

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

3:23-cv-847 (AMN/ML)

Civil No. -----

UPSTATE SHREDDING, LLC and WEITSMAN
SHREDDING, LLC

Defendants.

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CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendants, Upstate Shredding, LLC, and Weitsman Shredding, LLC, (collectively, “Upstate”), violated the Clean Air Act and provisions of the New York State Implementation Plan (“NY SIP”) implementing the Clean Air Act.

Specifically, the Complaint alleges that Upstate failed to implement Reasonably Available Control Technology (“RACT”) to control emissions of volatile organic compounds (“VOC”) at its metal shredding facility located at 1 Recycle Drive, Owego, New York, 13827 (the “Facility”). The Complaint further alleges that the Facility has the annual potential to emit 50 tons or more of VOC, and the potential to emit more than 3.0 pounds of VOC per hour or 15 pounds of VOC per day. The Complaint alleges that Upstate has not installed RACT to control VOC emissions, or otherwise complied with 6 N.Y.C.R.R. § 212-3, which is part of the NY SIP.

EPA issued Upstate a Notice of Violation on September 23, 2021, identifying violations of the NY SIP and Title V of the Clean Air Act.

Defendants do not admit any liability to the United States arising out of the occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith; will avoid litigation between the Parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, 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, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Facility is located in this District and because the alleged violations occurred in this District. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

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

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendants 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, to EPA, DOJ, and the United States Attorney for the Northern District of New York, in accordance with Section XIV (Notices). Any attempt to transfer

ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree.

Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

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

III. OBJECTIVES

7. The objectives of this Consent Decree are to (a) resolve claims for violations of the Clean Air Act and the NY SIP, through payment of a civil penalty; (b) implement injunctive relief to ensure that VOC emissions from the metal shredder at the Facility are within the limits specified by the NY SIP at 6 N.Y.C.R.R. § 212-3.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Clean Air Act or in regulations promulgated pursuant to the Clean Air Act have the meanings assigned to them in the Clean Air Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

“CEMS” means for obligations involving VOC under this Consent Decree, the total equipment and software required to sample and condition (if applicable), to analyze, and to provide a record of VOC emission rates, and the raw data necessary to support the reported

emission rates, and that have been installed and calibrated in accordance with 40 C.F.R. § 60.13 and 40 C.F.R. Part 60 Appendix B and Appendix F.

“Complaint” means the complaint filed by the United States in this action;

“Consent Decree” or “Decree” means this Decree;

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

“Defendants” or “Upstate” means the defendants, Upstate Shredding, LLC, and Weitsman Shredding, LLC;

“DOJ” means the United States Department of Justice and any of its successor departments or agencies;

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” means the definition provided in Section XV;

“Facility” means Defendants’ metal shredding facility located at 1 Recycle Drive, Owego, New York;

“Paragraph” means a portion of this Decree identified by an Arabic numeral;

“Parties” means the United States and the Defendants;

“Section” means a portion of this Decree identified by a Roman numeral;

“Shredder” means the hammermill shredder at the Facility;

“United States” means the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

9. Within 60 Days after the Effective Date, Defendants shall pay the sum of \$400,000 as a civil penalty, together with interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date.

10. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of New York. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Matthew Marko
15 W. Main Street, Owego, NY 13827
mmarko@weitsman.com (607) 687-7777

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

11. At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XIV; and (iii) to EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America v. Upstate Shredding, LLC and Weitsman*

Shredding, LLC, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-12564.

12. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

13. Defendants shall comply with the Clean Air Act and the NY SIP. In addition to the foregoing general obligations, Defendants shall install RACT to control VOC emissions in compliance with 6 N.Y.C.R.R. § 212-3 as set forth in this Section VI.

14. Emission Enclosure and Capture System: Defendants shall install a permanent enclosure and operate and maintain a capture system at the Shredder to ensure shredder emissions will be captured and routed to the Air Pollution Control Equipment required under Paragraph 15 of this Decree. The enclosure and capture system shall be designed and constructed consistent with the requirements of EPA Method 204 or an alternative design if Defendants can demonstrate that the proposed design captures not less than 95% of emissions from the Shredder and EPA approves such alternative design. The enclosure and capture system's design and construction shall take into account the Shredder's operational requirements and any safety concerns. The design will include, at a minimum, a direct pickup point for emissions from the infeed chute conveyor and the under-mill oscillator, with adequate fan capacity and distribution of draft throughout the enclosure to ensure capture from emission points without introducing unwanted scrap debris to the sampling line(s).

