

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of Corrective Action, Closure, and Post-Closure Care for a Hazardous Waste Management Facility and Remedial Program for an Inactive Hazardous Waste Disposal Site, 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 Parkway
Richfield, Ohio 44286

ArcelorMittal USA LLC
250 W. U.S. Highway 12
Burns Harbor, Indiana 46304-9745

Order on Consent and
Administrative Settlement

DEC Site No. 915009
EPA ID No. NYD002134880

File No. R9-20190927-126

Respondents.

WHEREAS

Jurisdiction

1. Consistent with the authority granted to the New York State Department of Environmental Conservation ("Department") and the Department's Commissioner by the Environmental Conservation Law of the State of New York ("ECL") Article 1 Title 3, the Department is responsible for carrying out the "policy of the state of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution."

Applicable Law

2. This Order on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under the Environmental Conservation Law including:

- a. ECL Article 27, Title 9 and Parts 370-374 and 376 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") that govern the implementation of the Resource Conservation and Recovery Act Program

- ("RCRA") via the Industrial Hazardous Waste Management Program;
- b. ECL Article 27, Title 13 and 6 NYCRR Part 375 that govern the implementation of Inactive Hazardous Waste Disposal Site remedial programs through the State Superfund Program ("SSF"); and
 - c. ECL Article 71, Title 27 that governs the enforcement of the provisions of Article 27.
3. Consistent with the authority granted to the Commissioner, the Department may issue Orders pursuant to *inter alia* ECL Article 27, Titles 9 and 13 and ECL § 71-2727(3) and 71-1929 requiring the payment of penalties and compliance, including implementation and operations of remedial programs, Closure, and Post-Closure Care; and such other measures as necessary to protect public health and the environment from releases of hazardous waste or constituents.

Parties

4. ArcelorMittal USA LLC is the parent corporation of Tecumseh Redevelopment Inc. It is listed with the New York State Department of State as a Delaware limited liability company with an address for service of process of: ArcelorMittal USA LLC, 28 Liberty Street, New York, New York 10005.
5. Tecumseh Redevelopment Inc. ("Tecumseh"), a wholly-owned subsidiary of ArcelorMittal USA LLC and a Delaware corporation, is listed with the New York State Department of State with an address for Service of Process of: Tecumseh Redevelopment Inc., 28 Liberty Street, New York, New York 10005. ArcelorMittal USA LLC and Tecumseh Redevelopment Inc. are collectively referred to as "Respondents" throughout this Order.
6. Tecumseh owns, operates and maintains property located along the west side of Route 5 in Lackawanna, New York, Erie County.
7. The portion of Tecumseh's property that is subject to this Order is the approximately 489-acre Corrective Measures Study ("CMS") area hereinafter referred to as the Site ("the Site" or "Site").
8. At one time the Site was home to Bethlehem Steel Corporation's Lackawanna iron and steel manufacturing facility. Bethlehem operated the Site until it filed Chapter 11 bankruptcy on October 15, 2001.

9. Tecumseh acquired the Site and the environmental liabilities associated with the Site, following an Asset Purchase Agreement approved by the Bankruptcy Court on April 22, 2003.

Site History

10. The Site is or has been:

- a. A hazardous waste management facility ("Facility" or "RCRA Facility") as defined by ECL § 27-0901(5) and 6 NYCRR § 370.2(b)(89), listed as Site No. NYD002134880;
- b. A Class 2 Inactive Hazardous Waste Disposal Site ("State Superfund Site") as defined by ECL § 27-1301(2) and 6 NYCRR § 375-1.2 (y), listed as Site No. 915009;
- c. An interim status facility pursuant to § 27-0913(1)(b) and 6 NYCRR § 373-1.3;
- d. The subject of a RCRA CMS Order on Consent, File No. 03-73, executed on June 30, 2009, and Tecumseh's Final CMS Report, which was accepted by the Department on August 21, 2019. The Department at that time acknowledged that the CMS Report, which included a redesigned Solid Waste Corrective Action Management Unit ("SW-CAMU"), would serve as the "foundation for developing remedies" at the Site, without necessarily endorsing all of the CMS Report's proposed remedies and conclusions; and
- e. The subject of a Department initiated Part 373 Permit call-in request dated June 28, 2019.

Objectives of this Order

11. The Department and Respondents agree that the objectives of this Order are to:

- a. Resolve outstanding issues regarding the Part 373 permitting process by following the requirements of this Order in lieu of a Part 373 Permit;
- b. Address the comprehensive investigation; evaluation; and implementation of Corrective Measures/Remedial Actions, Closure and Post-Closure Care requirements of the Site to protect public health and the environment and to allow, when and where appropriate, the continued use of the Site and its redevelopment by Tecumseh and/or third parties;

- c. Establish the terms and conditions that govern the parties' rights and responsibilities should there be a dispute under this Order, a violation of the ECL or a violation of this Order;
- d. Provide for the reimbursement of State costs, as defined under 6 NYCRR §375-1.5(b)(3)(ii), incurred after the Effective Date of this Order ("State Costs");
- e. Provide financial assurance for the Corrective Measures/Remedial Actions, Closure and Post-Closure Care requirements for all Solid Waste Management Units ("SWMUs"), Areas of Concern ("AOCs"), and Operable Units ("OUs") identified in this Order and any additional areas of contamination subsequently identified during Respondents' work under this Order;
- f. Allow for the termination of all prior Orders for the Site, under ECL Article 27, Title 9 and/or Title 13, while providing that Respondents outstanding and on-going substantive remedial obligations, Closure and Post Closure Care requirements and financial assurance obligations survive and are enforceable under the terms of this Order;
- g. Ensure that the provisions of this Order now control all Corrective Measures/Remedial Actions, Closure and Post-Closure Care activities undertaken at the Site under ECL Article 27, Title 9 and/or Title 13;
- h. Ensure that the provisions of this Order now control all Corrective Measures/Remedial Actions, Closure and Post-Closure Care activities undertaken off-Site under ECL Article 27 Title 9 and/or Title 13 to the fullest extent of Respondents' legal liability for off-Site remediation;
- i. Maintain and appropriately manage the Site's previously-implemented interim and final corrective measures including continuing to maintain financial assurances listed in paragraph XVII, subpart A, and continuing the post-closure operation, maintenance, and monitoring ("OM&M") measures, as required in the Work Plans, any amendments thereto, or future amendments thereto, for the Operable Units ("OU") including, but not limited to OU-02, OU-03, OU-04, OU-04B, and Hazardous Waste Management Units ("HWMU") 1A and 1B;
- j. Implement Corrective Measures/Remedial Actions, Closure and Post-Closure Care, if necessary, for any additional contamination discovered as a

