

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY

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UNITED STATES OF AMERICA and the  
COMMONWEALTH OF KENTUCKY,

Plaintiffs,

v.

Civil Action No. -----

CLEVELAND-CLIFFS STEEL CORPORATION,

Defendant.

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**CONSENT DECREE**

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**WHEREAS**, Plaintiffs, the United States of America (United States), on behalf of the United States Environmental Protection Agency (EPA), and the Commonwealth of Kentucky (State), on behalf of the Kentucky Department for Environmental Protection (KYDEP), filed a complaint (Complaint) in this action concurrently with this Consent Decree, against Cleveland-Cliffs Steel Corporation, formerly AK Steel Corporation (Defendant), pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), Kentucky Revised Statutes (KRS), Section 224.1-400-Powers of Cabinet, and KRS Section 224.99-010-Penalties. The Complaint alleges that Defendant is liable for penalties and injunctive relief for violations of KRS 224.46 and of the Kentucky Hazardous Waste Regulations, codified at Title 401 of the Kentucky Administrative Regulations (K.A.R.), Chapters 30 through 38, 43, and 44 (2006) [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g, and the implementing regulations set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 124, and 260-279], pertaining to the former AK Steel Ashland Coke Plant located at 40th Street and Winchester Avenue in Ashland, Kentucky (Facility).

**WHEREAS**, the Complaint includes allegations that Defendant failed to make hazardous waste determinations; disposed of hazardous waste and operated a hazardous waste management unit without a permit; failed to test listed hazardous waste prior to land disposal; failed to maintain and operate the Facility in a manner that minimized the possibility of releases; failed to provide secondary containment and external liners for a hazardous waste tank system; failed to use appropriate controls and practices to prevent spills and overflows from a tank; failed to

conduct daily inspections of a hazardous waste tank system; failed to mark a tank with the words “hazardous waste”; stored hazardous waste in excess of ninety (90) days; and failed to timely amend the Facility’s contingency plan.

**WHEREAS**, beginning in the 1920s, and until the Facility ceased production in June of 2011, Defendant and its predecessors manufactured furnace coke at the Facility by heating coal in an oxygen-deficient distillation process using coke ovens. While in operation, Defendant and its predecessors generated a number of hazardous wastes, including, but not limited to: wastes exhibiting the characteristics of toxicity for arsenic (D004), barium (D005), cadmium (D006), benzene (D018), chromium (D007), and pyridine (D038); and listed wastes associated with its coking operations, including decanter tank tar sludge from coking operations (K087) and process residues from the recovery of coal tar (K141). After operations at the Facility ceased in June of 2011, Defendant also generated residues from process cleaning and decommissioning activities, including coking wastes carrying one or more of the following listed waste codes: K141, K142, K143, K144, K145, K147, and K148.

**WHEREAS**, between June 2010 and May 2012, EPA and/or KYDEP conducted several hazardous waste inspections at the Facility, during which inspectors observed multiple violations of RCRA and the State’s authorized hazardous waste program.

**WHEREAS**, EPA issued AK Steel Corporation a RCRA Section 3013 Order on September 26, 2012 (RCRA 3013 Order), Docket No. RCRA-04-2012-4252, requiring AK Steel to conduct certain monitoring, testing, analysis, and reporting to ascertain the nature and extent of certain releases of hazardous waste at four (4) distinct areas of the Facility.

**WHEREAS**, sampling at the Facility confirmed the presence of a number of Hazardous Constituents in the soils at the Facility, including, but not limited to: benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, arsenic, barium, chromium, copper, cadmium, lead, and benzene. The sampling also revealed that the soils contained a number of Hazardous Constituents expected to be found in, but not necessarily from a release of, the following listed hazardous wastes: K141, K142, K143, K144, K145, K147, K148, and K087.

**WHEREAS**, Cleveland-Cliffs Steel Corporation is incorporated in the State of Delaware and is licensed to do business in the Commonwealth of Kentucky.

**WHEREAS**, the Parties, without the necessity of trial or adjudication of any issues of fact or law, and without any admission of liability or of any factual or legal allegations (except as provided below), consent to entry of this Consent Decree resolving all issues in this action, including all claims for civil penalties and injunctive relief for the violations alleged in the Complaint; and

**WHEREAS**, the Parties agree and the Court finds that this Consent Decree has been negotiated by the Parties in good faith, that the implementation of this Consent Decree will avoid prolonged and complicated litigation, and that the Consent Decree is fair, reasonable and in the public interest.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and over the Parties. Venue lies in this district pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.

2. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted.

