Source Control Area and closure/post closure requirements in accordance with 6 NYCRR § 373-3.8 *et seq.* Under no circumstances will the CMS Order be terminated until Respondent has demonstrated that liability insurance for the remaining Benzol Yard Source Control Area Interim Corrective Measures and closure/post closure requirements has been established.

C. Pursuant to the terms of the CMS Order, the financial assurances for the Benzol Yard Source Control Area Interim Corrective Measures and closure/post closure requirements, will be subject to adjustment for inflation as provided for in 6 NYCRR § 373-3.8(c)(2) and § 373-3.8(e)(2).

III. Submittals

A. All reports and submissions required by this Order shall be made to the Regional Environmental Remediation Geologist and the Director of the Division of

Environmental Remediation, 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 Department 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 Measure Order; the Plan; and this Order including plans and reports approved pursuant to 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 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. Respondent shall provide copies of all submissions in electronic format, in a form acceptable to the Department. 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 requirements of ECL Article 27, Titles 9 and 13, and 6 NYCRR Parts 373 and 375.

IV. Stipulated Penalties

A. 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.

B. If Respondent fails to comply with the terms of this Order, 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.

Unless disputed pursuant to the terms of Section VII, 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 rate specified by the New York Civil Practice Laws 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 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 | \$ 250 |
| 16th through 30th day | \$ 1,000 |
| 31st day and thereafter | \$ 5,000 |

C. Any Stipulated penalties assessed in the Order constitute a debt owed to the State of New York. Failure to pay the assessed penalty or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount.

V. Entry Upon Benzol Yard Source Control Area

Respondent hereby consents to entry to the Benzol Yard Source Control Area, and areas in the vicinity of the Benzol Yard Source Control Area 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 Benzol Yard Source Control Area, including but not limited to the health and safety

requirements of Respondent and ArcelorMittal USA, Inc. The Department may be accompanied by an employee, consultant, contractor, or agent of Respondent. Upon request, Respondent shall provide the Department with 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 Environmental Remediation Geologist and the Director of the Division of Environmental Remediation 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, submit a written request to meet with the Director of the Division of Environmental Remediation (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 or the Director's designated agent 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 or the Director's designated agent 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 Benzol Yard Source Control Area, including Respondent's defenses, if any, should the Department attempt to recover natural resource damages or otherwise attempt to impose liabilities or obligations on Respondent beyond those addressed by this Order, or provided for statutorily.

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, or representative of the Department performing work related to the Benzol Yard Source Control Area.

X. Notification of Proposed Transfer

A. If Respondent proposes to convey the whole or any part of Respondent's ownership-interest in the Benzol Yard Source Control Area 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 Benzol Yard Source Control Area will, in the future, be subject to an Environmental Easement.

B. 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 Benzol Yard Source Control Area.

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 Environmental Remediation Geologist
Division of Environmental Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999; and

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation

625 Broadway
Albany, New York 12233-7258; and

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
Vice President & General Manager Environmental Affairs
Tecumseh Redevelopment, Inc.
4020 Kinross Lakes Parkway
Richfield, Ohio 44286-9000; and

Mr. Paul H. Werthman, P.E.
Benchmark Environmental Engineering & Science, PLLC
2558 Hamburg Turnpike, Suite 300
Lackawanna, New York 14218; and

Mr. Thomas M. Tuori
Harter Secrest & Emery LLP
1600 Bausch and Lomb Place
Rochester, New York 14604-2711

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

A. The terms of this Order constitute the complete and entire Order the Department issued to Respondent covering Interim Corrective Measures under ECL Article 27, Titles 9 and 13 for the Benzol Yard Source Control Area. 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 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

A. Respondent's obligations under this Order shall be deemed satisfied and shall terminate upon (i) a determination by the Department that Respondent has satisfactorily completed the interim corrective measures at the Benzol Yard Source Control Area specified in the Plan; (ii) a determination by the Department that the Respondent has sufficient financial assurances to provide for all outstanding/remaining OM&M for the Benzol Yard Source Control Area; and (iii) a fully executed Order on Consent that binds Respondent to provide OM&M for the Benzol Yard Source Control Area, including but not limited to maintaining financial assurances and liability coverage for the Benzol Yard Source Control Area.

B. If a dispute should arise about Respondent's satisfaction of its obligations under this Order, including, but not limited to whether the interim corrective measures for the Benzol Yard Source Control Area have been satisfied to the extent practicable or

whether the amount of financial assurances provided for OM&M for the Benzol Yard Source Control Area is adequate, the Department agrees to enter into dispute resolution with Respondent pursuant to Section VII.

XIV. Miscellaneous

A. Respondent hereby certifies that it, to the best of its knowledge, 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 the Benzol Yard Source Control Area soils and groundwater and any and all other environmental concerns related to the Benzol Yard Source Control Area.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, third party data validators, and ELAP Certified Analytical Laboratories who are qualified to conduct their respective activities and perform their respective duties in the State of New York.

Respondent's engineer-of-record on this and other Corrective Action at the Lackawanna Facility is Benchmark Environmental Engineering, PLLC, in association with TurnKey Environmental Restoration, LLC as design-builder. The qualifications of any other firms, sub-contractors 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 pursuant to this Order, and the Department also shall have the right to take its own samples at the Benzol Yard Source Control Area. 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 Benzol Yard Source Control Area 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. If a deadline falls on a weekend or holiday, such deadline shall automatically be extended to the next business day.

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.