result of additional investigation and/or in the course of Respondents' work under this Order; and

k. Support citizen participation in the development and implementation of the Corrective Measures/Remedial Actions, Closure and Post-Closure Care at the Site.

Overview of Remediation

12. a. The Corrective Measures/Remedial Actions, Closure and Post-Closure Care for the following OUs, their incorporated SWMUs, associated Watercourses and Groundwater will be governed by the Statement(s) of Basis/Record(s) of Decision ("SOB/ROD"), and any supplements or amendments thereto, issued by the Department during the term of this Order:

i. OU-05

1. Solid Waste Management Units

- a. S-1 Surface Impoundment A
- b. S-2 Surface Impoundment B
- c. S-3 Surface Impoundment C (HWMU 2)
- d. S-4 Surface Impoundment D
- e. S-5 Surface Impoundment E
- f. S-6 Surface Impoundment F
- g. S-7 Surface Impoundment G
- h. S-8 Surface Impoundment H (Empty)
- i. S-20 Drying Area for Sludge from Impoundment F
- j. S-27 Sludge Disposal Area

ii. OU-06

1. Solid Waste Management Units

- a. S-10 Slag Quench Area J
- b. P-8 Waste Oil Storage Tanks
- c. P-74 (A,B,C &D) Solid Fuel Mix Storage Piles
- d. P-75 Tank Storage Area for No. 6 Fuel Oil & Petroleum Tar

iii. OU-07

1. Solid Waste Management Units

- a. P-1 Quench Water Pit, North Station
- b. P-2 Quench Water Pit, Arctic Station
- c. P-3 Quench Water Pit, Central Station
- d. P-4 Quench Water Pit, A Station
- e. P-5 Quench Water Pit, B Station
- f. P-6 PA-2: Lime Sludge Settling Basin
- g. P-7 PA-2: Abandoned Lime Sludge Settling Basin
- h. P-10 PA-3: Contaminated Soil near Ball Mill
- i. P-11 Benzol Plant Tank Storage Area
- j. P-11A Old Benzol Plant Storage Area
- k. P-12 Spill Cleanup Soil Storage Area
- l. S-26 Fill near Coke Battery No. 8
- m. S-19 Murphy's Mountain Landfill AA
- n. S-25 Landfill / Impoundment under North End of Coal Pile

iv. OU-08

1. Solid Waste Management Units

- a. S-12 Asbestos Landfill L
- b. S-13 Coal Tar Sludge (HWMU 1A)
- c. S-14 General Rubble Landfill N
- d. S-15 General Rubble Landfill O
- e. S-16 Lime Stabilized Spent Pickle Liquor Sludge/Slag Landfill Basin (HWMU 1B)
- f. S-17 Vacuum Carbonate Blowdown (Landfill Q)
- g. S-18 Lime Dust and Kish Landfill R
- h. S-23 Tar Pit adjacent to Lime Stabilized Spent Pickle Liquor Sludge Landfill
- i. S-28 Drum Landfill

2. Areas of Concern

- a. AOC-A Lead-impacted solid waste/fill within SWMU S-18
- b. AOC-D Tar-impacted solid waste slag/fill identified during

Steel Winds I utility excavation and CMS-- contamination was partially excavated and disposed of off-Site, but additional remedial action is required

v. OU-09

1. Water Courses

- a. South Return Water Trench
- b. North Return Water Trench
- c. Smokes Creek
- d. Gateway Metroport Ship Canal

vi. OU-10

1. Groundwater

b. The OUs and SWMUs that have final corrective measures or ongoing OM&M of interim corrective measures are:

- i. The Acid Tar Pits SWMU Group, OU-03, for SWMUs S-11, S-21, S-22 and S-24, memorialized in Corrective Action Order on Consent File No. 10-09, effective date May 10, 2010;
- ii. The Acid Tar Pits SWMU Group consolidation, OU-02, for SWMUs S-18 sub-areas B&C, P-9, P-18, and P-76, and AOCs: B, C, F, G, H and I, memorialized in the Acid Tar Pits SWMU Group, Amendment No. 1, Corrective Action Order on Consent File No. 10-09, effective date 7/27/2015, and in the Former Coke Oven Gas Lines Order on Consent File No. 14-23, effective date June 29, 2015;
- iii. The Coke Oven Area Groundwater, OU-04, including SWMUs P-11 and P-11A, memorialized in the Coke Oven Area Groundwater Expedited Corrective Action Order on Consent File No. 16-55, effective date September 11, 2017;
- iv. The Benzol Plant-Source Area Control, for SWMU P-11, memorialized in the Benzol Yard Source Control Interim Corrective Measure Order on Consent File No. 18-23, effective date November 14, 2018; and
- v. Hazardous Waste Management Unit (HWMU) 1A.