## II. PARTIES BOUND AND NOTICE OF TRANSFER

4. The obligations of this Consent Decree apply to and are binding upon the United States, the State, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented, unless: (1) the transferee agrees in writing to undertake the obligations required by this Consent Decree and to be substituted for Defendant as a Party to the Consent Decree and thus be bound by the terms thereof; and (2) the United

States and the State consent in writing to relieve Defendant of its obligations pursuant to Section XVIII (Modification). At least thirty (30) Days prior to any transfer of ownership or operational control of the Facility, or part of the Facility, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement governing the transfer, to EPA Region 4, the Department of Justice (DOJ), the United States Attorney for the Eastern District of Kentucky, and KYDEP in accordance with Section XV (Notices), together with a request for approval of the substitution of obligations under this Consent Decree. The Plaintiffs' decision whether to approve the transferee's substitution for Defendant under this Consent Decree and what conditions may attend approval will take into account: (i) the status of the Work to be Performed in Section VII; (ii) whether the transferee has or will have prior to the transfer the financial and technical capability to comply with this Consent Decree; and (iii) other factors that Plaintiffs may deem relevant, including but not limited to the environmental compliance history of the proposed transferee and environmental management capabilities of the proposed transferee. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Defendant shall provide a copy of this Consent Decree to the Vice President of Environmental Affairs, Director Environment Land & Remediation, and Remediation Manager, as well as to the primary contact of any contractor retained to perform Work required under this Consent Decree. Defendant shall condition any such contract(s) upon performance of the Work in conformity with the terms of this Consent Decree. Defendant or its contractor(s) shall provide

written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. OBJECTIVES

8. The purposes of the United States, the State, and Defendant in entering into this Consent Decree are to:

- a. Resolve all pending claims set forth in the underlying Complaint according to the terms and subject to the reservations set forth herein, without admission of fact or liability or the necessity of further litigation;
- b. Ensure that Defendant complies with the applicable requirements of RCRA, all corresponding State laws, and all applicable implementing regulations, as necessary to implement this Consent Decree;
- c. Ensure that Defendant conducts additional sampling and analysis at the Facility as set forth in the Incremental Sampling Methodology (ISM) Work Plan attached as Appendix B to this Consent Decree;
- d. Ensure that Defendant implements agreed-upon remedial actions at the Facility as set forth in the Remediation Work Plan attached as Appendix C to this Consent Decree, which will address the following areas: the Recycle Area, On-site Process Water Wells, Spill Area, and Stormwater Collective;



e. Ensure that Defendant provides the results of the additional sampling to KYDEP, so that KYDEP may determine what, if any, additional work and/or controls should be required to ensure the protection of human health and the environment at the Facility; and

f. Provide for the payment of a civil penalty by Defendant.

#### IV. DEFINITIONS

9. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in RCRA, 42 U.S.C. §§ 6901 *et seq.*, KRS 224.1-400, KRS 224.46, or in the regulations promulgated thereunder, shall have the meaning set forth in such definitions.

10. Whenever the terms listed below are used in this Consent Decree or any Appendices or attachments hereto, the following definitions shall apply:

a. “Complaint” means the complaint filed by the United States and the State in this action;

b. “Consent Decree” shall mean this Consent Decree and all Appendices and attachments hereto, and all modifications. In the event of a conflict between this Consent Decree and any Appendix or attachment, this Consent Decree shall control.

c. “Day” shall mean a calendar day unless expressly stated to be a working day. “Working Day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time prescribed or allowed under this Consent Decree, the provisions of Rule 6, Federal Rules of Civil Procedure, shall apply.

d. “Defendant” shall mean Cleveland-Cliffs Steel Corporation, formerly AK Steel Corporation.

e. “DOJ” means the United States Department of Justice and any of its

successor departments or agencies;

f. “Effective Date of this Consent Decree” shall be the date as set forth in Section XVI (Effective Date) of this Consent Decree.

g. “Engineering Controls” shall mean engineering measures (e.g, caps, treatment systems, etc.) designed to minimize the potential for human exposure to contamination by either limiting direct contact with contaminated areas or controlling migration of contaminants through environmental media.

h. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

i. “Facility” shall mean the approximately 138-acre property comprising the former Ashland Coke Plant owned and operated by Defendant or its predecessors at 40th Street and Winchester Avenue, Ashland, Kentucky 41101, and depicted on the map attached as Appendix A.

j. “Hazardous Constituents” shall mean those substances listed in 40 CFR Part 261 Appendix VIII and 40 CFR Part 264 Appendix IX.

k. “Institutional Controls” shall mean non-engineered and/or legal controls that minimize the potential human exposure to contamination by limiting land or resource use.

