IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE UNITED STATES OF AMERICA, THE STATE OF OHIO, THE SIERRA CLUB and NATURAL RESOURCES DEFENSE COUNCIL,	
Plaintiffs,	CIVIL ACTION NO. C-1-00530
v.	SENIOR JUDGE HERMAN J. WEBER
AK STEEL CORPORATION,	
Defendant.	

CONSENT DECREE IN PARTIAL RESOLUTION OF PENDING CLAIMS

ECF 369

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List of Acronyms

AOC	Area of Concern
ASR	Alternatives Summary Report
BH	Bore Hole
CAP	Corrective Action Plan
CCR	Current Conditions Report
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CMI	Corrective Measures Implementation
CMO	Corrective Measures Objectives
CMS	Corrective Measures Study
COCs	Contaminants of Concern
CQA	Construction Quality Assurance
DMR	Discharge Monitoring Report
DOCC	Description of Current Conditions
DQO	Data Quality Objective
EFT	Electronic Funds Transfer
EPA	United States Environmental Protection Agency
HWMU	Hazardous Waste Management Unit
IM	Interim Measures
MCL	Maximum Contaminant Level

MCS	Media Cleanup Standards
mg/kg	milligram per kilogram
mg/l	milligram per liter
NPDES	National Pollutant Discharge Elimination System
O.A.C.	Ohio Administrative Code
O&M	Operations and Maintenance
ODP	Ozone Depleting Potential
OEPA	Ohio Environmental Protection Agency
OMS	Olympic Mill Services
OSWER	Office of Solid Waste and Emergency Response
NAPL	Non-Aqueous Phase Liquids
NIOSH	National Institute of Occupational Safety and Health
PA	Preliminary Assessment
PCB	polychlorinated biphenyl
PMP	Project Management Plan
ppm	parts per million
ppb	parts per billion
PPE	Personal Protective Equipment
PRG	Preliminary Remediation Goals
PTI	Permit To Install
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control

RAAR	Risk Assessment Assumptions Report
RCRA	Resource Conservation and Recovery Act
RFI	RCRA Facility Investigation
SCS	Soil Conservation Service
SEP	Supplemental Environmental Project
SOW	Scope of Work
SS	Soil Sample
SWMU(s)	Solid Waste Management Unit(s)
TCE	trichloroethylene
TSCA	Toxic Substances Control Act
µg/kg	micrograms per kilogram
µg/l	micrograms per liter
UIC	Underground Injection Control
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USDA	United States Department of Agriculture
VSI	Visual Site Inspection

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THE UNITED STATES OF AMERICA, THE STATE OF OHIO, THE SIERRA CLUB and NATURAL RESOURCES DEFENSE COUNCIL, Plaintiffs, v. AK STEEL CORPORATION, Defendant.	CIVIL ACTION NO. C-1-00530 SENIOR JUDGE HERMAN J. WEBER

CONSENT DECREE IN PARTIAL
RESOLUTION OF PENDING CLAIMS

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed an Amended Complaint ("U.S. Complaint") against Defendant, AK Steel Corporation ("Defendant" or "AK Steel"), in this matter on October 18, 2001, seeking injunctive relief and civil penalties for alleged violations of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, regulations implementing those statutes, and the Ohio State Implementation Plan ("Ohio SIP") at AK Steel's Middletown, Ohio steel production facility (the "Facility"), as well as an order for AK Steel to perform corrective action pursuant to Section 3008(h) of the Resource Conservation Recovery

Act ("RCRA"), 42 U.S.C. § 6928(h). In addition, the U.S. Complaint sought enforcement of an administrative order issued by EPA pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) ("§ 7003 Order");

WHEREAS, EPA withdrew the § 7003 Order on January 17, 2003, and on or about March 28, 2003, this Court entered an Agreed Order dismissing the United States' claim relating to the § 7003 Order;

WHEREAS, Plaintiff State of Ohio, on behalf of the Ohio Environmental Protection Agency ("OEPA"), filed a First Amended Complaint ("Ohio Complaint") against AK Steel in this matter on April 5, 2001, for injunctive relief and/or the assessment of civil penalties for violations of Ohio Revised Code ("R.C.") Chapters 3704, 3734, 6111, and the rules implementing those chapters, the CAA, 42 U.S.C. § 7401 *et seq.*, the CWA, 33 U.S.C. § 1251 *et seq.*, regulations implementing those statutes, and the Ohio SIP at the Facility. Ohio brought its Complaint pursuant to Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), R.C. Chapter 6111, Section 304(b)(1)(B) of the CAA, 42 U.S.C. § 7604(b)(1)(B), R.C. Chapter 3704, and R.C. Chapter 3734;

WHEREAS, by Order entered January 3, 2003, the Court dismissed certain claims contained in the Ohio Complaint, specifically Claims 2-7, relating to violations of the CAA and Ohio air pollution laws, and subsequently dismissed Claim 1 by Order entered April 21, 2003;

WHEREAS, Plaintiffs Sierra Club and Natural Resources Defense Council ("Intervenors") filed a Complaint in Intervention ("Intervenors' Complaint") pursuant to Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), Section 304(b)(1)(B) of the CAA, 42 U.S.C. S§ 7604(b)(1)(B), and Section 7002(b)(1) of RCRA, 42 U.S.C. § 6972(b)(1), against AK

Steel in this matter on January 3, 2003, seeking injunctive relief and civil penalties for alleged violations of the CAA, the CWA, regulations implementing those statutes, and the Ohio SIP at the Facility, as well as an order for AK Steel to perform corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). In addition, the Intervenors' Complaint sought enforcement of the § 7003 Order;

WHEREAS, on or about March 28, 2003, this Court entered an Agreed Order dismissing the Intervenors' claim relating to the § 7003 Order;

WHEREAS, prior to entering into this Consent Decree, AK Steel collected soil samples from specified areas of the Dicks Creek floodplain ("Floodplain"), in accordance with a Floodplain Soil Sampling and Analysis Plan approved by EPA after consultation with OEPA and Intervenors, and AK Steel has agreed to provide the results of the analysis of these samples to Plaintiffs;

WHEREAS, in furtherance of both judicial efficiency and the public interest, the Parties hereto have agreed to enter into a Consent Decree to resolve Plaintiffs' pending claims for relief under the CWA, CAA, the Ohio SIP, and R.C. Chapters 3734 and 6111, and to provide for AK Steel to implement specified Interim Measures and to perform various corrective action investigations to develop more detailed information about any releases of hazardous waste or hazardous constituents at or from the Facility, the possible impact of such releases on human health and the environment and an evaluation of a range of possible corrective measures that might be used to mitigate risks from such releases, pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h);

WHEREAS, except with respect to the "Interim Measures" or as otherwise provided in this Consent Decree, the Parties have agreed to defer resolution of issues relating to alleged liability of AK Steel under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), to implement any corrective measures that may be selected following completion of the corrective action investigations required under this Consent Decree;

WHEREAS, 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 and at arms length and will avoid prolonged and complicated litigation among the Parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking any testimony; upon the pleadings; without adjudication of any issue of fact or law, except as provided in Section I, below; without this Consent Decree constituting any evidence, waiver or admission of fact, violation or liability by any party; and with the consent of the parties, it is hereby DECREED, and Defendant is ENJOINED and ORDERED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims asserted herein under the CWA, CAA and RCRA pursuant to Sections 309(b) and (d), and 505(a) of the CWA, 33 U.S.C. §§ 1319(b), (d), and 1365(a); Section 3008(h) of RCRA, 42 U.S.C. § 6928(h); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the state law claims asserted by the State of Ohio pursuant to 28 U.S. C. § 1367. This Court also has jurisdiction over the parties to this Consent Decree.

2. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(h) of RCRA, 42 U.S.C. § 6928(h); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1355 and 1391(b) and (c).

II. PARTIES BOUND

3. The provisions of this Consent Decree shall apply to and be binding upon Plaintiffs and upon Defendant, including Defendant's officers, directors, employees, agents, servants, and successors and assigns, and all persons, firms, entities and corporations acting under, through or for it or in active concert or participation with it. Defendant shall be responsible for the acts of any of its officers, directors, employees, agents, servants, successors, assigns, contractors, and consultants, which violate or cause Defendant to violate the terms hereof.

