

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

Site IA
Interim Corrective Measure
Order on Consent
File No. 21-10

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 Cleveland-Cliffs Steel LLC (formerly known as ArcelorMittal USA LLC), owns, operates and maintains property located along the west side of Route 5 in Lackawanna, New York (the "Lackawanna Facility").
3. Discrete portions of adjacent lands, which are described in paragraph 8 below are the subject of this Interim Corrective Measure ("ICM") Order on Consent (the "Order").
4. 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.

5. An approximately 489-acre portion of the Lackawanna Facility and the discrete areas described in paragraph 8 below are 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") ("the RCRA/SSF Areas").

6. On September 24, 2020, Respondent and ArcelorMittal USA LLC signed an "*Order on Consent and Administrative Settlement*" that contains the provisions for the final corrective measures/remedial actions and closure/post closure care for the RCRA/SSF Areas of the site.

7. The terms of the *Order on Consent and Administrative Settlement* generally are not operative until after the Department selects the final remedies for the site and issues one or more Statements of Basis or Records of Decision.

8. Certain discrete portions of land formerly owned by Respondent and certain piping infrastructure on adjacent property owned by Gateway Trade Center, Inc. ("Gateway") are the subject of this Order, specifically: (i) the South Return Water Trench ("SRWT"), the North Return Water Trench ("NRWT"), and overhead gas piping on the real property known as Tecumseh Phase IA Business Park ("IA Property") that is currently owned by Sucro Real Estate New York, LLC ("Sucro"), and (ii) overhead gas piping on the adjacent Gateway property. Respondent does not currently own any of the property subject to this Order.

9. For the purposes of implementing this Order, the portion of the IA Property and the Gateway property that are subject to this Order shall be referred to as the IA RCRA/SSF Area which is depicted on the map attached hereto as Exhibit A.

10. Except for the overhead gas piping and the SRWT and the NRWT up “to their top edges,” the IA Property is in the Brownfield Cleanup Program (BCP) and is subject to the terms of Brownfield Cleanup Agreement (BCA) Index # B9-0752-07-08, Site C915218.

11. The SRWT, NRWT, and the overhead gas piping on the IA property are part of the RCRA/SSF Areas and are subject to this Order and the *Order on Consent and Administrative Settlement*.

12. This interim Corrective Measure Order on Consent is being issued to allow the work described in paragraph 13 to proceed prior to the issuance of one or more Statements of Basis or Records of Decision.

13. The Department and Respondent agree that the goal of this Order is for the Respondent to undertake corrective measures/remedial actions on the IA RCRA/SSF Area. The work will include decommissioning overhead piping on the IA Property and the connected overhead piping on the Gateway property and remediating the SRWT and the NRWT on the IA Property.

14. Pursuant to the terms of the deed by which the Respondent conveyed the IA Property to Sucro in February 2021 (filed in Erie County, at BK/PG 11375/321), Tecumseh agreed “at its cost and expense” to remediate the SRWT and NRWT within the IA Property and to remove “all elevated exterior coke gas piping and/or the substances contained therein located south of the Blowing Engine House and located on the Premises...as required by the New York State Department of Environmental Conservations (“NYSDEC”) and pursuant to and in accordance with the global RCRA

Order...” The global RCRA Order is the same document described herein as the *Order on Consent and Administrative Settlement*.

15. Consistent with the intended future use of the IA Property, and the remediation of the IA Property under the BCA, all work on the IA Property done under this Order shall be completed to Site-Specific Action Levels and Commercial Use standards.

16. The corrective measures/remedial actions work required for the complete decommissioning of the overhead piping, the removal of sediment and debris from the SRWT and NRWT, the remediation of the trenches and surrounding impacted areas, the proper disposal of the wastes from these areas, and the closure of these areas will be performed in accordance with plans and specifications in the document entitled “*Remedial Design/Remedial Action Work Plan (RD/RAWP) Portions of North Return Water Trench, South Return Water Trench & Overhead Pipe Decommissioning*” (the Plan) prepared by Benchmark Environmental Engineering & Science, PLLC and approved by the Department on July 21, 2021.

17. 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.

18. 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 IA RCRA/SSF Area.

19. The Department finds that resolution of issues relating to the implementation of interim corrective measures at the IA RCRA/SSF Area, undertaken in accordance with the terms of this Order, is in the public interest.

20. 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 IA RCRA/SSF 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 Department approved Plan.

A. Respondent shall complete the Interim Corrective Measures in the IA RCRA/SSF Area within nine (9) months from the effective date of this 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. All documents created under the Plan, and all attachments thereto, shall be incorporated in, and become an enforceable part of, this Order.

C. When the interim corrective measures set forth in the Plan are completed to the Department's satisfaction, and are determined to constitute complete remediation of the Site, the IA RCRA/SSF Area shall be regarded as if it were one of the SWMUs and AOCs denominated in paragraph 12(c) of the *Order on Consent and Administrative Settlement*, which lists the SWMUs and AOCs for which no further corrective measures/remedial actions are contemplated.