l. “KYDEP” shall mean the Kentucky Department for Environmental Protection and any successor departments or agencies of the Commonwealth of Kentucky.

m. “On-site Process Water Wells” shall mean the three (3) on-site process water wells (Production Wells 02B, 01B, and 04) that were sampled by EPA during the

December 2011 inspection, located in the Spill Area, just north of the Spill Area, and directly west of the Spill Area. The locations of the On-Site Process Water Wells are identified on Appendix A.

n. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral;

o. “Parties” shall mean the United States of America, the Commonwealth of Kentucky, and Cleveland-Cliffs Steel Corporation.

p. “Plaintiffs” shall mean the United States of America and the Commonwealth of Kentucky, and their agencies and departments, including EPA and KYDEP.

q. “Recycle Area” shall mean the area which formerly consisted of an in-ground concrete containment area, which was approximately 75 feet by 32 feet in dimension and used to store decanter tank tar sludge, and the adjacent concrete pad that was approximately 125 feet by 180 feet used for the temporary stockpiling of hazardous waste for the purpose of recycling. The location of the Recycle Area is identified on Appendix A.

r. “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, of hazardous wastes or Hazardous Constituents into the environment at the Facility.

s. “Section” means a portion of this Consent Decree identified by a Roman numeral.

t. “Spill Area” shall mean the area adjacent to the river side of the Weak Ammonia Liquor Dike near Production Well 02B, where dark colored soil was observed

and sample results showed constituent levels above EPA's Regional Screening Levels (RSLs) for Industrial Soil (April 2012) for benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and arsenic. The location of the Spill Area is identified on Appendix A.

u. "State" means the Commonwealth of Kentucky and its agencies and departments, including KYDEP.

v. "Stormwater Collective" means the unlined earthen basin that receives the discharge from the Facility's two stormwater collection ponds and discharges through the southernmost outfall into the Ohio River. The location of the Stormwater Collective is identified on Appendix A.

w. "United States" shall mean the United States of America and its agencies and departments, including the United States Environmental Protection Agency.

x. "Work" shall mean all activities Defendant is required to perform under this Consent Decree, or any Appendix or attachment hereto.

## V. CIVIL PENALTY

11. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of Three Hundred Sixty-Seven Thousand Five Hundred Dollars (\$367,500) to the United States as a civil penalty (United States' Civil Penalty). If any portion of the United States' Civil Penalty is not paid when due, Defendant shall pay interest accruing from the date the Consent Decree is lodged with the Court through the date of payment at the rate specified in 28 U.S.C. § 1961.

12. Defendant shall pay the United States' Civil Penalty, and any interest thereon, by FedWire Electronic Funds Transfer (EFT) to the DOJ account, in accordance with instructions

provided to Defendant by the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the Eastern District of Kentucky after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree.

The FLU will provide the payment instructions to:

Keith Nagel  
Director Environment Land & Remediation  
Cleveland-Cliffs Inc.  
200 Public Square, Suite 3400  
Cleveland, Ohio 44114-2315  
[Keith.Nagel1@clevelandcliffs.com](mailto:Keith.Nagel1@clevelandcliffs.com)

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XV (Notices).

13. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the RCRA civil penalty owed pursuant to the Consent Decree in United States et al. v. Cleveland-Cliffs Steel Corporation and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-09449/1, to the United States and EPA as follows:

As to the United States by email:

[EESCaseManagement.ENRD@usdoj.gov](mailto:EESCaseManagement.ENRD@usdoj.gov)  
Re: DJ# 90-5-2-09449/1

As to the United States by mail:

EES Case Management Unit  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ# 90-5-2-09449/1

As to EPA by email:

acctsreceivable.CINDWD.epa.gov  
[Summers.Robert@epa.gov](mailto:Summers.Robert@epa.gov)

As to EPA by mail:

Rob F. Summers  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency,  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

14. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of One Hundred Twenty-Two Thousand Five Hundred Dollars (\$122,500) as a civil penalty to KYDEP (KYDEP Civil Penalty). If any portion of the KYDEP Civil Penalty is not paid when due, Defendant shall pay interest accruing from the date the Consent Decree is lodged with the Court through the date of payment at the rate specified in 28 U.S.C. § 1961.

15. Defendant shall pay the KYDEP Civil Penalty, and any interest thereon, to KYDEP by cashier's check or certified check payable to "Kentucky State Treasurer," mailed to Donald Hamm at the address in Paragraph 16 below.