- c. No further corrective measures/remedial actions are contemplated for the following SWMUs and AOCs, many of which were addressed as part of the Acid Tar Pits ("ATP") SWMU Group consolidation/OU-2/OU-3 described above:
- i. S-24 Tar Pit North of Lime Plant (Post-Closure Care required) -- addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3
 - ii. AOC-B Lead-impacted hazardous waste/fill within SWMU S-18 addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3
 - iii. AOC-C Lead-impacted hazardous waste/fill within SWMU S-18 -- addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3
 - iv. AOC-E Tar-impacted solid waste slag/fill identified during Steel Winds I utility excavation -- contamination was excavated and disposed of off-Site
 - v. AOC-F Tar-impacted solid waste slag/fill identified during slag reclamation activities -- addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3
 - vi. AOC-G Tar-impacted solid waste slag/fill identified during Steel Winds II Wind Turbine 9 foundation excavation -- addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3
 - vii. AOC-H Tar-impacted solid waste slag/fill identified during installation of Steel Winds II electric transmission poles -- addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3
 - viii. AOC-I Tar-impacted solid waste slag/fill identified during installation of Steel Winds II electric transmission poles -- addressed as part of the ATP SWMU Group consolidation/OU-2/OU-3

Public-Private Partnership

13. a. Respondents commit to a public/private collaboration between themselves, DEC, and other public entities (the "Collaborators") to evaluate the feasibility, location(s) of, and designs for: on-Site areas of habitat creation, restoration and enhancement that will include; structural, environmental and ecological enhancements to the on-Site shoreline and surrounding area that will

restore the Lackawanna lakeshore to a more natural state, soften the shoreline and provide stability of the slag-cliff face where needed. The development of such enhancements will be compatible with all final remedies and the Collaborators' shared vision for the planned future use of the Site;

b. In conjunction with the Collaborators' shared vision for the planned future use of the Site, Respondents agree to allow public access to private/publicly-funded private/publicly-owned improvements in certain areas of the Site, including portions along Smokes Creek and the Lake Erie waterfront, that are consistent and compatible with all final remedies and the protection of public health and the environment. The development of all such access and improvements shall be subject to the Collaborators review and approval regarding final locations, uses, conditions, parameters, scope, management, construction plans, and other details related thereto. Respondents agree to assist, as reasonably necessary, efforts to acquire public and/or private funding (from third parties) for such improvements.

14. Respondents hereby waive any right to a hearing as may be provided by law, and consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree to be bound by its terms.

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

I. Effect of Order

A. This Order is issued in lieu of a Part 373 Permit pursuant to 6 NYCRR § 373-1.2(e)(3). A Part 373 Permit will not be required for the Site unless Respondents are found, after notice and a right to be heard, to be in violation of this Order. If Respondents are found to be in violation of the Order the Department reserves its right to require a Part 373 Permit pursuant to Section IX below.

B. Hereinafter, any investigation, Corrective Measures/Remedial Actions, Closure and Post-Closure Care undertaken by Respondents with respect to the Site, or off-Site, will be subject to the terms and provisions of this Order and will be taken pursuant to one or more Department-approved work plans ("Work Plan" or Work Plans") to be developed under and in accordance with this Order.

C. All prior Orders, agreements, and authorizations, including Orders on Consent and Interim Orders under ECL Article 27, Titles 9 and/or 13 (specifically including the Orders listed in paragraph 12, subpart b, items (i), (ii), (iii) and (iv)), between Respondents and the Department concerning the Site are hereby terminated, but Respondents' outstanding and on-going substantive remediation obligations and/or financial assurance obligations under such Orders, agreements, and authorizations survive and shall be binding and enforceable under this Order. The provisions of this Order will now control all activities undertaken pursuant to ECL Article 27 Titles 9 and/or 13 at the Site and off-Site.

D. This Order does not affect any Department Order, agreement or authorization issued for the Site outside of those issued under ECL Titles 9 and/or 13, unless there is a conflict between such other agreement, authorization or Order and the objectives of this Order.

E. This Order shall control in the event of any conflicts between it and any prior Order, agreement or authorization between Respondents and the Department concerning the Site.

F. By entering into this Order, Respondents shall be deemed to have entered into an administrative settlement of liability and to have resolved their liability to New York State for the purposes of contribution protection provided by 42 USC section 9613(f)(2) for the matters addressed pursuant to and in accordance with this Order, and Respondents are entitled to seek contribution from any person except those who are entitled to contribution protection under 42 USC section 9613(f)(2).

II. Remedial Scope and the Department's Issuance of a SOB/ROD

A. This Order governs the Respondents' remedial obligations with respect to the Site, and off-Site, to the fullest extent of Respondents' legal liability for the remediation of off-Site locations.

B. The Department will consider Respondents' Final CMS Report, including the revised design of the proposed SW-CAMU, along with the provisions of 6 NYCRR § 375-1.8(f) when selecting final remedies. The Department has previously

acknowledged that it will use the Final CMS Report "as the foundation" for developing remedies, without necessarily endorsing the entirety of the Report's proposed remedies and conclusions.

C. Respondents shall cooperate with the Department and provide reasonable assistance, consistent with their Citizen Participation Plan, to solicit public comment on proposed remedial action plans ("PRAPs") for the Site.

D. After the close of the public comment period on a PRAP, the Department will select the Corrective Measure/Remedial Action work to be completed by Respondents.

E. The Corrective Measure/Remedial Action work to be completed will be set out in one or more Statement(s) of Basis/Record(s) of Decision ("SOB/ROD").

F. Nothing in this Order shall abridge any rights of Respondents, as provided by law, to judicially challenge a Department issued SOB/ROD.

G. The Department agrees that additional investigation, evaluation or corrective measures studies will only be required if the Department determines that there is inadequate information to design the remedial alternatives for any SWMU, AOC, waterbody or OU, or if additional or previously unknown contamination is discovered, or is reasonably suspected, during Respondents' work under this Order. Should such additional or previously unknown contamination be discovered during Respondents' work under this Order, or if it is determined that there should be an addition to paragraph 12, subpart a as a result of such discovery, the scope of the required Corrective Measure/Remedial Action, or Closure and Post-Closure Care at the Site shall be expanded to reflect these findings. Nothing in this paragraph shall be construed as relieving Tecumseh from its obligation to remediate contamination currently known, or unknown, to exist at the Site or any OU, including but not limited to contamination in the Coke Oven Area.