4. Defendant agrees to undertake all actions required by the terms and conditions of this Consent Decree.

5. Defendant waives any rights to request a hearing on this matter pursuant to §3008(b) of RCRA and 40 C.F.R. Part 24, and consents to entry of this Consent Decree by the Court as set forth in Section XXIV (Public Comment) and without a hearing pursuant to §3008(b) of RCRA as a consent order issued pursuant to §3008(h) of RCRA.

6. The undersigned representative(s) of Defendant, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, the Ohio Assistant Attorney General signing this Consent Decree, and the undersigned representative(s) of the Intervenors, each certifies that he or she is fully authorized to execute this Consent Decree and to legally bind the party whom he or she represents to this Consent Decree.

7. No change in ownership or corporate status shall in any way alter Defendant's responsibilities under this Consent Decree. In the event of any conveyance of title, easement, or other interest in the Facility (as defined in Section III of this Consent Decree), all of Defendant's obligations under this Consent Decree shall continue to be met by Defendant, except as provided in Paragraphs 9 and 10.

8. In the event that Defendant proposes to sell or transfer the real property or operations subject to this Consent Decree, Defendant shall give written notification to the Plaintiffs in accordance with Section VIII (Notices and Submissions) of this Consent Decree, identifying such purchaser or transferee in interest at least thirty (30) days prior to the sale or transfer. At least thirty (30) days prior to any such conveyance, Defendant shall also provide a copy of this Consent Decree to any person or entity to whom Defendant intends to make such conveyance, and shall condition such sale or transfer upon the purchaser or transferee submitting to the jurisdiction of this Court, becoming a party to this Consent Decree and being subject to the obligations of Defendant under this Consent Decree as provided in Paragraph 9.

9. This Consent Decree shall not be construed to impede the transfer of any real property or operations between Defendant and any purchaser as long as the requirements of this Consent Decree are met. Any such purchaser shall: (1) provide Defendant, Government Plaintiffs, and their representatives, including agencies, employees, authorized agents, contractors and subcontractors of Defendant and Government Plaintiffs with access to the purchased property or operations for purposes of implementing any Work required under this Consent Decree and for any other purpose specified in Section XIV (Site Access); (2) cooperate with implementation of the Work and refrain from any action that would interfere with or hinder the effectiveness or

timely completion of the Work; and (3) agree to implement any institutional controls necessary to assure effectiveness of the Work. This Consent Decree shall not be construed to prohibit a contractual allocation – as between Defendant and any purchaser – of the burdens of compliance with this Consent Decree, provided that Defendant shall remain liable to the Plaintiffs for the obligations of the Consent Decree applicable to the transferred or purchased ownership interests, except as provided in Paragraph 10.

10. If EPA, OEPA and Intervenors in their unreviewable discretion agree, Defendant and any purchaser that has become a party defendant to this Consent Decree pursuant to Paragraph 8, above, may seek modification of the Consent Decree pursuant to Paragraph 119, below, to relieve Defendant of its liability for specified obligations and liabilities under this Consent Decree, and to subject the purchaser to specified obligations, liabilities and rights of Defendant under this Consent Decree, as identified in the motion to modify. Notwithstanding the foregoing, Defendant may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred real estate, including the obligations set forth in Sections VI (Supplemental Environmental Project) and VII (Civil Penalty).

11. Defendant shall be required to notify each Contractor retained to perform Work pursuant to Section V (Corrective Action) and the Supplemental Environmental Project ("SEP") pursuant to Section VI (Supplemental Environmental Project) of this Consent Decree of each of the requirements of this Consent Decree relevant to the activities to be performed by the Contractor, including all schedules and reporting deadlines relevant to the Work to be performed by the Contractor. Defendant shall further require that each such Contractor above notify each of its

subcontractors retained to perform Work pursuant to Section V (Corrective Action) and the SEP pursuant to Section VI (Supplemental Environmental Project) of each of the requirements of this Consent Decree applicable to the Work or SEP, as relevant to the activities to be performed by such subcontractor. In any action or proceeding to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its agents, servants, contractors, subcontractors or employees to take actions necessary to comply with the Consent Decree, except where such failure is the result of circumstances that meet the criteria of Section XI (Force Majeure Between the United States, Intervenors and Defendant) or Section XII (Potential Force Majeure Between Ohio and Defendant) of this Consent Decree.

III. DEFINITIONS

12. Unless otherwise stated, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, RCRA, and CAA and their implementing regulations as of the lodging of this Consent Decree.

13. The following terms used in this Consent Decree or the attachments hereto shall be defined as follows:

a. "Additional Areas" shall mean (1) any areas of Dicks Creek Floodplain adjacent to Reach 1 or Reach 2 not owned by AK Steel; (2) areas where Hazardous Waste or Hazardous Constituents have migrated from the Facility; and (3) areas identified on Exhibit C to Attachment 2.

b. "Area of Concern" means any area of the Facility under the control of the owner or operator where a release to the environment of Hazardous Waste(s) or Hazardous Constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

c. "Consent Decree" means this Consent Decree in Partial Resolution of Pending Claims and all attachments hereto, as well as plans, reports, schedules, and other items and deliverables approved by EPA pursuant to this Consent Decree. In the event of a conflict between this Consent Decree and any attachment hereto, or plan, report, item or deliverable approved by EPA pursuant to this Consent Decree, this Consent Decree shall govern.

d. "Contaminants" and/or "Contamination" shall mean any "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), or 40 C.F.R. § 260.10; any "hazardous constituent" listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264; any "hazardous waste" as defined in R.C. 3734.01(J); and any "industrial waste" or "other waste" as defined in R.C. 6111.01, as each of these provisions is codified at the date of lodging, provided, however, that only "industrial waste" or "other waste" that impairs or has the potential to impair water quality in a water of the State of Ohio is included in this definition.

e. "Contractor" means any contractor, subcontractor, consultant, or laboratory retained to conduct or monitor any portion of the Work or SEP performed pursuant to this Consent Decree.

f. "Corrective Measures Study" or "CMS" means that portion of the RCRA corrective action process that provides for identification and evaluation of potential remedial alternatives for the releases that have been identified at and/or from the Facility as part of the RFI.

g. "Data Quality Objectives" means the qualitative or quantitative statements expressing acceptable levels of uncertainty. The Data Quality Objectives process is designed to

collect data that are scientifically valid, defensible and of known precision and accuracy relative to the use(s) for which the data are obtained.

h. "Day" as used in this Consent Decree shall mean calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day. Working day means a day other than a Saturday, Sunday, or Federal holiday.

i. "Defendant" means AK Steel Corporation.

j. "Dicks Creek" means the perennial stream which flows generally from east to west adjacent to Defendant's Facility, and which is a tributary of the Great Miami River. Relevant portions of Dicks Creek are shown on the map attached hereto as Attachment 5.

k. "EPA" means the United States Environmental Protection Agency and any successor agencies or departments.

l. "Existing Contamination" means (1) with respect to Reach 1 and Reach 2 of Dicks Creek, the Outfall 002 channel, and Monroe Ditch, any Contaminants present in such areas as of the date of lodging of this Consent Decree; and (2) with respect to the Floodplain, any Contaminants present in the Floodplain as of the date of entry of this Consent Decree.

m. "Facility" means the steel production facility owned and/or operated by Defendant and located at 1801 Crawford Street in Middletown, Butler County, Ohio and all contiguous property owned by Defendant, including the slag processing area. The Facility is shown on Attachment 5.

n. "Floodplain" means the area within the Floodplain boundaries designated on Attachment 6.

o. "Government Plaintiffs" means the United States and the State of Ohio.

p. "Hazardous Constituents" shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 as codified at the date of lodging, or any constituent identified in Appendix IX to 40 C.F.R. Part 264 as codified at the date of lodging.

q. "Hazardous Waste" shall mean hazardous wastes as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), or 40 C.F.R. § 260.10, as codified at the date of lodging, and shall include Hazardous Constituents as defined above.

r. "Hazardous Waste Management Unit" or "HWMU" shall mean a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of such units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, a tank and its associated piping and containment system, and a container storage area, including the containers and the land or pad upon which they are placed.