16. At the time of payment, Defendant shall send a copy of the check, together with a transmittal letter, which shall state that the payment is for the RCRA civil penalty owed pursuant to the Consent Decree in United States et al. v. Cleveland-Cliffs Steel Corporation and shall reference KYDEP number DWM-21-2-0023 and DOJ case number 90-5-2-09449/1, to KYDEP as follows:

As to KYDEP by email:

[Donald.Hamm@ky.gov](mailto:Donald.Hamm@ky.gov)

Re: KYDEP Case # DWM-21-2-0023 and  
DJ # 90-5-2-09449/1

As to KYDEP by mail:

Donald Hamm  
Office of Legal Services  
Energy and Environment Cabinet  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

17. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal, state, or local income tax.

18. All of the foregoing obligations shall apply to and are binding upon Defendant and its successors, and shall not be altered by any change in ownership or corporate status.

#### VI. COMPLIANCE REQUIREMENTS

19. Compliance With Applicable Law: All Work undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations, or permits, including, without limitation, federal or state laws and regulations governing the generation, management, treatment, storage, transport, and disposal of hazardous waste, and the terms and conditions of any existing permit applicable to the Facility.

20. Permits. Where any compliance obligation under this Consent Decree requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. A request for supplementation by the permitting agency does not constitute a notice of finding that an application was incomplete for the purposes of this Paragraph unless the permitting agency determines that the original application was so deficient as to constitute a

material breach of Defendant's obligations under this Consent Decree. Defendant may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

21. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal, state, or local statute or regulation.

## VII. WORK TO BE PERFORMED

22. Defendant shall perform the following Work as set forth below:

a. Incremental Sampling Methodology (ISM) Work Plan: Within fourteen (14) Days of the Effective Date of this Consent Decree, Defendant shall commence implementation of the ISM Work Plan included as Appendix B to this Consent Decree.

b. Remediation Work Plan for Specified Areas: Within fourteen (14) Days of the Effective Date of this Consent Decree, Defendant shall commence implementation of the Remediation Work Plan included as Appendix C to this Consent Decree. The Remediation Work Plan provides for implementation of remedial actions at the Recycle Area, Stormwater Collective, On-site Process Water Wells, and Spill Area.

c. All Work performed under this Consent Decree shall be conducted in accordance with a Health and Safety Plan prepared in compliance with EPA's "Standard Operating Safety Guides" (PUB 9285.1-03, PB 92-963414, June 1992) and currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910.



23. Defendant shall not commence any Work except in conformance with the terms of this Consent Decree and any approved Work Plan. The Work Plans, schedules, and any subsequent modifications shall be incorporated into and become fully enforceable under this Consent Decree.

24. Defendant shall perform all Work in accordance with the schedules contained in the approved Work Plan.

25. Selection of Supervising Contractor. All aspects of the Work to be performed by Defendant shall be under the supervision of the Supervising Contractor, the selection of which shall be subject to approval or disapproval by EPA, in consultation with KYDEP. Within seven (7) Days after the Effective Date of this Consent Decree, Defendant shall notify EPA and KYDEP in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the Work. If Defendant proposes to change its Supervising Contractor, Defendant shall give ten (10) Days advance notice of such change in qualified Supervising Contractor to EPA and KYDEP. Such replacement Supervising Contractor shall be subject to approval or disapproval by EPA, in consultation with KYDEP.

26. Project Coordinators. Defendant has designated the following as its Project Coordinator:

James Kemp  
Remediation Manager  
Cleveland-Cliffs Inc.  
9227 Centre Pointe Drive  
West Chester, Ohio 45069  
[james.kemp@clevelandcliffs.com](mailto:james.kemp@clevelandcliffs.com)  
513-425-6177

To the greatest extent possible, the Project Coordinator shall be present at the Facility or readily available during the Work.

27. EPA has designated the following as EPA Project Coordinator:

Wesley Hardegree  
RCRA Corrective Action Section  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
[hardegree.wes@epa.gov](mailto:hardegree.wes@epa.gov)  
404-562-9629

28. KYDEP has designated the following as its Project Coordinator:

Larry D. Hughes  
Office of the Commissioner  
Kentucky Department for Environmental Protection  
300 Sower Blvd.  
Frankfort, Kentucky 40601  
[Larry.Hughes@ky.gov](mailto:Larry.Hughes@ky.gov)  
502-782-6661

29. EPA, KYDEP, and Defendant shall have the right, subject to this Paragraph, to change their designated Project Coordinator(s). Defendant shall notify EPA and KYDEP ten (10) Days before such a change is made. The initial notification by Defendant may be made orally, but shall be promptly followed by a written notice. Any change in Defendant's Project Coordinator shall be subject to review and approval or disapproval by EPA, in consultation with KYDEP. If EPA disapproves of the designated Project Coordinator, Defendant shall retain a different Project Coordinator and shall notify EPA and KYDEP of that person's name, address, telephone number, and qualifications within thirty (30) Days following EPA's disapproval. Such replacement Project Coordinator shall also be subject to approval or disapproval by EPA, in consultation with KYDEP.