III. Evaluation of Operable Units

A. The Site OUs, their incorporated SWMUs, associated Watercourses and Groundwater are in various stages of investigation, Corrective Measures/Remedial Action, Closure and Post-Closure Care. In some cases, Work Plans, Reports, and

other documents have been submitted by Respondents to the Department for acceptance under prior Orders and agreements. Any such Work Plans, Reports and other documents regarding outstanding and on-going obligations are incorporated into and made an enforceable part of this Order. If the Department determines that the work done under any previously approved Work Plan is not sufficiently protective of public health and the environment, Respondents must amend the Work Plan or Work Plans and implement the modified Plan(s) pursuant to the terms of this Order.

B. All future Work Plans, Supplemental Work Plans, Reports and amended Reports, including any newly discovered contamination, must be submitted to the Department for approval pursuant to the terms and conditions of this Order prior to work commencing.

C. Respondents have the right to propose, for Department approval, additional OUs or the subdivision of existing OUs. The Department may also require the creation of additional OUs or the subdivision of existing OUs. Upon Department approval of any newly proposed or subdivided OU, Respondents must submit Supplemental Work Plans, in accordance with approved schedules, for completion of the investigation, remediation or Closure or Post-Closure Care of the new or subdivided OU under the terms of this Order.

IV. Development, Performance of Work Plans and Reports

A. All activities that comprise any element of Corrective Measures/Remedial Actions, Closure and Post Closure Care shall be conducted pursuant to one or more Department-approved Work Plans and this Order. All activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* Work Plans shall be developed and implemented in accordance with 6 NYCRR §§ 375-1.6(a) and 375-6. Upon approval of a Work Plan by the Department, Respondents shall implement such Work Plan in accordance with the schedule contained therein.

The Work Plans shall be captioned as follows:

For areas with newly discovered contamination where additional investigation is warranted:

1. Site Characterization ("SC") Work Plan: which provides for the identification of the presence of any hazardous waste disposal or contamination at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: which provides for the investigation of the nature and extent of contamination within the boundaries of the Site, and emanating from the Site, and a study of remedial alternatives to address such on-Site and off-Site contamination;
3. "Interim Remedial Measure ("IRM") Work Plan" if the Work Plan provides for an interim remedial measure;

For areas included in a SOB/ROD:

4. Pre-Design Investigation ("PDI") Work Plan: which provides for additional field investigation and/or studies necessary to design the remedial alternative set forth in the SOB/ROD;
5. Remedial Design/Remedial Action ("RD/RA") Work Plan: which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the SOB/ROD;
6. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary OM&M of the Corrective Measure/Remedial Action; or
7. "Supplemental Work Plan" if additional work plans are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. Within thirty (30) days after approval of a final SOB/ROD, Respondents shall submit for Department approval a schedule for the completion of any known remaining investigation and for the submission of PDI and RD/RA Work Plans for OUs in the SOB/ROD. If Respondents challenge a SOB/ROD, all timelines in this paragraph IV, subpart B in relation to the portion of the Site, or off-Site, that is the subject of the challenge shall be tolled until ten (10) business days after Respondents' challenge is fully and finally resolved (including any appeals) in the

Department's favor, the parties settle the matter before such full and final resolution, or Respondents abandon their challenge.

2. Within sixty (60) days after approval of a final SOB/ROD, Respondents shall submit one or more proposed Work Plans pursuant to the Schedule approved by the Department.

3. The Department reserves the right to set and maintain an enforceable schedule for the submission of additional Work Plan(s) until such time as final Work Plan(s) have been approved by the Department for each OU, as well as for any additional areas of contamination found during the course of remedial work done under this Order.

4. Respondents may opt to propose one or more additional or Supplemental Work Plan(s) (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

5. All Work Plans shall be prepared and implemented in accordance with the requirements of all applicable laws, rules and regulations and shall consider applicable department guidance.

6. All proposed Work Plans shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate the Work Plan. Respondents may request modification to any schedule approved by the Department at least Sixty (60) days before the date the scheduled activity is to take place. The Department may, in its discretion, agree to modify the schedule if it determines that the request is sufficiently justified and will not unjustly impair the implementation of the Corrective Measures/Remedial Actions, Closure and Post-Closure Care activities.

7. A Site Management Plan must be submitted in accordance with the schedule set forth in an IRM Work Plan or Remedial Work Plan.

8. During all field activities conducted under a Department-approved Work Plan, Respondents shall have an on-site representative who is qualified to

supervise the activities undertaken in accordance with the provisions of 6 NYCRR § 375-1.6(a)(3).

9. A Professional Engineer licensed and registered in New York State must stamp and sign all Work Plans.

C. Submission of Final Reports and Periodic Reports

1. All Reports including, but not limited to all Reports, design documents, plans or site management plans which are submitted to the Department in draft or final form for any phase of the remedial program, are to be submitted in accordance with the schedule in an approved Work Plan, Report, or design document or any subsequent schedule agreed to and approved by the Department.

2. Reports shall include, but not be limited to all: (i) environmental or health data generated relative to the Site; (ii) information, other than in subparagraph (i) of this paragraph, obtained as part of the implementation of the Work Plan; and (iii) assessments and evaluations required by the Work Plan.

3. Each Final Report shall contain a certification by the person with primary responsibility for the day to day performance of the activities under the Work Plan. The certification shall: (i) be on such form as provided by the Department and shall be included in the Final Report provided for approval; (ii) be completed by a professional engineer, or such other qualified environmental professional as the Department may find acceptable; and (iii) certify that all activities were performed in full accordance with the Department-approved Work Plan and any Department-approved modifications.

4. Any Final Report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the Interim Remedial Measure.

5. Respondents may also be required to submit construction completion Reports and/or an Interim Site Management Plan ("ISMP") for specific OUs upon completion of all activities required by the Work Plan for such OUs.