D. If the Department determines that the interim corrective measures completed by Respondent did not result in complete remediation of the Site, the IA RCRA/SSF Area shall be regarded as if it were one of the SWMUs and AOCs denominated in paragraph 12(b) of the Order on Consent and Administrative Settlement which lists the SWMUs and AOCs for which on-going operation, maintenance and monitoring (OM&M) is required.

II. Financial Assurances

A. If Respondent does not fully complete the interim corrective measures set forth in the Plan to the Department's satisfaction within nine (9) months from the Effective Date, Respondent must provide the Department with a line item estimate of the cost associated with the outstanding interim corrective measures for the IA RCRA/SSF Area contained in the Plan.

B. If the estimate renders the amount of financial assurance already associated with the *Order on Consent and Administrative Settlement* inadequate, Respondent must then promptly increase its financial assurance in accordance with 6 NYCRR § 373-2.8.

C. Respondent must thereafter have and maintain liability coverage for the IA RCRA/SSF Area and closure/post closure requirements in accordance with 6 NYCRR § 373-2.8(h).

D. Financial assurances for the IA RCRA/SSF Area Interim Corrective Measures and closure/post closure requirements, if required pursuant to Section I or II, will be subject to adjustment for inflation as provided for in 6 NYCRR § 373-2.8(c)(2) and § 373-2.8(e)(2).

III. Submittals

A. All reports and submissions required by this Order shall be made to the Regional 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 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 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, NYSDEC, 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 IA RCRA/SSF Area

Respondent hereby agrees to assist the Department to gain access to the IA RCRA/SSF Area that is under the control of Sucro, and to provide access to areas in the vicinity of the IA RCRA/SSF Area that are under the control of Respondent, with such access being 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. Respondent agrees to assist the Department, if necessary, to gain access to the Gateway property.

The Department shall abide by the health and safety rules in effect at the IA RCRA/SSF Area, including but not limited to the health and safety requirements of Sucro, Respondent, Cleveland-Cliffs Steel LLC, and Gateway. 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, pandemic, 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 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 IA RCRA/SSF 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 IA RCRA/SSF Area.

X. Notification of Proposed Transfer

A. If Respondent learns that Sucro or any subsequent owner proposes to convey the whole or any part of the IA RCRA/SSF Area during the term of this Order, Respondent shall, not fewer than sixty (60) days before the date of conveyance or as soon as practicable if Respondent learns of the proposed conveyance less than sixty

(60) days before the contemplated closing, 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.

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, there are any changes in ownership of the IA RCRA/SSF Area or any part thereof.

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 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:

Director of Land and Remediation
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 IA RCRA/SSF 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 a determination by the Department that Respondent has satisfactorily completed the interim corrective measures at the IA RCRA/SSF Area and Gateway Site specified in the Plan and complete remediation of the Site has been achieved.

B. If the Department determines that complete remediation of the Site has not been achieved, Respondent's obligations under this Order shall be deemed satisfied and shall terminate upon a determination by the Department that Respondent has sufficient financial assurances to provide for all outstanding/remaining OM&M for the IA RCRA/SSF Area, including financial assurances and liability coverage for post closure care.

C. 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 IA RCRA/SSF Area and Gateway Site have been satisfied to the extent practicable or whether the amount of financial assurances that may be required pursuant to Section II 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 IA RCRA/SSF Area soils and groundwater and any and all other environmental concerns related to the IA RCRA/SSF 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 IA RCRA/SSF 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 IA RCRA/SSF 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.

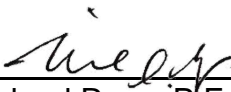
M. Respondent and Respondent’s corporate successors and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against New York State pursuant to Article 12 of the Navigation Law with respect to the IA RCRA/SSF Area, and further release and hold harmless the New York 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 IA RCRA/SSF 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: September 15, 2021
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

Director of Land & Remediation
Title

August 17, 2021
Date

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

On this 17th day of August, 2021, before me personally came Keith A. Nagel, to me known, who being duly sworn, did depose and say that he resides in Richfield, Ohio; that he is the Director of Land & Remediation, 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 E. Dick
Notary Public
Susan E. Dick
Commission Expires:
November 6, 2022

Exhibit A



REMEDIAL PLAN FOR OVERHEAD GAS PIPING & SRWT/NRWT

RD/RAWP FOR PORTIONS OF
NIRWT, SRWT & OVERHEAD PIPE DECOMMISSIONING
TECUMSEH PHASE 1A BUSINESS PARK
BCP SITE NO. C915218
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT INC.

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

JOB NO.: 0071-020-124

FIGURE 3

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. & TURNKEY ENVIRONMENTAL RESTORATION, LLC IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC & TURNKEY ENVIRONMENTAL RESTORATION, LLC.