30. Except as otherwise provided in this Consent Decree, Defendant shall direct all submissions required by this Consent Decree to the EPA and KYDEP Project Coordinators in accordance with Section VIII (Agency Approvals, Document Submissions, and Reporting

Requirements). The EPA and KYDEP Project Coordinators shall be responsible for overseeing Defendant's implementation of this Consent Decree. The Project Coordinators shall have the authority to halt, conduct, or direct any Work required by this Consent Decree. Absence of the EPA and/or KYDEP Project Coordinators from the Facility shall not be cause for stoppage of Work unless specifically directed by EPA or KYDEP.

31. Sampling and Document Availability and Quality: All sampling undertaken pursuant to this Consent Decree shall be performed in a manner consistent with EPA's "Field Branches Quality System and Technical Procedures," available at <https://www.epa.gov/quality/quality-system-and-technical-procedures-lsasd-field-branches>. The name, address, telephone number, and contact person of each analytical laboratory Defendant proposes to use must be specified in the applicable Work Plan. Defendant shall ensure that laboratories used by Defendant for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), or other methods deemed satisfactory to EPA and KYDEP. If methods other than EPA or KYDEP methods are to be used, Defendant shall specify and submit all such protocols for approval in the applicable Work Plan. EPA, in consultation with KYDEP, may reject any data that does not meet the requirements of the approved Work Plan, or EPA or KYDEP analytical methods, and may require re-sampling and additional analysis.

32. Defendant shall ensure that the laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to that which is followed by EPA<sup>1</sup>. EPA and KYDEP may conduct a performance and QA/QC audit of each laboratory

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<sup>1</sup> See "EPA Requirements for Quality Assurance Project Plans," available at

chosen by Defendant before, during, or after sample analyses. Upon request by EPA, Defendant shall have its laboratory perform analyses of samples provided by EPA or KYDEP to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, re-sampling and additional analysis may be required.

33. Defendant shall make available to EPA and KYDEP the results of all sampling and/or tests or other data generated by or on behalf of Defendant during implementation of this Consent Decree. Upon request, EPA and KYDEP will make available to Defendant the results of all sampling and/or tests or other data generated by or on behalf of EPA or KYDEP during implementation of this Consent Decree.

34. Unless otherwise provided for in this Consent Decree, or a Work Plan approved hereunder, or unless otherwise agreed upon by the Parties, Defendant shall notify the EPA and KYDEP Project Coordinators identified in Paragraphs 27 and 28 via email at least seven (7) Days prior to engaging in any field activities undertaken pursuant to implementation of this Consent Decree, such as well drilling, installation of equipment, or sampling. At the request of EPA or KYDEP, Defendant shall provide split samples to EPA or KYDEP, or allow EPA or KYDEP, or their authorized representatives, to take samples or split or duplicate samples of any samples collected by, or on behalf of, Defendant pursuant to the implementation of this Consent Decree. Upon request, EPA and KYDEP shall provide Defendant splits of any samples taken by EPA or KYDEP.

35. State Determination: Based upon the approved Final Reports (see Section VIII of this Consent Decree) documenting the Work performed pursuant to the ISM Work Plan and

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[https://www.epa.gov/sites/default/files/2016-06/documents/r5-final\\_0.pdf](https://www.epa.gov/sites/default/files/2016-06/documents/r5-final_0.pdf), and "Guidance for Quality Assurance Project Plans," available at <https://www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf>.

Remediation Work Plan, KYDEP will determine if any additional work and/or Institutional Controls or Engineering Controls are required at the Facility. Such additional work and/or Institutional Controls or Engineering Controls, if any, is not included within the scope of this Consent Decree.

#### VIII. AGENCY APPROVALS, DOCUMENT SUBMISSIONS, AND REPORTING REQUIREMENTS

36. Agency Approvals. After review of any work plan, report, or other item that is required to be submitted pursuant to this Consent Decree (hereinafter, “submissions”), EPA, after consultation with KYDEP, will in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

37. If the submission is approved pursuant to Paragraph 36(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 36(b) or (c), Defendant shall, upon written direction from EPA, after consultation with KYDEP, take all actions required by the approved plan, report, or other item that EPA, after consultation with KYDEP, determines are technically severable from any disapproved portions, subject to Defendant’s right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

38. If the submission is disapproved in whole or in part pursuant to Paragraph 36(c) or (d), Defendant shall, within forty-five (45) Days, or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission

is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

39. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with KYDEP, may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendant's right to invoke dispute resolution and the right of EPA and KYDEP to seek stipulated penalties.