6. When the Final Report for an OU requires site management, Respondents shall submit an initial periodic report in accordance with the schedule in the Interim Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer, or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR § 375-1.8(h)(3). Respondents must submit subsequent periodic reports in accordance with a schedule specified by the Department.

7. Within thirty (30) Days after the Department's approval of a Final Report, Respondents shall submit such Final Report, as well as all data gathered and drawings and submittals made pursuant to the Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondents shall submit such document in an alternative format acceptable to the Department.

8. Within sixty (60) days after the Department's approval of a Final Report, Respondents shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. Final Engineering Report

1. A Final Engineering Report (FER) shall be submitted that includes but is not limited to: (i) a description of all activities completed pursuant to the approved remedial Work Plans or remedial designs; (ii) the Site, OU, SWMU and AOC boundaries; (iii) a description of all engineering and /or institutional controls that will be used, including mechanisms to implement, maintain, monitor, and enforce such controls; and (iv) a Final Site Management Plan.

2. The FER shall be prepared in accordance with all relevant statutes and regulations and upon consideration of applicable guidance.

3. The FER shall be prepared by a professional engineer with primary responsibility for the day to day performance of the remedial program activities.

4. The FER shall include a certification by a professional engineer that meets the requirements of 6 NYCRR § 375-1.6(c)(4).

5. The Department shall review the FER, the submittals made in the course of the remedial program, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been, or will be, achieved in accordance with established time frames.

E. Review of Work Plans and Reports

The Department shall approve, modify or reject proposed Work Plans, Reports, and other documents that require Department approval.

1. Approval. Upon the Department's written approval of a Work Plan, Report or other document, such Work Plan, Report or other document shall be incorporated into and become an enforceable part of this Order.

i. In the case of a Work Plan, the Work Plan shall be implemented in accordance with the schedule contained therein. Respondents shall place the approved Work Plan in the Site's document repository.

ii. In the case of a Report, the approval will initiate the next phase of the remedial program in accordance with the schedule approved by the Department. Respondents shall place a copy of the Report in the Site's document repository.

2. Modification. If the Department requests modification of a Work Plan, Report or other document by Respondents, or provides a Department modified Work Plan, Report or other document, the reasons for such modification shall be provided in writing. Within fifteen (15) days of Respondents' receipt of the Department's written notice, Respondents shall elect in writing to:

- i. Modify the Work Plan, Report or other document as requested by the Department, or accept the Department's modified version within thirty (30) days of receipt of the written notice; or
- ii. Invoke dispute resolution pursuant to paragraph XVI.

iii. In the event that Respondents' revised submittal in response to the Department's modification request is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondents shall be in violation of this Order unless it invokes dispute resolution pursuant to paragraph XVI and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Disapproval. If the Department disapproves a Work Plan, Report or other document, the reasons for such disapproval shall be provided in writing. Within fifteen (15) days of Respondents' receipt of that written notice, Respondents shall elect in writing to:

- i. Modify the disapproved Work Plan, Report or other document within thirty (30) days of receipt of the written notice; or
- ii. Invoke dispute resolution pursuant to paragraph XVI.
- iii. In the event that Respondents' revised submittal in response to the Department's initial disapproval notice is also disapproved, the Department shall set forth its reasons for its second disapproval in writing and Respondents shall be in violation of this Order unless it invokes dispute resolution pursuant to paragraph XVI and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

F. Citizen Participation Plan

1. Within twenty (20) days of the effective date of this Order, Respondents shall submit for review and approval a written Citizen Participation Plan ("CP Plan") prepared in accordance with the requirements of 6 NYCRR § 375-1.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

2. Respondents shall cooperate with the Department and provide reasonable assistance, consistent with the CP Plan, in soliciting public comment on the

approved Work Plans and Reports identified for public comment in the CP Plan, and additional Work Plans and/or Reports as the Department may require.

3. The CP Plan may need to be supplemented, modified, or updated in the future with respect to the Corrective Measures/Remedial Actions, Closure and Post-Closure Care.

G. OU-Specific "No Further Action" Letters.

Respondents reserve the right to request "No Further Action" letters from the Department for specific OUs. The Department will consider such requests in good faith, after Respondents have submitted a Construction Completion Report and an ISMP for the OU. The ISMP may include engineering and/or institutional controls as appropriate. If after review, the Department feels it is appropriate, it may issue a letter indicating that no further action is contemplated for a specific OU at that time.

H. Certificate of Completion.

If after implementation of all final remedies at the Site, approval of a Final Engineering Report for the Site, and satisfaction of all other pending or unfulfilled duties under this Order, the Department determines that the Order can be terminated, it shall issue a Certificate of Completion ("COC") for the Site pursuant to 6 NYCRR §§ 373-3.7(j) and 375-1.9.

V. Penalties

A. Subject to the provisions below regarding Force Majeure Events, Respondents' failure to comply with any term of this Order constitutes a violation of this Order, the ECL and 6 NYCRR § 375-2.11(a)(4). If the Department determines that Respondents has failed to comply with this Order, the Department shall notify Respondents in writing. Payment of any penalties shall not in any way alter Respondents' obligation to comply with any term of this Order or to complete performance under the terms of this Order. The payment of penalties, as set forth below, shall not limit the Department's right to seek such other relief as may be authorized by law. Nothing herein abridges Respondents' right to contest any allegation that it has failed to comply with this Order.

B. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the Case Number of this Order on Consent written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900. Unpaid penalties imposed by this Order shall bear interest at the rate of nine percent (9%) per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

C. Default of Payment. The penalties assessed under this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty or any part thereof 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 Respondents by the State of New York, by the penalty amount.

VI. Force Majeure

A. Respondents shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Respondents, of any entity controlled by Respondents, and of Respondents' contractors, that delays or prevents the performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation, such as where the failure is a result of acts of God, work stoppages due to labor disputes or strikes, fires, explosions, Federal or State declared national or state emergency based on an epidemic or pandemic, riots, war, rebellion, sabotage or any other condition which was not caused by the negligence or willful misconduct of Respondents and which could not have been avoided by the Respondents through the exercise of due care ("Force Majeure Event").