15. Air Pollution Control Equipment. Defendants shall install, operate, and maintain the following Air Pollution Control Equipment at the Shredder:

a. Particulate Matter Control: A particulate matter control device to assure optimal operation of the VOC Control device and ensure continuous and effective operation of the Air Pollution Control Equipment.

b. VOC Control: A regenerative thermal oxidizer that is designed to meet 98% destruction efficiency during operation.

c. Acid Gas Control: An acid gas control device necessary to reduce levels of any acid gases generated by the VOC Control to meet any Clean Air Act or New York requirements, as determined through the permitting process.

16. Monitoring: For at least 60 Days, including the Day(s) on which the Performance Test required by Paragraph 19 is conducted, Defendants shall install and operate a temporary CEMS that monitors the outlet VOC concentration of the regenerative thermal oxidizer, and meets the EPA's performance specifications under 40 CFR Part 60, Appendices B and F. In addition, Defendants shall install permanent monitoring devices for direct or parametric values to continually monitor (1) performance of the Emission Enclosure and Capture System described in Paragraph 14 and (2) performance of the Air Pollution Control Equipment described in Paragraph 15, in order to demonstrate continuous compliance with the NY SIP's VOC RACT Regulations, and the requirements in Paragraphs 14 and 15 of this Decree.

17. Permit Application: Defendants have submitted an application to the New York State Department of Environmental Conservation ("NYSDEC") to modify the existing Air Facility Registration Certificate and permit for the metal shredding operations at the Facility. The permit modification application proposes the installation and conditional operation of the Emission Enclosure and Capture System as described in Paragraph 14, the Air Pollution Control Equipment as described in Paragraph 15, and the Monitoring Devices as described in Paragraph

16. In addition, the modification application reevaluates the Facility's emissions of criteria pollutants, metal hazardous air pollutants, and toxic acid gasses from the shredder and the Air Pollution Control Equipment, as well as the applicable legal requirements associated with these emissions.

18. Startup. By September 1, 2025, Upstate will commence initial startup of the Emission Enclosure and Capture System, the Air Pollution Control Equipment, and the Monitoring Devices described in Paragraphs 14, 15, and 16.

19. Performance Test. Upstate will conduct a Performance Test designed to (1) demonstrate initial compliance with the Modified Permit and Paragraphs 14, 15, and 16 of this Consent Decree, and (2) establish ongoing federally enforceable compliance requirements/operating parameter limits for the Air Pollution Control Equipment and Emission Enclosure and Capture System, to be incorporated into the permit as provided in Paragraph 20 of this Decree.

- a. Test Plan: By July 1, 2025, Upstate will submit a performance test plan ("Test Plan") for EPA approval. The Test Plan must describe the test methods to be used for the Performance Test and must include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance program for the Performance Test. In addition, the Test Plan will describe required and/or proposed operating parameter limits and averaging times that will be verified through the Performance Test as a means to monitor and demonstrate continuous compliance with the requirements of Paragraphs 14, 15, and 16 of this Consent Decree. The Test Plan will describe how data obtained from the

Performance Test will be used for verifying and/or establishing operating parameter limits to be used for demonstrating ongoing compliance.

- b. Test Timing: Upstate will conduct the Performance Test by October 1, 2025, or within two months after EPA approval of the test plan, whichever is later.
- c. Test Report and Operating Parameter Limits: By November 1, 2025, or within 60 Days of the Performance Test, whichever is later, Upstate will submit a report with the results of the test (“Test Report”) to EPA for review and approval. If the results of the performance test fail to demonstrate compliance with Paragraphs 14, 15, and 16 of this Consent Decree, the Modified Permit, or any performance criteria in the Test Plan, then as part of the Test Report, Upstate will propose, for approval by EPA, corrective actions to achieve compliance with the emission and operational requirements under this Decree and/or appropriate federally enforceable operating parameter limits to assure continuous compliance.