40. If Defendant elects to invoke dispute resolution as set forth in Paragraphs 37 or 39, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 69 within thirty (30) Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

41. Any stipulated penalties applicable to the original submission, as provided in Section IX (Stipulated Penalties), accrue during the time period specified in Paragraph 38, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part under Paragraph 39 in which case the stipulated penalties applicable to the original submission shall be due and payable; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

42. Reporting. Defendant shall submit the following reports and notices to the EPA and KYDEP Project Coordinators identified in Paragraphs 27 and 28.

- a. Final Reports: All actions taken under an approved Work Plan must have a corresponding submission of a final report documenting the results of the Work, the time for submission of which will be governed by the schedule

of implementation found in the associated approved final Work Plan.

- b. Progress Reports: By thirty (30) Days after the end of each calendar quarter of each year after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XIX, Defendant shall electronically submit a quarterly report for the preceding three months that includes, but is not limited to, the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, any non-compliance with this Consent Decree and any remedial steps taken, or to be taken, to prevent or minimize such violation, together with implemented or proposed solutions; and the status of permit applications (if any).
- c. Notification of Non-Compliance: If Defendant violates any requirement of this Consent Decree, Defendant shall notify the Project Coordinators of such violation and its likely duration, in writing, within ten (10) Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its

obligation to provide the notice required by Section X (Force Majeure).

d. Notification of Threat to Public Health or Welfare or the Environment:

Whenever any violation of this Consent Decree, or of any applicable permits required by this Consent Decree, or any other event affecting Defendant's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify the EPA and KYDEP Project Coordinators, as identified in Paragraphs 27 and 28, by telephone and email, as soon as possible, but no later than twenty-four (24) hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraphs.

43. Deliverables. One (1) electronic copy of all documents regarding the Work to be performed under this Consent Decree, including work plans, reports, and other correspondence to be submitted pursuant to this Consent Decree, shall be sent to the EPA and KYDEP Project Coordinators identified in Paragraphs 27 and 28, or to any other recipient or address that Defendant, EPA, or KYDEP hereafter agree upon in writing. A hard copy is not required; however, Defendant shall submit a hard copy upon request by EPA or KYDEP.

44. All documents submitted by Defendant to EPA and KYDEP for review and approval or modification pursuant to this Consent Decree shall be signed by an official of the submitting Party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry



of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

45. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

46. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by RCRA, 42 U.S.C. §§ 6901 *et seq.*, KRS 224.1-400, KRS 224.46, or any implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

47. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### IX. STIPULATED PENALTIES

48. Defendant shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

49. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$15,000 per Day for each Day that the payment is late.

50. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section VI (Compliance Requirements) and Section VII (Work to be Performed):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

Applicable compliance milestones, include the following:

- (1) Failure to timely submit any required work plan;
- (2) Failure to meet deadlines for commencing Work under the Consent Decree or any Work Plan; and
- (3) Failure to comply with any other requirement of Section VI (Compliance Requirements) and Section VII (Work to be Performed).

51. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Section VIII (Agency Approvals, Document Submissions, and Reporting Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,000	15th through 30th Day

\$2,000 31st Day and beyond

Applicable reporting requirements include the following:

- (1) Failure to submit Progress Reports on time;
- (2) Failure to submit Final Reports on time; and
- (3) Failure to comply with any other requirement of Section VIII  
(Agency Approvals, Document Submissions, and Reporting  
Requirements).

52. The following stipulated penalties shall accrue per violation per Day for any other violation of this Consent Decree that is not specifically stated elsewhere:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$1,000	15th through 30th Day
\$2,000	31st Day and beyond

53. Transfer of Ownership. If Defendant fails to: (a) provide a copy of this Consent Decree to any proposed transferee at least thirty (30) Days prior to any transfer of the Facility or any portion of the Facility; (b) provide written notice of the prospective transfer, together with a copy of the proposed written agreement governing the transfer, to EPA Region 4, DOJ, the United States Attorney for the Eastern District of Kentucky, and KYDEP at least thirty (30) Days prior to any transfer of the Facility or any portion of the Facility; or (c) comply with requirements of Paragraphs 5 and 6, Defendant shall pay a stipulated penalty of \$5,000 per violation per day.