B. The requirement that Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondents economic inability to comply with any obligation; the failure of Respondents to make, complete, or timely file an application for any required approval or permit; and non-attainment of the goals, standards, and requirements of this Order.

C. Respondents must notify the Department in writing within fifteen (15) days after it obtains knowledge of any Force Majeure Event. Respondents shall, as applicable, include in such notice the measures taken, and to be taken, to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such fifteen (15) day period constitutes a violation of the Order and is a waiver of any claim that a delay is not subject to penalty. Respondents shall be deemed to know of any circumstance that it, any entity controlled by it, or its contractors knew or should have known.

D. Respondents have the burden of proving, by a preponderance of the evidence, that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondents complied with the requirements of Subsection VI(C) regarding timely notification.

E. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

F. If the Department rejects the Respondents assertion that an event provides a defense to non-compliance with this Order, Respondents will be in violation of this Order unless they invoke dispute resolution pursuant to paragraph XVI and Respondents' position prevails.

VII. Entry Upon Site

A. Respondents hereby consent to entry upon the Site, and/or areas in the vicinity of the Site which may be under the control of Respondents, with advance notice unless an emergency makes such notice impracticable, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondents' compliance with this Order. All visitors shall abide by the health and safety rules in effect for the Site (including but not limited to the health and safety requirements of Respondents). Respondents may require that visitors be accompanied by an employee, consultant, contractor, or agent of Respondents if Respondents so chooses, but the unavailability of such employee, consultant, contractor, or agent shall not provide a basis for excluding access to the Site by the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order.

B. Upon request, Respondents shall (i) provide the Department with suitable workspace at the Site including access to a telephone, to the extent available and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department.

C. In the event Respondents are unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

VIII. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department for any State Costs incurred after the Effective Date of this Order, Respondents shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i). Failure to

timely pay any invoice will be subject to late payment charge and interest at a rate of nine percent (9%) from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Invoices to Respondents shall be sent to the following address:

Vice President, Environmental Affairs and Real Estate
Tecumseh Redevelopment Inc.
4020 Kinross Lakes Parkway
Richfield, Ohio 44286-9000

D. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

E. Each party shall notify the other within thirty (30) days after any change in the addresses listed in this paragraph.

F. If Respondents object to any invoiced costs under this Order, the provisions of 6 NYCRR § 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department at the address provided under paragraph VIII, subpart D, above.

G. In the event of non-payment of any invoice within the 45 days provided herein, and if no objection has been lodged, the Department may seek enforcement of this provision pursuant to paragraph V or the Department may commence an enforcement action for non-compliance with ECL § 71-4003.

H. Within fourteen (14) days of receipt of an invoice from the Department, Respondents shall pay \$150,000 to the Department pursuant to this section in full satisfaction of State costs incurred up to the date of execution of this Order. Additionally, Respondents' obligation to pay \$125,000 to the Department pursuant to Amendment No. 1 to the CMS Order, dated June 18, 2015, survives execution of this Order.

IX. Reservation of Rights

A. Except as provided at 6 NYCRR §§ 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (i) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondents; (ii) any right of the Department to enforce against Respondents administratively or at law or in equity, the terms, provisions and conditions of this Order; (iii) any right of the Department to bring any future action, either administrative or judicial, for natural resource damages, or for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in Orders or permits, if any, issued by the Department to Respondents; (iv) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation; and (v) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against Respondents with respect to the Site, or any OU, in the event activities completed at the Site, as described in 6 NYCRR § 375-1.6(c), do not progress in the timeframes provided by the approved schedules as may be amended pursuant to paragraph IV, subpart (B), subsection (6), or are not sufficiently protective of public health and the environment.

B. Except as otherwise provided in this Order, Respondents reserve all rights and defenses under applicable law regarding remedial liability and/or natural resource damages and further reserve all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. Further, Respondents reserve such rights as they may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site or off-Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

X. Indemnification

To the fullest extent permitted by law, Respondents shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless from any claims, suits, actions, and related costs resulting from the Respondents' fulfillment or attempted fulfillment of this Order, except for any such claims, suits, actions, and costs arising from the gross negligence or willful or intentional misconduct by the State of New York and/or its representatives and employees during the course of any activities conducted pursuant to this Order. The Department shall provide written notice no less than 30 days prior to commencing a lawsuit seeking indemnification.

XI. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondents shall provide notice consistent with the requirements set forth in 6 NYCRR § 375-1.5(a). Within sixty (60) Days of such submission, Respondents shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondents propose to transfer by sale the whole or any part of Respondents' interest in the Site, or become aware of such transfer, Respondents shall, not fewer than forty-five (45) days before the date of transfer, or within forty-five (45) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed, or actual, date of the conveyance. The Department reserves the right to object to the sale or transfer until Respondent can demonstrate that the sale or transfer will not disrupt the remedial activities at the Site or off-Site. If the sale is approved by the Department, Respondents shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order and of the transferee's obligation under the Order to consent to all investigation and remediation required under the Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien,

pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondents to secure the repayment of money or the performance of a duty or obligation.

XII. Change of Use

Respondents shall notify the Department at least sixty (60) days in advance of any change of use, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). For purposes of this Order, "change of use" shall be as defined in 6 NYCRR § 375-2.2(a). If the Department determines that the proposed change of use is prohibited, the Department shall make a good faith effort to notify Respondents of such determination within forty-five (45) days of receipt of such notice.

XIII. Institutional and Engineering Controls

A. If the Department-approved Corrective Measures/Remedial Actions rely upon one or more institutional and/or engineering controls, Respondents must submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State, Respondents must comply with the certification requirements of 6 NYCRR § 375-1.8(h)(3).