20. Application to Amend Permit. Within 30 Days after EPA approves the Test Report submitted pursuant to Paragraph 19.c of this Consent Decree, Upstate will apply to NYSDEC to modify or amend the permit secured under Paragraph 17. This application to amend the permit will include the federally enforceable operating parameter limits from the approved Test Report.

21. By March 31, 2026, Upstate will achieve full compliance with Paragraphs 14, 15, and 16 of this Decree, including compliance with the parameter limits established in the Application to Amend Permit submitted under Paragraph 20.

22. Recordkeeping. In accordance with Section XI (Information Collection and Retention), Upstate shall keep records of the continuously monitored values and operating parameter limits that are established for the Emission Enclosure and Capture System and Air Pollution Control Equipment under Paragraphs 16 (Monitoring), 19 (Performance Test), and 20 (Application to Amend Permit) of this Consent Decree.

23. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA 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.

24. If the submission is approved pursuant to Paragraph 23(a), Defendants 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 23(b) or (c), Defendants shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions.

25. If the submission is disapproved in whole or in part pursuant to Paragraph 23(c), Defendants shall, within 60 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, Defendants shall proceed in accordance with the preceding Paragraph.

26. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs.

27. If Defendants elect to invoke Dispute Resolution as set forth in Section X (Dispute Resolution) concerning a decision by EPA to disapprove, approve on specified conditions, or modify a deliverable, Defendants shall do so by sending a Notice of Dispute in accordance with Paragraph 54 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

28. Any stipulated penalties applicable to the original submission, as provided in Section VIII, accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

29. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX (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.

VII. REPORTING REQUIREMENTS

30. Defendants shall submit the following reports to EPA and DOJ at the addresses set forth Section XIV (Notices):

- a. By April 30th, July 31st, October 31st, and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendants shall submit a quarterly report for

the preceding three months that includes the status of the following milestones, including, at a minimum, any activities undertaken toward achieving the milestones, together with problems encountered or anticipated and implemented or proposed solutions:

- (1) Emission Enclosure and Capture System in Paragraph 14;
- (2) Air Pollution Control Equipment in Paragraph 15;
- (3) Monitoring in Paragraph 16;
- (4) Applications to permit or to amend the permit as described in Paragraphs 17 and 20;
- (5) Startup of the emission enclosure and capture system and air pollution control equipment as described in Paragraph 14, including the status of all design and construction steps necessary to achieve timely startup;
- (6) Performance Test Plan as described in Paragraph 19.a;
- (7) Performance Test as described in Paragraph 19;
- (8) Performance Test Report as described in Paragraph 19.c;

- b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and 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 Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify EPA and DOJ of such violation and its likely duration, in writing, within 30 Days of the Day Defendants first become 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, Defendants shall so state in the report. Defendants 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 30 Days of the Day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the notice required by Section IX (Force Majeure).

31. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendants' performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify Robert Buettner by telephone at 212-637-5031, or by email to Robert Buettner at buettner.robert@epa.gov, as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

32. Each report submitted by Defendants under this Section shall be signed by an authorized representative of the submitting party and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure 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 have no personal knowledge that the information submitted is other than 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.

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

34. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

VIII. STIPULATED PENALTIES

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

37. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$2,000 per Day for each Day that the payment is late.

38. Compliance Milestones.

The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraphs 14, 15, 16, 18, 19, 20, and 21 of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 30th Day
\$2,500	31st Day and beyond

39. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 30th Day
\$750.....	31st Day and beyond

40. 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.

41. Defendants shall pay any stipulated penalty within 30 Days of receiving the United States’ written demand subject to Paragraph 43.

42. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

43. Stipulated penalties shall continue to accrue as provided in Paragraph 37, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA’s decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in

whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

- c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

44. Defendants shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 10 and with the confirmation notices required by Paragraph 11, 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.

45. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants 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 from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

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

47. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants 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.

IX. FORCE MAJEURE

48. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants’ contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that Defendants 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 Defendants’ financial inability to perform any obligation under this Consent Decree.