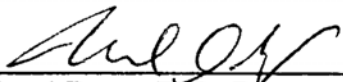
M. Respondent and Respondent's corporate successors and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against New York State pursuant to Article 12 of the Navigation Law with respect to the Benzol Yard

Source Control Area, 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 Benzol Yard Source Control Area.

N. The terms of any Orders on Consent Respondent has entered into with the Department pertaining to the Lackawanna Facility that are in effect as of the Effective Date of this Order 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: November 14, 2018
Albany, New York

**New York State Department of Environmental
Conservation**

By: 
Michael Ryan, P.E., Director
Division of Environmental Remediation
New York State Department of Environmental
Conservation

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

V.P.
Title
October 23, 2018
Date

STATE OF OHIO)
) s.s.:
COUNTY OF SUMMIT)

On this 23rd day of October, 2018, before me personally came Keith A. Nagel, to me known, who being duly sworn, did depose and say that he resides in Ohio; that he is the Vice President of Tecumseh Redevelopment, 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.



Susan F. Dick
Notary Public
Commission expires:
November 6, 2022

DATE: MAY 2016
DRAFTED BY: RFL

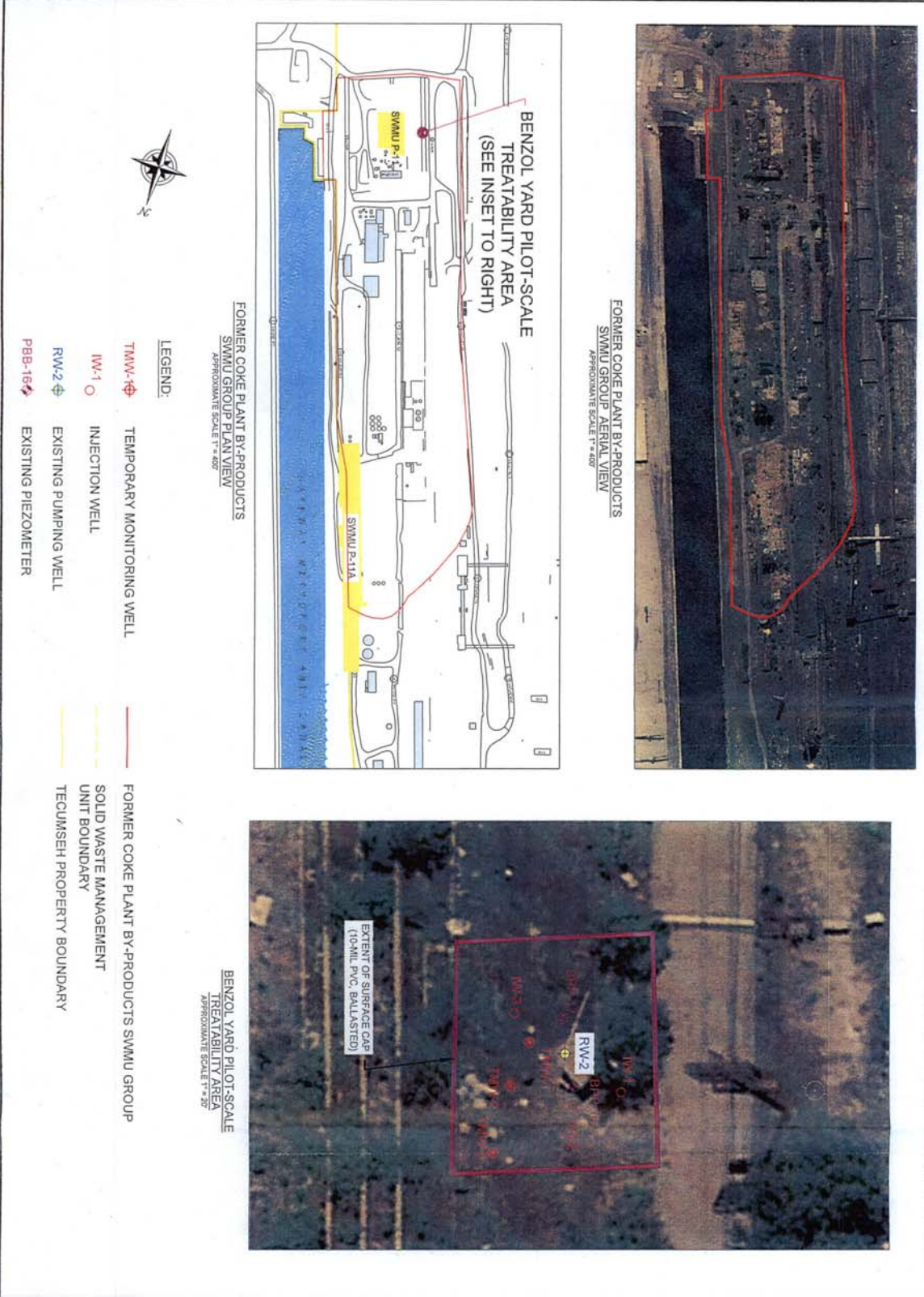


FIGURE 2

**BENZOL YARD PILOT-SCALE
TREATABILITY LOCATION**
EVALUATION OF SOURCE AREA CORRECTIVE MEASURES
FORMER COKE PLANT BY-PRODUCTS SWMU GROUP
LACKAWANNA, NEW YORK
PREPARED FOR
TECUMSEH REDEVELOPMENT INC

BENCHMARK
ENVIRONMENTAL
ENGINEERING &
SCIENCE, PLLC

TURNKEY
Environmental
Restoration, LLC

2558 HAMBURG TURNPIKE, SUITE 300, BUFFALO, NY 14218, (716) 856-0599

JOB NO.: 0071-013-921

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