B. Failure to cause such Environmental Easement to be recorded in accordance with 6 NYCRR § 375-1.8(h)(2), will be a violation of this Order. If Respondents fail to record an Environmental Easement, they will not be entitled to the benefits conferred by 6 NYCRR §§ 375-1.9 and 375-2.9.

C. Respondents may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment.

D. The Department may, as provided by 6 NYCRR § 373.2.7(g), extend the period for Post-Closure Care, including the requirement to maintain financial assurance,

institutional and/or engineering controls in perpetuity, if it determines that the extended period is necessary to protect public health and the environment.

XIV. Progress Reports and Communications

A. In addition to any Reports required by individual Work Plans approved pursuant to this Order and until the final Certificate of Completion is issued, Respondents shall provide monthly (or at some other frequency agreed to by the parties) and annual Reports to the parties identified in Section XVIII of the Order. All monthly Reports are to be submitted within twenty (20) days of the end of the month in question. The annual report must be submitted by March 1st of the subsequent calendar year.

B. All Reports shall, at a minimum, include a description of the following: (i) all actions taken in furtherance of this Order during the previous reporting period and those anticipated for the next reporting period; (ii) all results of sampling and tests and all other data received or generated by or on behalf of Respondents in connection with work done pursuant to this Order in the previous reporting period, including quality assurance/quality control information; (iii) information regarding percentage of completion; (iv) unresolved delays encountered or anticipated that may affect the future schedule of work approved by this Order, and efforts made to mitigate such delays; and (v) information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

C. At the Department's discretion Respondents and the Department may hold monthly telephone conferences to discuss Respondents progress and compliance with the requirements of this Order in lieu of the Respondents submitting monthly written Reports.

XV. Termination of Order

A. This Order will terminate upon the Department's written determination that Respondents have satisfactorily completed all phases of the Corrective Measures/Remedial Actions and Closure and Post-Closure Care, including Site

Management, and all other obligations required under the terms of this Order or any amendments thereto.

B. Notwithstanding the foregoing, the provisions contained in paragraphs VIII and X shall survive the termination of this Order and any violation of such surviving paragraphs shall be a violation of this Order, the ECL and 6 NYCRR § 375-2.11(a)(4), subjecting Respondents to penalties as provided under paragraph V so long as such obligations accrued on or prior to the termination date.

XVI. Dispute Resolution

A. In the event disputes arise under this Order, Respondents may, within fifteen (15) Days after Respondents knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All costs incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondents to invoke dispute resolution with respect to any remedy selected by the Department in the SOB/ROD, or any element of such remedy, nor to impair any right of Respondents to seek judicial review of the Department's selection of any remedy.

D. Respondents' failure to invoke dispute resolution or comply with the Department's directive that was the basis of the dispute is a violation of this Order.

E. With respect to disputes relating to State costs the provisions of 6 NYCRR § 375-1.5 (b)(3) apply.

XVII. Financial Assurance

A. Respondents currently have Thirty-Four Million Two Hundred Thousand Dollars (\$34,200,000.00) in financial assurance for Closure, Post-Closure Care and Corrective Action costs for the regulated units SWMU S-13 (HWMU 1A) and SWMU S-16 (HWMU 1B) and for interim corrective measures undertaken pursuant to Interim Order on Consent File No. 03-73 (for the Benzol Plant Tank Storage Area, SWMU P-11), Second

Interim Order on Consent File No. 03-73 (for dredging of the lower reach of Smokes Creek), and Order on Consent File No. 05-32 (for the Treatment and Discharge of Accumulated Precipitation from the Former Primary Cooler Wash Oil Tank Containment Dikes and 5MG Storage Tanks). This financial assurance is provided pursuant to the terms of 6 NYCRR § 373-2.8 and must be maintained and supplemented by Respondents pursuant to 6 NYCRR § 373-2.8 and the following provision.

1. While complying with the requirements, Respondents shall add the words, "and/or Corrective Action" wherever the words, "Closure, Post-Closure" appear in financial assurance instrument wording. Respondents 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. Within sixty (60) days after the issuance of a SOB/ROD, Respondents must update and post additional financial assurance in an amount sufficient to complete all Corrective Measures/Remedial Actions, Closure and Post-Closure Care to be implemented pursuant to that SOB/ROD and consistent with applicable laws. The financial assurance must be in the form of one or more of the financial instruments prescribed at 6 NYCRR § 373-2.8 and the following provision.

1. While complying with the requirements, Respondents shall add the words, "and/or Corrective Action" wherever the words, "Closure, Post-Closure" appear in financial assurance instrument wording. Respondents 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."

C. The financial assurance, including financial assurance for Corrective Measures/Remedial Actions, Closure and Post-Closure Care undertaken pursuant to this Order, as well as the financial assurance associated with paragraph XVII, subpart

A, will be subject to adjustment for inflation pursuant to 6 NYCRR §§ 373-2.8(c)(2), 373-2.8(e)(2).

D. Financial assurance must be maintained until Respondents are notified by the Commissioner in writing that they are no longer required to maintain financial assurance for Post-Closure Care pursuant to 6 NYCRR §§ 373-2.8 (d)(8), 373-2.8(f)(8).

E. Respondents must have and maintain liability coverage in accordance with 6 NYCRR § 373-2.8(h).

XVIII. Communications

A. 1. All written communications required by this Consent Order shall be transmitted either by United States Postal Service, electronic transmission including e-mail or facsimile, private courier service or hand delivery.