s. "Interceptor Trench" means the sump, piping and other appurtenances, and activated carbon treatment system, which was installed in January 1998, and subsequently extended, designed to capture and treat seeps containing polychlorinated biphenyls ("PCBs") emanating from the slag processing area at the Facility.

t. "Interim Measures" mean the actions required to be initiated by the Defendant under this Consent Decree prior to completion of the Corrective Measures Study to control or abate potential threats to human health and the environment and/or to prevent or minimize the release or potential release of Hazardous Wastes, Hazardous Constituents or Contaminants at or from the Facility or Additional Areas. Interim Measures include each of the measures identified

in Section II (Scope) of Attachment 1 to this Consent Decree, as well as any additional Interim Measures that are proposed by Defendant pursuant to Subparagraph 22.c and subsequently approved by EPA.

u. "Interim Measures SOW" means the Scope of Work for performing the Interim Measures under this Consent Decree, which is attached hereto as Attachment 1.

v. "Intervenors" means the Sierra Club and Natural Resources Defense Council.

w. "Monroe Ditch" means the stream which is a tributary of Dicks Creek and flowing generally from south to north adjacent to Defendant's closed landfills at the west end of the slag processing area of the Facility, and is also known as the landfill tributary. Relevant portions of Monroe Ditch are shown on the map attached hereto as Attachment 5.

x. "OEPA" means the Ohio Environmental Protection Agency and any successor agencies or departments.

y. "Ohio" means the State of Ohio, on behalf of OEPA.

z. "Plaintiffs" shall mean the United States, Ohio, and the Intervenors collectively.

aa. "RCRA Facility Investigation" or "RFI" means that portion of the RCRA corrective action process under this Consent Decree with the purpose of determining the nature, impact and extent of releases of Hazardous Waste, Hazardous Constituents or Contaminants from regulated units, solid waste management units, areas of concern, and other source areas at and from the Facility and to gather all necessary data to support a Corrective Measures Study, which includes the activities described in the RFI/CMS SOW that is attached hereto as Attachment 2.

bb. "Reach 1" means the stretch of Dicks Creek extending from approximately 50 feet upstream of Defendant's Outfall 002 to approximately 50 feet downstream of the former United States Geological Service ("USGS") gauging station downstream of Yankee Road in Middletown, Ohio.

cc. "Reach 2" means the stretch of Dicks Creek extending from the terminus of Reach 1 to approximately three hundred (300) feet downstream of the Main Street Bridge in Middletown, Ohio.

dd. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, seeping, leaching, dumping, or disposing of Hazardous Waste, Hazardous Constituents or Contaminants into the environment.

ee. "RFI/CMS SOW" means the Scope of Work for performing a RCRA Facility Investigation and a Corrective Measures Study at the Facility under this Consent Decree, which is attached hereto as Attachment 2.

ff. "SEP SOW" means the Scope of Work for performing the Supplemental Environmental Project described in Paragraph 25 of this Consent Decree that is attached hereto as Attachment 3.

gg. "Solid Waste Management Unit or SWMU" shall mean any discernable unit a which solid wastes have been placed at any time regardless or whether the unit was intended the management of solid or hazardous wastes. Such units include any area at the Facility wh solid wastes have been routinely or systematically placed or released.

hh. "Stabilization" shall mean, solely for purposes of this Consent Decree, any corrective action activity required to be initiated pursuant to Paragraph 22 at any time prior to completion of the CMS in order to:

1) prevent or minimize any significant further spread of previously-released Contaminants in a near to mid-term (5-10 year) time frame;

2) prevent new contamination from occurring; or

3) control or reduce actual or imminent exposure threats to humans or ecological receptors at and/or near the Facility and Additional Areas;

based on a determination that one or more of the foregoing conditions may present a significant risk to human health and the environment. For purposes of this Consent Decree, Stabilization shall not include Interim Measures identified in Section II (Scope) of Attachment 1 or any additional Interim Measures that are proposed by Defendant pursuant to Subparagraph 22.c and subsequently approved by EPA.

ii. "Submission or Submittal" shall mean any Workplan, report, progress report, or any other written document Defendant is required by this Consent Decree to send to EPA.

jj. "United States" means the United States of America, on behalf of EPA.

kk. "Work" means all activities to be performed pursuant to Section V (Corrective Action) and the SOWs attached as Attachments 1 and 2 of this Consent Decree.

ll. "Workplan" shall mean a detailed plan prepared by Defendant to satisfy the requirements of this Consent Decree or any corresponding scope of work specified in Attachments 1 and 2.

IV. COMPLIANCE OBLIGATIONS

14. Compliance.

a. Defendant shall achieve and maintain compliance with Defendant's current NPDES Permit No. 1ID00001*ID and any renewal or modification of such permit ("NPDES

Permit"), the provisions of the CWA, 33 U.S.C. § 1281 *et seq.* and regulations promulgated thereunder, R.C. Chapter 6111, and rules promulgated thereunder. Defendant shall maintain compliance at the coke by-product recovery plant with the leak detection and repair requirements of 40 C.F.R. Part 61, Subpart L, Sections 61.132(b) and (c), and 61.135(a) and (d).

b. Defendant shall not recommence operations of the Sinter Plant Windbox Stack unless and until it provides written notification to Plaintiffs of its intent to start up the Sinter Plant at least sixty (60) days prior to the startup. Within ninety (90) days after startup of the Sinter Plant, Defendant shall conduct a particulate emissions test at the outlet of the windbox stack. Defendant shall provide a copy of the test report to Plaintiffs within thirty (30) days following completion of the test.

c. If Defendant recommences operation of the Sinter Plant pursuant to Subparagraph 14.b, Defendant shall, upon startup of the Sinter Plant, comply with all applicable state and federal regulations, including but not limited to, Ohio Administrative Code ("O.A.C.") 3745-17-11.

d. Within sixty (60) days of the entry of this Consent Decree, Defendant shall submit to OEPA an after-the-fact permit-to-install ("PTI") application pursuant to O.A.C. Chapter 3745-42, for the as-built PCB interceptor trench and treatment system located at the OMS site.

e. Within thirty (30) days after entry of this Consent Decree, Defendant is enjoined and ordered to submit to OEPA an updated RCRA Part A Permit Application in order to attain compliance with the Permit by Rule requirements of O.A.C. 3745-50-46(B).

15. Compliance Reporting.

a. Defendant shall submit to EPA, on a monthly basis, effluent Discharge Monitoring Reports ("DMRs") either in electronic format or hard copy format on the OEPA 4500 report form preprinted by OEPA for each individual sampling station. Such DMRs are to be submitted no later than the 15th day of the month following the reporting period.

b. Defendant shall submit to EPA and Intervenors a copy of each report that Defendant is required to submit to OEPA pursuant to Section III, Paragraphs 11.B, 11.D or 12.C of NPDES permit no. 1ID00001*ID or any modification or renewal thereof.

c. Defendant shall submit to EPA, OEPA and Intervenors on a semiannual basis, a report that details instances where the repair requirements of 40 C.F.R. §§61.132(b)(3) and (4) and 61.135(a) and (d) were not met.

d. For purposes of submission to EPA, all reports and submissions required pursuant to Subparagraphs 15.a and 15.b of this Paragraph shall be submitted to the following individual in lieu of the United States' contacts listed in Paragraph 39:

Branch Secretary
U.S. Environmental Protection Agency, Region 5
Water Division
Water Enforcement and Compliance Assurance Branch
Mail Code: WC-15J
77 West Jackson Blvd.
Chicago, IL 60604

e. Nothing in this Consent Decree alters or affects in any way any reporting requirements established by the NPDES Permit.