54. Subject to the provisions of Paragraph 41 above, and except as otherwise specified in Paragraphs 57(b) and (c), stipulated penalties under this Section shall begin to accrue

on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

55. Defendant shall pay stipulated penalties to the United States and to the State within thirty (30) Days of a written demand by either Plaintiff, subject to Defendant's right to invoke dispute resolution in accordance with Section XI (Dispute Resolution). Defendant shall pay fifty percent (50%) of the total stipulated penalty amount due to the United States and fifty percent (50%) to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

56. Each Plaintiff, may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Consent Decree. The determination by one Plaintiff not to seek stipulated penalties, or to subsequently waive or reduce the amount it seeks, shall not preclude the other Plaintiff from seeking the full amount of the stipulated penalties owed.

57. Stipulated penalties shall continue to accrue as provided in Paragraph 54, during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States, in consultation with the State, that is not subject to judicial review or appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within thirty (30) Days of the effective date of the agreement or the receipt of the United States' or the State's decision or order.

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or

in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within thirty (30) Days of receiving the final Court decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within thirty (30) Days of receiving the final appellate court decision.

58. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 12 and with the confirmation notices required by Paragraph 13, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Defendant shall pay stipulated penalties owing to the State in the manner set forth in Paragraph 15 and with confirmation notices required in accordance with Paragraph 16, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

59. Defendant shall not deduct stipulated penalties paid under this Section in calculating its federal, state, or local income tax.

60. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

61. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

62. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the State's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States and the State expressly reserve the right to seek any other relief they deem appropriate for the Defendant's violation of this Consent Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### X. FORCE MAJEURE

63. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall notify the EPA and KYDEP Project Coordinators identified in Paragraphs 27 and 28, promptly in writing by email, within seventy-two (72) hours of when Defendant first knew that

the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to the EPA and KYDEP Project Coordinators an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

65. If EPA, after a reasonable opportunity for review and comment by KYDEP, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by KYDEP, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

66. If EPA, after a reasonable opportunity for review and comment by KYDEP, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

67. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than fourteen (14) Days after receipt of EPA's notice under Paragraphs 65 or 66. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 63 and 64. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XI. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States or the State to enforce any obligation of Defendant arising under this Consent Decree.

69. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ, EPA, and KYDEP, in accordance with



Section XV (Notices), a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with the State, shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

70. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ, EPA, and KYDEP a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

71. The United States, after consultation with the State, will send Defendant its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

72. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the State a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall

contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

73. The United States, in consultation with the State, shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

74. Standard of Review

a. Disputes Concerning Matters Accorded Record Review.

(1) An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

(2) Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 70 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of Work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and

capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 70, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

75. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 57. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## XII. ACCESS, INFORMATION COLLECTION, AND RECORD RETENTION

76. Access. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry to Defendant's Facility at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

77. Record Retention. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, unless Defendant asserts a privilege in accordance with the following Paragraph.

78. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to United States or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, Defendant may make no claim of privilege or

protection regarding: (i) any data regarding the Facility, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other record that evidences conditions at or around the Facility; or (ii) the portion of any record that Defendant is required to create or generate pursuant to this Consent Decree.

79. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

80. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

81. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging except as set forth in Paragraph 82 below.

82. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under RCRA, 42 U.S.C. §§ 6901 *et seq.*, KRS 224.1-400, KRS 224.46, or any implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as

expressly specified in Paragraph 81. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

83. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 81.

84. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the RCRA, 42 U.S.C. §§ 6901 *et seq.*, KRS 224.1-400, KRS 224.46, or with any other provisions of federal, state, or local laws, regulations, or permits.

85. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

86. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XIV. COSTS

87. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalty or any interest due but not paid by Defendant.

#### XV. NOTICES

88. Except where notice is specifically required to be sent to the Project Managers as identified in Paragraphs 27 and 28 of this Consent Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email, with a preference for email, addressed as follows:

As to DOJ by email (preferred):      eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-2-09449/1

As to DOJ by mail:                      EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ # 90-5-2-09449/1

Gregory Rosenberg  
Assistant United States Attorney  
Eastern District of Kentucky  
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As to EPA:

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Attorney Advisor  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
404-562-9523  
[Summers.Robert@epa.gov](mailto:Summers.Robert@epa.gov)

As to the State:

Chris Fitzpatrick  
General Counsel  
Department for Environmental Protection  
Office of Legal Services  
Energy and Environment Cabinet  
300 Sower Blvd., 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601  
502-782-6948  
[Chris.fitzpatrick@ky.gov](mailto:Chris.fitzpatrick@ky.gov)