2. Work Plans shall include one hard copy (unbound) and 1 electronic copy.

B. Communication from Respondents to the Department shall be sent to:

Stanley Radon
Region 9 Regional Remediation Geologist
NYS Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203
stanley.radon@dec.ny.gov

Michael J. Cruden
NYS Department of Environmental Conservation
Director, Remedial Bureau E
Division of Environmental Remediation
625 Broadway
Albany, New York 12233
michael.cruden@dec.ny.gov

Steven Moeller
NYS Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203
steven.moeller@dec.ny.gov

Andrew Zwack
NYS Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203
andrew.zwack@dec.ny.gov

With electronic copies to:

Karen Draves, Esq.
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203
karen.draves@dec.ny.gov

Sara Bogardus
Bureau of Environmental Exposure Investigation
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237
Sara.Bogardus@health.ny.gov

C. Communication from the Department to Respondents shall be sent to:

Vice President, Environmental Affairs and Real Estate
Tecumseh Redevelopment Inc.
4020 Kinross Lakes Parkway
Richfield, Ohio 44286-9000

With electronic copy to:

President
TurnKey Environmental Restoration, LLC
2558 Hamburg Turnpike
Suite 300
Lackawanna, New York 14218

And for legal notice to:

Thomas M. Tuori, Esq.
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711
ttuori@hselaw.com

D. The Department and Respondents reserve the right to designate additional or different addressees for communication on written notice to the other.

E. Each party shall notify the other within thirty (30) days after any change in the addresses listed in this paragraph.

F. The Department has implemented an Environmental Information Management System (EIMS). The EIMS requires that electronic data be provided in specific formats. In an effort to better manage environmental data, the Department is requiring that all data submissions be in a Department-accepted Electronic Data Deliverable (EDD) format. All Work Plans and Reports (including all attachments and appendices) shall be submitted in print as well as in an electronic format that is acceptable to the Department. The Department reserves the right to request that the Respondents provide more than one paper copy of any Work Plan or report.

XIX. Modifications

A. The terms of this Order constitute the complete and entire Order the Department issued to Respondents. 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.

B. 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 Respondents of their obligation to obtain such formal approvals as may be required by this Order.

C. If Respondents desire that any provision of this Order be changed, Respondents must make timely written application to the Department setting forth reasonable grounds for the relief sought. Respondents have the burden of proving entitlement to any modification requested. 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 XVIII.

D. Respondents' request for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondents as the

Department deems appropriate. Notwithstanding the foregoing, if Respondents seek to modify an approved Work Plan, a written request must be made to the Department's project manager, with copies to the parties listed in paragraph XVIII.

E. 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.

XX. Tolling Agreement

Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondents or any other time limitations for the filing of potential natural resource damages claims against Respondents under any other applicable state or federal law are tolled in their entirety until termination of this Order.

XXI. Miscellaneous

A. Respondents agree to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2. The provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. Respondents hereby certify that they have fully and accurately disclosed or made available to the Department all relevant information known to Respondents and all relevant information known to be in the possession or control of their officers, directors, employees, contractors, and agents which relates to, identifies or describes contamination of the Site or any OU, soils and groundwater and any other environmental concerns.

C. Respondents 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 responsibility for the performance of the professionals retained by Respondents shall rest solely with Respondents.

D. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondents, and the Department also shall have the right to take their own samples. Respondents shall make available to the Department the results of all sampling and/or tests or other data generated by Respondents with respect to implementation of this Order and shall submit these results in the progress Reports required by this Order. Respondents 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 Respondents the results of all sampling, tests or other data generated by the Department with respect to this Order.

E. The Department may exempt Respondents from the requirement to obtain any state or local permit or other authorization for activities conducted pursuant to this Order as provided by 6 NYCRR § 375-1.12(b), (c) and (d).

F. Respondents shall exercise reasonable due diligence to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondents' obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondents' best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondents shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondents in obtaining same.

G. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondents to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Respondents' inability to obtain such interest.

H. Except as set forth herein, if Respondents desire that any provision of this Order be changed, Respondents shall make timely written application to the Commissioner with copies to the parties listed in paragraph XVIII.

I. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondents promptly.

J. The provisions, terms, and conditions of this Order bind Respondents and Respondents' heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

K. Any change in ownership including, but not limited to, any transfer of assets or real or personal property at the Site shall in no way alter Respondents' responsibilities under this Order.

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

M. All references to "days" in this Order are to calendar days unless otherwise specified.

N. 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.

O. The Effective Date of this Order shall be the date that the Commissioner or his designee signs this Order. The Department will provide Respondents (or Respondents' counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

P. 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 XXI 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.

Q. Respondents and Respondents' 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 Site or any OU, 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 Site or any OU.

R. This Order may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Electronic signatures are acceptable.

S. Service of a duly executed copy of this Order upon Respondents' counsel by ordinary mail, shall be deemed good and sufficient service.

DATED: September 29, 2020
Albany, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

By: George W. Heitzman
George W. Heitzman, P.E., Assistant Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent ArcelorMittal USA LLC 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: Keith Nagel
Title: DIR. ENVIR & REAL ESTATE
Date: September 24, 2020

STATE OF Ohio)
COUNTY OF Summit) s.s.:

On this 24th day of September, 2020, before me personally came Keith Nagel, to me known, who being duly sworn, did depose and say that he/she resides in Ohio; that he/she is the Director, Environmental & Real Estate of ArcelorMittal USA LLC, the Corporation (Respondent) described herein and that he/she is authorized by the governing body of said Corporation to sign on behalf of the Corporation, and that he/she did sign the foregoing instrument on behalf of, and with the authority to bind, said Corporation.

Susan E. Dick
Notary Public Susan E. Dick

Commission Expires: November 6, 2022



CONSENT BY RESPONDENT

Respondent Tecumseh Redevelopment Inc. 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: Keith Nagel
Title: VP ENVIR. & REAL ESTATE
Date: September 24, 2020

STATE OF Ohio)
COUNTY OF Summit) s.s.:

On this 24th day of September, 2020, before me personally came Keith Nagel, to me known, who being duly sworn, did depose and say that he/she resides in Ohio; that he/she is the VP Environmental & Real Estate of Tecumseh Redevelopment Inc., the Corporation (Respondent) described herein and that he/she is authorized by the governing body of said Corporation to sign on behalf of the Corporation, and that he/she did sign the foregoing instrument on behalf of, and with the authority to bind, said Corporation.

Susan E. Dick
Notary Public Susan E. Dick

Commission Expires: November 6, 2022