V. CORRECTIVE ACTION

16. All Work undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the attached Scopes of Work ("SOW"); all EPA-approved Workplans; RCRA

and other applicable Federal laws and their implementing regulations; any applicable Ohio laws and their implementing regulations; and in a manner consistent with relevant federal and Ohio guidance documents (hereinafter "guidance documents"), including guidance documents issued or revised following entry of this Consent Decree, as specified in Subparagraphs 16.a through 16.f, below. Attachment 4 identifies guidance documents relevant to the Work required pursuant to the Consent Decree; however, it is not intended to identify all guidance documents that may be relevant to every activity that may be undertaken pursuant to the Consent Decree.

a. If, prior to Defendant's submission of any plan or other submittal required pursuant to this Consent Decree, any Party believes that any additional or revised guidance documents not listed in Attachment 4 are relevant to Work to be performed pursuant to such plan or submittal, such Party shall, as early as possible, provide to the other Parties written notice identifying such additional or revised guidance documents and describing in detail how such guidance would be applied to the Work to be performed. Any Party may request a conference to exchange views regarding the relevance and/or application of any such additional or revised guidance documents. Following any conference or if no conference is held, within 30 days, EPA shall issue a written determination concerning the relevance and application of any identified additional or revised guidance documents. Any Party that does not agree with EPA's determination may invoke the procedures of Section XIII (Dispute Resolution) of the Consent Decree.

b. If, following Defendant's submission of any plan or other submittal required pursuant to the Consent Decree, any Party believes that any additional or revised guidance documents not listed in Attachment 4 are relevant to Work to be performed pursuant to such plan

or submittal, such Party shall, as early as possible, provide to the other Parties written notice identifying such additional or revised guidance documents and describing in detail how the guidance would be applied to the Work to be performed. EPA's determination concerning the relevance of any additional or revised guidance document identified by any party shall be included in EPA's approval, disapproval or modification of the plan or other submittal, and shall be subject to the provisions of Sections IX (Submissions and Approvals) and XIII (Dispute Resolution) of the Consent Decree.

c. Following approval of any plan or other submittal required pursuant to the Consent Decree, any Party may provide to the other Parties written notice identifying additional or revised guidance documents that it believes need to be applied to any activities remaining to be undertaken pursuant to such plan or submittal and describing in detail how such guidance would be applied to the Work to be performed. Any Party may request a conference to exchange views regarding the relevance and/or application of any such additional or revised guidance documents. Following any conference or if no conference is held, within 30 days, EPA shall issue a written determination concerning the relevance and application of any identified additional or revised guidance documents. Any Party that does not agree with EPA's determination may invoke the procedures of Section XIII (Dispute Resolution) of the Consent Decree. In accordance with EPA's written determination, Defendant shall apply such additional or revised guidance documents prospectively, to the Work remaining to be undertaken pursuant to such plan or submittal, without prejudice to the existing Work and subject to the provisions of Section XIII (Dispute Resolution) of the Consent Decree. Nothing in this Paragraph shall be construed to limit application of the provisions of Paragraph 22 of this Consent Decree.

d. Prior to Defendant's submission of any plan or other submittal required pursuant to the Consent Decree, or any proposed modification of such plans or other submittals, any Party may identify in writing and as early as possible any conflict or inconsistency between guidance documents relevant to the Work covered by such plan or submittal. Any Party may request a conference to exchange views regarding any identified conflicts or inconsistencies. As soon as possible following any such conference or if no conference is held, within 30 days, EPA shall issue a written determination regarding any identified conflicts or inconsistencies and how they should be resolved. Any Party that does not agree with EPA's determination may invoke the procedures of Section XIII (Dispute Resolution) of the Consent Decree.

e. Following Defendant's submission of any plan or other submittal required pursuant to the Consent Decree, or any proposed modification of such plans or other submittals, any Party may identify any conflict or inconsistency between guidance documents relevant to the Work covered by such plan or submittal. Following identification of any conflict or inconsistency between guidance documents, any Party may request a conference to exchange views regarding the identified conflicts or inconsistencies. EPA's approval or disapproval of the plan or other submittal, or modification thereof, if applicable, shall specify how, and to what extent, any identified conflicting or inconsistent guidance documents shall apply to the Work covered by the plan or other submittal, or modification thereof, subject to the provisions of Section IX (Submissions and Approvals) and Section XIII (Dispute Resolution) of the Consent Decree.

f. If any conflict or inconsistency between guidance documents relevant to any Work required pursuant to the Consent Decree is identified by any Party following approval of

any plan or submittal covering such Work, any Party may request a conference to exchange views regarding the identified conflicts or inconsistencies. Following any such conference or if no conference is held, within 30 days, EPA shall issue a written determination as soon as possible specifying how, and to what extent such conflicting or inconsistent guidance documents shall apply to Work required pursuant to the Consent Decree. Any Party that does not agree with EPA's determination may invoke the procedures of Section XIII (Dispute Resolution).

17. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Defendant shall perform Interim Measures in accordance with all provisions, terms, and schedules set forth in this Consent Decree, including any attachments hereto. The Interim Measures to be performed by Defendant are more fully described in the Interim Measures SOW attached hereto as Attachment 1.

18. Pursuant to Section 3008(h) of RCRA, 42 U.S,C, § 6928(h), Defendant shall perform a RCRA Facility Investigation or RFI in accordance with all provisions, terms, and schedules set forth in this Consent Decree, including any attachments hereto. The RFI to be performed by Defendant is more fully described in the RFI/CMS SOW attached hereto as Attachment 2, including Exhibit A (Preliminary List of HWMUs, SWMUs and AOCs, Spills and Additional Areas), Exhibit B (Map of SWMUs and AOCs) , Exhibit C (Map of Additional Areas for Evaluation During the RFI) and Exhibit D (Scope of Work for Intrusive Investigation of OMS Area Landfills).

19. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Defendant shall perform a Corrective Measures Study or CMS in accordance with all provisions, terms, and schedules set

forth in this Consent Decree, including any attachments hereto. The CMS to be performed by Defendant is more fully described in the RFI/CMS SOW attached hereto as Attachment 2.

20. Pursuant to Section IX (Submissions and Approvals) of this Consent Decree, copies of each of the plans, reports, schedules, and other items and deliverables required under this Consent Decree or either of Attachments 1 and 2 must be submitted to EPA for approval. Copies shall be provided to Plaintiffs in accordance with the requirements of Section VIII (Notices and Submissions).

21. If, prior to Defendant's Request for an Acknowledgment of Completion pursuant to Section XVI (Completion of the Work) of this Consent Decree, EPA, after reasonable opportunity for review and comment from OEPA and Intervenors, determines that Defendant's performance of the Work is inadequate or incomplete, EPA will notify Defendant in writing of the activities that must be undertaken to complete the Work, and will set forth in the notice a reasonable period for Defendant to complete the Work. Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to any right provided in this Consent Decree to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution).

22. Additional Work.

a. "Additional Work" shall mean any activity or requirement, including investigatory work, engineering evaluations, Stabilization activities or procedure/methodology modifications, not otherwise required under this Consent Decree or any EPA-approved Workplan, and which is approved by EPA pursuant to this Paragraph 22.

b. After reasonable opportunity for review and comment by OEPA and the Intervenors, EPA may determine that Additional Work is necessary:

i. to assure that the RFI and CMS implemented pursuant to this Consent Decree adequately provide:

(1) an identification and evaluation of the nature, and extent of any releases of Hazardous Waste or Hazardous Constituents at or from the Facility, and the impact of any such releases on human health and the environment,

(2) an identification and evaluation of appropriate corrective measures alternatives necessary to prevent, mitigate and/or remediate any releases of Hazardous Waste or Hazardous Constituents at or from the Facility, and

(3) a basis for EPA's subsequent determinations concerning the need for and nature of any corrective measures that may be appropriate to address any releases of Hazardous Waste or Hazardous Constituents at or from the Facility; or

ii. for Stabilization.

c. In addition, Defendant may submit for approval by EPA, after reasonable opportunity for review and comment by OEPA and the Intervenors, a workplan describing Additional Work that AK Steel proposes to implement in addition to the tasks described in Section II of Attachment 1 and included in any EPA-approved Workplan.

d. After reasonable opportunity for review and comment by OEPA and Intervenors as provided in Subparagraphs 22.b and 22.c above, EPA will notify Defendant in writing of its determination that Additional Work is necessary or (in the case of Additional Work proposed by Defendant) appropriate. The notice shall specify a deadline for submission of a workplan for

such Additional Work, if required, and specify the contents of such workplan. In the case of any determination to require Additional Work pursuant to Subparagraph 22.b, the notice shall also identify the provision(s) of Subparagraph 22.b that provide the basis for EPA's determination that Additional Work is necessary.