49. 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, Defendants shall provide notice by telephone to Robert Buettner at 212-637-5031, or by email to Robert Buettner, at buettner.robert@epa.gov, within 72 hours of when Defendants first knew that the event might cause a delay. Within seven Days thereafter, Defendants shall provide in writing to EPA 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; Defendants’ 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 Defendants, such event may

cause or contribute to an endangerment to public health, welfare or the environment. Defendants 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 Defendants 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. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

50. If EPA 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 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 Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

51. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

52. If Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), they shall do so no later than 30 Days after receipt of EPA's notice. In any such proceeding, Defendants 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 Defendants complied with the requirements of Paragraphs 49 and

50. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree.

X. DISPUTE RESOLUTION

53. 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. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

54. 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 Defendants send DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 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 shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

55. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA 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 Defendants' position and any supporting documentation relied upon by Defendants.

56. The United States will send Defendants its Statement of Position within 45 Days of receipt of Defendants' 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 Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

57. Judicial Dispute Resolution. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 54, unless the Plaintiffs raise a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree, consistent with the Local Rules of the Court.

58. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

59. Standard of Review

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 53 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, Defendants 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 55, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

60. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants 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 43. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

61. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, 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 in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

62. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.

63. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their 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 their or their 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 Defendants' performance of their 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, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

64. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 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, Defendants shall deliver any such documents, records, or other information to EPA. As relates to the preceding paragraph and this paragraph 64, Defendants 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 Defendants assert such a privilege, they 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 Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

65. Defendants 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 Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

66. 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 pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

68. The United States reserves 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 to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 67. The United States further reserves 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, Defendants' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

69. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendants' violations, Defendants 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 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 67.

70. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' 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 does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in

compliance with provisions of the Clean Air Act, 42 U.S.C. §§ 7661 through 7661f, or with any other provisions of federal, State, or local laws, regulations, or permits.

71. This Consent Decree does not limit or affect the rights of Defendants or of the United States 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 Defendants, except as otherwise provided by law.

72. 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.

XIII. COSTS

73. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States 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 penalties due but not paid by Defendants.

XIV. NOTICES

74. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by email, addressed as follows:

As to DOJ:	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-12564
As to USAO:	john.hoggan@usdoj.gov Re: DJ # 90-5-2-1-12564
As to EPA:	buettner.robert@epa.gov

As to Defendants:

Upstate Shredding, LLC
Weitsman Shredding, LLC
Attn: Adam Weitsman, President
1 Recycle Drive
Tioga Industrial Park
Owego, New York 13827-3213
aweitsman@upstateshredding.com

Dale R. Vollmer, P.E.
Plumley Engineering, P.C.
8232 Loop Road
Baldwinsville, New York 13027
dvollmer@plumleyengineering.com

Doreen A. Simmons, Esq.
Hancock Estabrook, LLP
1800 AXA Tower I, 100 Madison Street
Syracuse, New York 13202
dsimmons@hancocklaw.com

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

76. 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.

XV. EFFECTIVE DATE

77. 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.

XVI. RETENTION OF JURISDICTION

78. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

79. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

80. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 59, 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).

XVIII. TERMINATION

81. After Defendants have completed the requirements of Sections VI (Compliance Requirements) and have thereafter maintained continuous satisfactory compliance with this Consent Decree and Defendants' air permit for a period of three years, have complied with all other requirements of this Consent Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

82. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be

terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

83. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section X. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

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

XX. SIGNATORIES/SERVICE

85. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

86. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree 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. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

87. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the subject matter of the Decree herein.

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

88. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance Paragraphs 5, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 29, 30, 31, 32, 61, 62, 63, and 64 is restitution, remediation, or required to come into compliance with law.

XXIII. HEADINGS

89. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXIV. FINAL JUDGMENT

90. 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 and Defendants. The

Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this __ day of _____, 20__

UNITED STATES DISTRICT JUDGE

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Simon, Paul Digitally signed by Simon, Paul
Date: 2023.06.30 10:05:06
-04'00'

Paul Simon
Regional Counsel
U.S. Environmental Protection Agency, Region 2

FOR UPSTATE SHREDDING, LLC AND WEITSMAN
SHREDDING LLC:

6/15/23
Date


Adam J. Weitsman
Member