As to Defendant:

Keith Nagel  
Director Environment Land & Remediation  
Cleveland-Cliffs Inc.  
200 Public Square, Suite 3400  
Cleveland, Ohio 44114-2315  
[Keith.Nagel@clevelandcliffs.com](mailto:Keith.Nagel@clevelandcliffs.com)

James Kemp  
Remediation Manager  
Cleveland-Cliffs Inc.  
9227 Centre Pointe Drive  
West Chester, Ohio 45069  
[james.kemp@clevelandcliffs.com](mailto:james.kemp@clevelandcliffs.com)

Steven M. Wesloh  
(Counsel for Cleveland-Cliffs Steel)  
Frost Brown Todd  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202-4182  
513-651-6911  
[SWesloh@fbtlaw.com](mailto:SWesloh@fbtlaw.com)

89. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

90. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XVI. EFFECTIVE DATE

91. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

## XVII. RETENTION OF JURISDICTION

92. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections XI (Dispute Resolution) and XIII (Effect of Settlement/Reservation of Rights), or effectuating or enforcing compliance with the terms of this Consent Decree.

## XVIII. MODIFICATION

93. The terms of this Consent Decree, including any Appendices or attachments hereto, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court. Minor changes, or changes to the technical provisions set forth in any approved Work Plan, or changes to any schedule, are not considered “material changes” and may be made without approval of the Court, upon written agreement among the Parties.

94. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 74, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## XIX. TERMINATION

95. After Defendant has completed the requirements of this Consent Decree, including the completion of the Work required in Section VII (Work to be Performed) and the Appendices or attachments hereto, and paying the civil penalty, any accrued stipulated penalties, and any accrued interest, as required by this Consent Decree, Defendant may serve upon the

United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

96. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a motion seeking termination of the Consent Decree.

97. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, Defendant may invoke dispute resolution under Section XI. However, Defendant shall not seek dispute resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

#### XX. PUBLIC PARTICIPATION

98. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

## XXI. SIGNATORIES/SERVICE

99. Each Party certifies that the undersigned representatives are fully authorized by that Party to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that Party, and to legally bind the Party.

100. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## XXII. INTEGRATION

101. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Consent Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

## XXIII. FINAL JUDGMENT

102. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and

Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

#### XXIV. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

103. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Sections II (Parties Bound and Notice of Transfer), VI (Compliance Requirements), VII (Work to be Performed), VIII (Agency Approvals, Document Submissions, and Reporting Requirements), and XII (Access, Information Collection, and Record Retention), is restitution or required to come into compliance with law.

#### XXV. RCRA 3013 ORDER TERMINATION AND SATISFACTION

104. On September 26, 2012, as part of the investigation of this matter, EPA issued Defendant an Administrative Order pursuant to Section 3013 of RCRA (RCRA 3013 Order), Docket No. RCRA-04-2012-4252.

105. Pursuant to Paragraph 143 of the RCRA 3013 Order, Defendant has sought termination of the Order by submitting to EPA a written document which indicates Defendant's compliance with all requirements of said Order, and the associated dates of approval correspondence from EPA. The provisions of the RCRA 3013 Order shall be deemed satisfied upon Defendant's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" (Acknowledgement).

106. EPA and Defendant acknowledge that the work under the RCRA 3013 Order is complete, that this Consent Decree will serve as the Acknowledgment and that, upon entry of the Consent Decree, the RCRA 3013 Order shall be deemed terminated and satisfied.

107. This Acknowledgment shall not, however, terminate Defendant's obligations to comply with any continuing obligations specified in Paragraph 143 of the RCRA 3013 Order, including, but not limit to, Section XIV (Record Preservation), Section XVI (Reservation of Rights), Section XVII (Other Applicable Laws), and Section XVIII (Other Claims).

108. This Acknowledgment shall not affect, satisfy, or alter Defendant's obligations to comply with any requirement under this Consent Decree, including, but not limited to, Section VII (Work to be Performed) and Defendant's obligation to implement the Incremental Sampling Methodology Work Plan and the Remediation Work Plan.

#### XXVI. APPENDICES

109. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Map of Facility;

“Appendix B” is the Incremental Sampling Methodology Work Plan; and

“Appendix C” is the Remediation Work Plan.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 20\_\_

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UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

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Eastern District of Kentucky

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FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:

3/21/2022

Date



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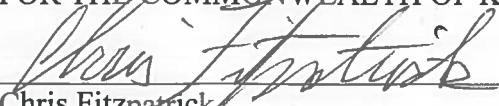
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