e. Within twenty (20) days after receipt of any notice referred to in Subparagraph 22.d or such longer time as may be agreed to by the Parties in writing, Defendant shall have the opportunity to meet or confer with EPA, as well as OEPA and the Intervenors, to discuss and reach agreement concerning the Additional Work.

f. If Defendant does not exercise the opportunity to meet or confer with EPA in accordance with Subparagraph 22.e, Defendant shall proceed to take any action required by the notice, including submission of a Workplan for Additional Work, if applicable, in accordance with the schedule established pursuant to Subparagraph 22.d.

g. Based on any meeting or conference pursuant to Subparagraph 22.e, EPA may, after reasonable opportunity for review and comment by OEPA and Intervenors, agree to withdraw or modify any notice pursuant to Subparagraph 22.d or determine that the originally proposed modifications or conditions are appropriate. Any such decision shall be in writing.

h. Unless EPA withdraws the notice issued to Defendant in accordance with Subparagraph 22.g, following any meeting or conference pursuant to Subparagraph 22.e, Defendant shall proceed to take any action required by the notice issued pursuant to Subparagraph 22.d, or any modification of the notice pursuant to Subparagraph 22.g, including the submission of a Workplan for Additional Work, if applicable, subject only to formal dispute resolution pursuant to Paragraph 75.

i. Upon approval of a Workplan by EPA, Defendant shall implement it in accordance with the schedule and provisions contained therein. Provided, however, that the schedule may be revised to the extent that 1) Defendant has notified Plaintiffs of the need to revise the schedule for submittal and the reasons for the revisions of the schedule at least twenty-one (21) days in advance of the original deadline, and 2) the Parties have agreed upon a revised schedule in advance of the original deadline.

23. Project Coordinator.

a. Within fifteen (15) days of the effective date of this Consent Decree, EPA, OEPA and Defendant shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Decree and for designating a person to act in their absence. The EPA Project Coordinator will be EPA's designated representative for the Facility. To the maximum extent practicable, all communications between Defendant, EPA, and OEPA and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Consent Decree shall be directed through the Project Coordinators, except as provided in Section VIII (Notices and Submissions) and Paragraph 15.d. EPA, OEPA, and Defendant shall each notify each Party in writing of the Project Coordinator it has selected.

b. Within fifteen (15) days of the effective date of this Consent Decree, Intervenors shall designate a single Project Representative, who shall be responsible for (i) providing EPA with any comments of Intervenors on any plan, report, schedule, or other item or deliverable that Defendant submits for approval pursuant to this Consent Decree; and (ii) presenting any positions of Intervenors with respect to any issues that arise during informal dispute resolution

pursuant to Paragraph 72 or during any meeting or conference among the parties pursuant to Paragraph 22 or Sections IX (Submissions and Approvals) or XVI (Completion of the Work) of this Consent Decree. Intervenors shall notify each party in writing of the Project Representative that it has selected.

c. Defendant, EPA and OEPA may change their Project Coordinators, and Intervenors may change their Project Representative, but agree to provide at least fourteen (14) days written notice prior to any such change, where practicable.

d. The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of Work.

24. Assurances of Financial Responsibility for Completing the Work

a. Cost Estimates Within sixty (60) days after the effective date of this Consent Decree Defendant shall submit to EPA and OEPA, for approval by EPA after consultation with OEPA, a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work. The initial cost estimate must account for the total costs of the Work for the entire period of this Consent Decree, including any necessary long term costs, such as operation and maintenance costs and monitoring costs. A third party is a party who (1) is neither a parent nor a subsidiary of Defendant, (2) does not share a common parent or subsidiary with Defendant, and (3) is in no way affiliated with Defendant. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Facility.

i. Concurrent with the submission of a Workplan for Additional Work required under Paragraph 22, Defendant shall submit revised detailed written estimate(s),

in current dollars, of the cost of hiring a third party to perform the Additional Work.

ii. Until the Work required by this Consent Decree is completed, Defendant must annually adjust the cost estimate(s) for inflation and submit the adjusted cost estimate(s) to Plaintiffs by March 31 after the close of Defendant's previous fiscal year. In addition, Defendant must adjust the cost estimate(s) and submit the adjusted cost estimate(s) to Plaintiffs if any Additional Work is required, pursuant to Paragraph 22, or if any other condition increases the cost of the Work to be performed under this Consent Decree.

b. Assurances of Financial Responsibility for Completing the Work

i. In order to secure the completion of the Work in accordance with this Consent Decree, Defendant shall establish financial assurance for the benefit of EPA. Within sixty (60) days after the effective date of this Consent Decree, concurrently with Defendant's submission of the initial cost estimate required by Subparagraph 24.a.i , Defendant shall submit draft financial assurance instruments to EPA and OEPA, for approval by EPA after consultation with OEPA. Within thirty (30) days after approval of both the initial cost estimate and the draft financial assurance instruments, whichever date is later, Defendant shall establish financial assurance in an amount at least equal to the approved initial cost estimate.

ii. Defendant may use any of the instruments or mechanisms generally described in Subparagraphs 24.b.ii.(1)-(6). Any and all financial assurance instruments or mechanisms provided pursuant to this Consent Decree shall be consistent with 40

C.F.R. § 264.151, to the extent appropriate to the Work required under this Consent Decree, and shall be subject to approval by EPA after consultation with OEPA.

(1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency. The trust agreement shall provide that the trustee shall make payments from the fund as the EPA shall direct in writing: (A) to reimburse Defendant from the fund for expenditures made by Defendant for Work performed in accordance with this Consent Decree, or (B) to pay any other person whom the EPA determines has performed or will perform the Work in accordance with this Consent Decree. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that (A) EPA has agreed to reduce the amount of financial assurance required pursuant to Subparagraph 24.b.xvi or (B) EPA has issued an Acknowledgment of Final Completion of the Work pursuant to Section XVI (Completion of the Work) of the Consent Decree.

(2) A surety bond guaranteeing performance of the Work in accordance with this Consent Decree or payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Subparagraph 24.b.ii.(1) above. The surety company issuing the bond must be an independent, third-party, in no way affiliated with Defendant, and be among those listed as

acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury.

(3) One or more irrevocable letters of credit, payable at the direction of EPA, into a standby trust fund that meets the requirements of the trust fund in Subparagraph 24.b.ii.(1) above. The letter(s) of credit must be issued by one or more financial institution(s): (A) with the authority to issue letters of credit, and (B) whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(4) A policy of insurance that: (A) provides EPA with acceptable rights as a beneficiary thereof; and (B) is issued by an insurance carrier with the authority to issue insurance policies in the applicable jurisdiction(s), who is independent, a third-party as defined in Subparagraph 24.a, and whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy must be issued for a face amount at least equal to the current cost estimate for the Work to be performed under this Consent Decree, except where costs not covered by the insurance policy are covered by another instrument, as permitted in Subparagraph 24.b.viii of this Paragraph. The Policy must provide that the insurer shall make payments as the EPA shall direct in writing: (A) to reimburse Defendant for expenditures made by Defendant for Work performed in accordance with this Consent Decree, or (B) to pay any other person whom the EPA determines has performed or will perform the Work in accordance with this Consent Decree, up to an amount equal to the face amount of the policy.

(5) A written corporate guarantee, executed in favor of the EPA by one or more of the following: (A) a direct or indirect parent company, or (B) a company that has a "substantial business relationship" with Defendant (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Consent Decree or to establish a trust fund as permitted by Subparagraph 24.b.ii.(1); provided, however, that any company providing such a guarantee must demonstrate that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work that it proposes to guarantee; or

(6) A written financial test; provided, however, that Defendant must demonstrate that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work that it proposes to guarantee.

iii. The financial assurance instruments or mechanisms authorized by Subparagraph 24.b.ii shall be issued for a face amount at least equal to the current cost estimate for the Work to be performed under this Consent Decree, except where costs not covered by the instrument or mechanism are covered by another instrument or mechanism, as permitted in Subparagraph 24.b.viii.

iv. If Defendant seeks to establish financial assurance by using any surety bond or letter of credit, Defendant shall also establish and maintain a standby trust fund into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA, pursuant to Subparagraph 24.b.xiii.

v. If Defendant seeks to establish financial assurance by providing a corporate guarantee or financial test pursuant to Subparagraph 24.b.ii.(5) or (6), Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Consent Decree, including: (A) initial submission of required financial reports and statements from the chief financial officer and independent certified public accountant of Defendant or its corporate guarantor, as applicable; (B) annual re-submission of such reports and statements within ninety (90) days after the close of each fiscal year of Defendant or its corporate guarantor, as applicable; and (C) notification that Defendant or, if applicable, its corporate guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1), which notice shall be provided to EPA within ninety (90) days after the close of Defendant's fiscal year (in the case of any instance in which Defendant no longer satisfies such financial test requirements) or within ninety (90) days after the close of any corporate guarantor's fiscal year (in the case of each instance in which the corporate guarantor no longer satisfies such financial test requirements). EPA reserves the right to request additional information (including financial statements and accountant's reports) from the Defendant or corporate guarantor at any time.

vi. For purposes of the corporate guarantee and financial test described in Subparagraphs 24.b.ii.(5) and (6) above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including

obligations under CERCLA, RCRA, UIC, TSCA and any other state or tribal environmental obligation) for which the Defendant or corporate guarantor is demonstrating assurance through the financial test in accordance with 40 C.F.R. § 264.143(f), including the cost of the Work to be performed in accordance with this Consent Decree.

vii. For purposes of the corporate guarantee and financial test described in Subparagraphs 24.b.ii.(5) and (6) above, references in 40 C.F.R. § 264.143(f) to a "special report from the owner's or operator's certified public accountant to the owner or operator" shall mean a "report of procedures and findings from Defendant's (or, if applicable, Defendant's corporate guarantor's) certified public accountant resulting from an agreed-upon procedures engagement that describes the procedures performed and related findings, including whether or not discrepancies were found in the comparison of information included in the letter from Defendant's (or Defendant's corporate guarantor's) Chief Financial Officer (CFO) and Defendant's (or Defendant's corporate guarantor's) independently audited, year-end financial statements for the latest fiscal year, including all notes and attachments. Where discrepancies exist between Defendant's (or Defendant's corporate guarantor's) CFO letter and Defendant's (or Defendant's corporate guarantor's) independently audited, year-end financial statements, the report of procedures and findings will provide a line-by-line reconciliation of each discrepancy."

viii. Defendant may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Consent

Decree, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

ix. The form and substance of any and all financial assurance instrument(s) provided pursuant to this Consent Decree (including, but not limited to, the initial trust fund, irrevocable letter of credit, surety bond, insurance policy, or corporate guarantee and financial documentation required pursuant to 40 C.F.R. § 264.143(f)(3)) shall be consistent with the requirements of such forms contained in 40 C.F.R. § 264.151, to the extent appropriate to the Work required under this Consent Decree and shall have been pre-approved by EPA after consultation with OEPA. The initial financial assurance instruments, including all required documentation, shall be submitted by Defendant to the EPA Project Coordinator.

x. Except as provided in Subparagraph 24.b.xii below, in the event that:

(1) EPA, after consultation with OEPA, determines at any time that a financial assurance instrument provided pursuant to this Paragraph is inadequate, or otherwise no longer satisfies the requirements set forth or incorporated by reference in this Paragraph, whether such determination is based on an increase in the estimated cost of completing the Work, any financial reports or statements required pursuant to Subparagraph 24.b.v, or any other information relevant to the financial condition of AK Steel or any of its financial assurance providers, or

(2) Defendant becomes aware at any time of information indicating that any financial assurance instrument provided pursuant to this Paragraph is inadequate or otherwise no longer satisfies the requirements set forth or

incorporated by reference in this Paragraph, whether due to an increase in the estimated cost of completing the Work, information in any reports or statements required pursuant to Subparagraph 24.b.v, or any other information relevant to the financial condition of AK Steel or any of its financial assurance providers, Defendant, within thirty (30) days of receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of becoming aware of such information, shall obtain and submit for approval a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Paragraph. Such revised or alternative form of financial assurance shall be submitted by Defendant to the EPA Project Coordinator.

xi. Defendant's inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Defendant to complete the Work in strict accordance with the terms of this Consent Decree.

xii. Any and all financial assurance instruments provided pursuant to Subparagraphs 24.b.ii.(2), (3), (4) or (5) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Defendant and the EPA Project Coordinator at least one hundred and twenty (120) days prior to expiration, cancellation or termination of the instrument of a decision to cancel, terminate, or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the 120 days will begin to run with the date of receipt of the notice by both the EPA Project Coordinator and Defendant. If the EPA Project

Coordinator and Defendant receive notice on different dates, the 120 day period will begin to run from the latter date of receipt. Furthermore, if Defendant has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance following receipt of such notice by both Defendant and the EPA Project Coordinator, then the EPA Project Coordinator shall have the authority to access the financial assurance mechanism in accordance with the following:

(1) for surety bonds addressed in Subparagraph 24.b.ii.(2), if Defendant does not obtain written approval for such alternative financial assurance within 90 days following receipt of such notice by both Defendant and the EPA Project Coordinator, the surety shall place funds in the amount guaranteed in the standby trust fund as directed by the EPA Project Coordinator;

(2) for a letter of credit addressed in Subparagraph 24.b.ii.(3), if Defendant does not obtain written approval for such alternate financial assurance within ninety (90) days following receipt of such notice by both Defendant and the EPA Project Coordinator, then the EPA Project Coordinator may draw upon the letter of credit;

(3) for insurance policies addressed under Subparagraph 24.b.ii.(4), the policy will remain in full force and effect;

(4) for written corporate guarantees addressed under Subparagraph 24.b.ii.(5), pursuant to the terms of the guarantee, which pursuant to Subparagraph 24.b.ii.(5) must satisfy the requirements of 40 C.F.R. § 264.143(f)(10).

The EPA Project Coordinator may delay accessing the financial assurance instrument, if the financial assurance provider grants an extension of the financial assurance instrument. During the last thirty (30) days of any extension, the EPA Project Coordinator may access the financial assurance instrument as set forth above.

xiii. Any and all financial assurance instruments provided pursuant to this Consent Decree shall provide for timely payment, as directed by EPA, or performance of the Work in accordance with this Consent Decree, or a combination of payment and Work, in the event that EPA determines that Defendant: (A) has ceased implementation of any portion of the Work, (B) is significantly or repeatedly deficient or late in its performance of the Work, or (C) is implementing the Work in a manner that may cause an endangerment to human health or the environment. In the event that EPA, after consultation with OEPA, determines that any of the circumstances described in Clauses (A), (B), or (C) of this Subparagraph 24.b.xiii has occurred, Defendant hereby acknowledges that EPA shall have the right to access without undue delay any and all financial assurance instruments provided pursuant to this Paragraph. The EPA Project Coordinator shall notify in writing both Defendant and the financial assurance provider of such a determination, and shall direct the financial assurance provider to, as expeditiously as practicable, (1) arrange for performance of the Work or (2) deposit into the standby trust fund, or a newly created trust fund meeting the requirements of Subparagraph 24.b.ii.(1) approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Consent Decree.

xiv. Defendant may invoke the procedures set forth in Section XIII (Dispute Resolution) of this Consent Decree to dispute EPA's determination that any of the circumstances described in Clauses (A), (B), or (C) of Subparagraph 24.b.xiii have occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider, under Subparagraph 24.b.xiii, to fund the trust fund, but if Defendant disputes EPA's determination under Subparagraph 24.b.xiii, EPA will not direct the trustee to make any payments from the trust fund, pending resolution of the dispute. If Defendant prevails in dispute resolution, all funds in the trust fund, including any interest that accrued on the funds, shall be returned to the financial assurance provider to the extent that (A) the financial assurance provider is the Defendant, or (B) the financial assurance provider is a third party who has agreed to continue providing financial assurance to the Defendant as it had prior to EPA's direction to deposit funds in a trust fund pursuant to Subparagraph 24.b.xiii.

xv. If EPA has determined that any of the circumstances described in Clauses (A), (B), or (C) of Subparagraph 24.b.xiii have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Consent Decree from the financial assurance provider pursuant to this Consent Decree, then, upon receiving written notice from EPA, Defendant shall within ten (10) days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Consent Decree as of

such date, as determined by EPA.

xvi. If Defendant believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Consent Decree, Defendant may, on any anniversary date of the effective date of this Consent Decree, sixty (60) days prior to the close of the fiscal year, or at any other time agreed to by EPA after consultation with OEPA, submit a written proposal to EPA and OEPA for approval by EPA after consultation with OEPA to reduce the amount of the financial assurance provided under this Paragraph to the estimated cost of the remaining Work to be performed. The written proposal shall specify the cost of the remaining Work to be performed and the basis upon which such cost was calculated. EPA shall notify Defendant of its decision regarding such a proposal in writing within ninety (90) days of receipt of the proposal. Defendant may reduce the amount of the financial assurance only after receiving EPA's written decision and only in accordance with and to the extent permitted by such written decision.

xvii. If Defendant desires to change the form of financial assurance, Defendant may, no more than once per fiscal year, submit a written proposal to EPA and OEPA, for approval by EPA after consultation with OEPA, to change the form of financial assurance. Such a proposal shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and a detailed description of the proposed revised form of financial assurance. After reasonable opportunity for review and comment by OEPA, EPA shall notify the Defendant of its decision regarding such a proposal in writing. After receiving EPA's written acceptance,

Defendant may change the form of financial assurance in accordance with and to the extent permitted by such written acceptance.

xviii. At such time as EPA and Defendant have submitted for the Court's approval a joint stipulation providing for termination of the Defendant's obligations pursuant to Paragraph 124.b of this Consent Decree, Defendant may submit to the EPA Project Coordinator a written request that EPA release Defendant from the requirement to maintain financial assurance under this Paragraph 24, except with respect to the financial assurance requirement referred to in Subparagraph 124.c.ii. The EPA Project Coordinator shall notify both the Defendant and the provider(s) of the financial assurance that Defendant is released from such financial assurance obligations under this Consent Decree. Upon completion of all operation and maintenance activities required pursuant to this Consent Decree, Defendant may submit to the EPA Project Coordinator a written request that EPA release Defendant from all remaining financial assurance requirements under this Paragraph 24. In all cases, the provider of the financial assurance may be released from its obligations under the instrument only upon a written release from the EPA Project Coordinator.

c. Defendant shall provide copies of the financial assurance documents, instruments and information submitted to EPA and OEPA pursuant to Subparagraphs 24.a. and 24.b to Intervenors for their review. To the extent that such documents contain information which Defendant identifies as confidential business information protected from disclosure under federal and Ohio law, Defendant will provide Intervenors with such confidential business information following entry into a confidentiality agreement. This confidentiality agreement will be

provided to Intervenors simultaneously with the submission of the confidential business information to EPA and OEPA. Nothing in this Paragraph 24 constitutes a waiver of a claim of confidentiality under federal or state law. Additionally, nothing in this Paragraph 24 is intended to restrict Intervenors' right to comment to EPA and OEPA concerning the financial assurance information submitted by Defendant. So long as Defendant has timely submitted to EPA financial assurance documents required under Paragraph 24, the process shall not be delayed in any way due to Intervenors' review of financial assurances documents, instruments or information.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

25. Defendant shall implement the Refrigerant Conversion Supplemental Environmental Project ("SEP"), as more fully described in the SEP SOW, attached hereto as Attachment 3 and incorporated herein by reference, in accordance with EPA's May 1, 1998, EPA Supplemental Environmental Projects Policy (the "SEP Policy"). The Parties agree that the SEP is intended to secure significant environmental or public health protection and improvements.

26. Performance of the SEP shall not be construed as prohibiting, altering or in any way limiting EPA's or OEPA's authority to enforce any applicable environmental requirements at Defendant's facilities, or Defendant's duty to comply with such requirements.

27. The total expenditure for the SEP shall be in accordance with the specifications set forth in the SEP SOW and shall be not less than the following: $750,000. Defendant shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

28. Defendant hereby certifies that, as of the date of its execution of this Consent Decree, Defendant is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Defendant required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Defendant further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. In addition, Defendant certifies that the SEP had not been started by Defendant, or funds committed thereto by Defendant, prior to the commencement of settlement discussions in this matter, and that the SEP is being performed in settlement of this litigation. If, prior to entry of this Consent Decree, any change of circumstance affects the continued accuracy of any certification referred to in this Paragraph, Defendant shall expeditiously as practicable, but in no event later than ten (10) working days after the change in circumstance, describing the changed circumstance and identifying each certification that is no longer accurate.

29. SEP Reports.

a. Completion Report. Defendant shall submit a SEP Completion Report to Plaintiffs within sixty (60) days after the SEP described in Paragraph 25 has been completed. The SEP Completion Report shall contain the following information:

i. A detailed description of the SEP as implemented, including a description of any deviations from the SEP SOW for the SEP, and, if deviations were necessary, a description of any operating problems encountered and the solutions thereto;

ii. Itemized costs for the SEP;

iii. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;

iv. A description of the environmental and public health benefits resulting from implementation of the SEP; and

v. A quantification of the direct and indirect benefits of pollutant reductions of the SEP.

b. Periodic Reports. Defendant shall submit any additional reports required by the SEP SOW to Plaintiffs in accordance with the schedule and requirements recited therein.

c. Defendant agrees that failure to submit the SEP Completion Report or any Periodic Report required pursuant to the SEP SOW above shall be deemed a violation of this Consent Decree and Defendant shall become liable for stipulated penalties pursuant to Section X (Stipulated Penalties).

d. Defendant shall submit all notices and reports required by this Section VI (Supplemental Environmental Project) of this Consent Decree in accordance with Section VIII (Notices and Submissions).

e. In itemizing its costs in the SEP Completion Report, Defendant shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit under the SEP Policy, those costs must be clearly identified as such. Eligible SEP costs include the costs of planning, designing, engineering, constructing and implementing the SEP, such as costs for engineering, purchasing and installing equipment, increased utility costs, and increased maintenance costs, but do not include overhead, additional employee time and salary not primarily attributable to maintaining the SEP, administrative expenses, legal fees, and oversight of a Contractor. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other

documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

30. In all reports that are to be submitted by Defendant under Paragraph 29, Defendant shall have a responsible corporate officer or, if specifically designated by Defendant for this purpose, the plant manager of the Facility, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

> I certify under penalty of law that the information contained in and accompanying this document is true, accurate, and complete. With respect to any portions of this document and its attachments for which I cannot personally verify truth and accuracy, I certify that such portions were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information
>
> submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
>
> Signature: _____
>
> Name: _____
>
> Title: _____

For purposes of this Consent Decree, "responsible corporate officer" shall mean a president, secretary, treasurer, or vice-president of the corporation in charge of the principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation.

31. EPA Review of SEP Completion Report.

a. After receipt of the SEP Completion Report pursuant to Paragraph 29 above, and reasonable opportunity for review and comment from OEPA and Intervenors, EPA, within sixty (60) days, shall provide Defendant with one of the following: i) a written Notice of SEP Completion in which EPA concludes that the SEP has been completed satisfactorily; ii) a written Notice of Deficiency specifying any deficiencies in the SEP Completion Report and a grant of sixty (60) days, or such other period as may be agreed by the Parties, in which Defendant may correct such deficiencies and resubmit the revised SEP Completion Report; or iii) a written Notice of SEP Noncompletion in which EPA concludes that the SEP has not been completed in accordance with the requirements of this Consent Decree.

b. If EPA elects to exercise either option ii) or iii) above, EPA shall permit Defendant the opportunity to object in writing to the notice given pursuant to Subparagraph 31.a. within twenty (20) days of receipt of such notice. EPA and Defendant shall then have an additional thirty (30) days from the receipt by EPA of the objection to reach agreement on changes necessary. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA, after consultation with OEPA and Intervenors, shall provide a written statement of its decision on adequacy of the completion of the SEP to Defendant, which decision shall be final and binding upon Defendant unless Defendant invokes Dispute Resolution in accordance with Section XIII (Dispute Resolution).

32. Any public statement, oral or written, made by Defendant making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken on behalf of the U.S. Environmental Protection

Agency, Ohio Environmental Protection Agency, Sierra Club and Natural Resources Defense Council under the Clean Water Act, the Resource Conservation and Recovery Act, and the Clean Air Act."

33. Defendant agrees that it will not seek or take any tax deduction for any expenditure it makes in implementing the SEP, notwithstanding whether such expenditure may otherwise be deductible under federal, state, or local law, nor will Defendant either seek or take any other tax advantage for SEP expenditures that may otherwise be available under federal, state, or local law.

VII. CIVIL PENALTY

34. Within thirty (30) calendar days after the entry of this Consent Decree, Defendant shall pay a total civil penalty of $460,000 to the United States and Ohio as required by Paragraphs 35 and 36.

35. Defendant shall pay to the United States a civil penalty of $230,000 by Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank, referencing the civil action number, and DOJ case number (90-5-2-1-2189). Payment shall be made in accordance with the EFT instructions available from the U.S. Attorney's Office. Any EFT received at the United States Department of Justice lockbox after 3:00 p.m. (Eastern Time) will be credited on the next working day. Defendant shall simultaneously deliver copies of its EFT transmittal notice to "Section Secretary, Multimedia Branch 1, Office of Regional Counsel (C-14J), Region 5, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604-3590"; and to "Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, Attn: DOJ No. 90-5-2-1-2189."

36. Defendant shall pay to Ohio a civil penalty of $230,000 by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and shall be sent to:

Mark Lemmon (or a person subsequently designated by the State of Ohio) at:

Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

37. In addition to any other remedies, if Defendant fails to make timely payment of the Civil Penalty in accordance with Paragraphs 35 and 36 above, it shall be liable for interest and penalties for late payment as follows: (1) interest on any delinquent penalty amount at the percentage rate established by the Department of Treasury pursuant to 28 U.S.C. § 1961 (as of the due date), for any period after the due date; and (2) administrative costs of collecting the penalty calculated in accordance with 40 C.F.R. § 13.11(b) and assessed monthly throughout the period the penalty is overdue.

38. Any payment made pursuant to Section VII (Civil Penalty) of this Consent Decree is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax deductible expenditure for purposes of federal, state, or local law. Neither Defendant nor any of its parent or affiliated corporations shall deduct Defendant's payment of the Civil Penalty provided for herein for any tax purpose or otherwise obtain favorable tax treatment of such Civil Penalty payment.

VIII. NOTICES AND SUBMISSIONS

39. Unless and until written notice to the contrary is provided to Defendant, all notifications, reports and information required by this Consent Decree to be submitted shall be submitted to:

For the United States:

Two copies to:

Gary Cygan
Waste, Pesticide & Toxics Division
U.S. Environmental Protection Agency
Region 5, Mail Code DE-9J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

with copies submitted simultaneously to:

Robert Guenther, Esq.
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5, Mail Code C-14J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Compliance Tracker
U.S. Environmental Protection Agency
Region 5, Mail Code AE-17J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
DOJ # 90-5-2-1-2189

For the State of Ohio:

Two copies to :

Ohio EPA Southwest District Office
ATTN: Assistant District Chief
401 East Fifth Street
Dayton, Ohio 45402-2911

and one copy to:

Chief, Environmental Enforcement Section
Ohio Attorney General's Office, 25th floor
30 E. Broad Street
Columbus, Ohio 43215-3428

For Intervenors:

Marilyn Wall
Sierra Club
515 Wyoming Avenue
Cincinnati, Ohio 45215

Coordinating Attorney
Sierra Club
85 Second Street
San Francisco, CA 94105-3441

and

Ex Kano S. Sams II, Esq.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
100 Pine Street, Suite 2600
San Francisco, California 94111

40. Unless and until written notice to the contrary is provided to Plaintiffs, any and all notifications, reports, and information required by this Consent Decree to be submitted, as to Defendant, shall be submitted to:

Carl H. Batliner
AK Steel Corporation
703 Curtis Street
Middletown, OH 45043

Steven Francis
AK Steel Corporation
1801 Crawford Street
Middletown, OH 45043

and

David C. Horn, Esq.
AK Steel Corporation
703 Curtis Street
Middletown, OH 45043

41. Notifications, reports or other documents submitted by Defendant to the Plaintiffs shall be deemed submitted on the date they are either: (1) postmarked and sent by certified mail, return receipt requested; (2) sent by facsimile transmission, with confirmation of receipt; (3) sent by overnight delivery service; or (4) sent by electronic mail with confirmation of receipt.

IX. SUBMISSIONS AND APPROVALS

42. Except as set forth in Paragraph 24, all documents submitted for approval pursuant to this Consent Decree shall be submitted to EPA, OEPA, and the Intervenors. After review of any plan, report, schedule, or other item or deliverable that is required to be submitted to EPA for approval pursuant to this Consent Decree (other than SEP Completion Reports governed by Paragraph 31), EPA shall, after reasonable opportunity for review and comment by OEPA and the Intervenors, in writing: (a) approve, in whole or in part, the submission; (b) approve the submission with specified modifications; (c) approve the submission upon specified conditions; (d) disapprove, in whole or in part, the submission, directing that the Defendant modify the submission; or (e) any combination of the above.

43. In the event of approval pursuant to Subparagraph 42(a), Defendant shall proceed to take any action required by the plan, report, schedule or other item, as approved by EPA under Subparagraph 42(a).

44. In the event EPA approves any plan, report, schedule or other item or deliverable pursuant to Subparagraph 42(b) or (c), Defendant shall have the opportunity to meet or confer with EPA within twenty (20) days, or such longer time as may be agreed to by the Parties in

writing, to discuss and reach agreement concerning the modifications or conditions identified by EPA. OEPA and the Intervenors may participate in any such meeting or conference. If Defendant does not exercise the opportunity to meet or confer with EPA in accordance with the preceding sentence, Defendant shall proceed to take any action required by the plan, report, schedule or other item, in accordance with the modifications and/or conditions specified by EPA.

a. Based on the meeting or conference pursuant to this Paragraph, EPA may, after reasonable opportunity for review and comment by OEPA and Intervenors, either decide to revise any modifications or conditions identified in its approval under Subparagraph 42(b) or (c) or decide that its originally proposed modifications or conditions are appropriate. EPA shall provide written notice of any such decision to the Parties in accordance with Section VIII (Notices and Submissions).

b. Following any meeting or conference conducted pursuant to this Paragraph, Defendant shall proceed to take any action required by the plan, report, schedule or other deliverable as approved by EPA pursuant to Subparagraph 42(b) or (c), or as agreed to pursuant to Subparagraph 44.a, subject only to formal dispute resolution in accordance with Paragraph 75.

45. In the event EPA disapproves any plan, report, schedule or other item or deliverable pursuant to Subparagraph 42(d), Defendant shall have the opportunity to meet or confer with EPA within twenty (20) days, or such longer time as may be agreed to by the Parties in writing, to discuss and reach agreement on any identified deficiencies or modifications required by EPA. OEPA and the Intervenors may participate in any such meeting or conference. If Defendant does not exercise the opportunity to meet or confer with EPA in accordance with the preceding

sentence, Defendant shall proceed to take any action required by the plan, report, schedule or other item, in accordance with the modifications and/or conditions specified by EPA.

a. Based on the meeting or conference pursuant to this Paragraph, EPA may, after reasonable opportunity for review and comment by OEPA and Intervenors, decide to revise any disapproval or modifications required pursuant to Subparagraph 42(d), decide to withdraw its disapproval and approve, in whole or in part, the plan, report, schedule or other item or deliverable as originally submitted, or decide that the originally proposed disapproval and any required modifications are appropriate. EPA shall provide written notice of any such decision to the Parties in accordance with Section VIII (Notices and Submissions).

b. Following any meeting or conference conducted pursuant to this Paragraph, Defendant shall, subject only to formal dispute resolution in accordance with Paragraph 75:

i. within fifteen (15) working days or such other time as specified by EPA, correct the deficiencies consistent with EPA's decision pursuant to Subparagraph 45.a and resubmit plan, report, schedule, or other item or deliverable for approval; or

ii. if applicable, Defendant shall proceed to take any action required by the plan, report, schedule or other deliverable as approved by EPA pursuant to Subparagraph 45.a.

c. If a plan, report, schedule or other item or deliverable that is resubmitted for approval pursuant to Subparagraph 45.b.i is approved by EPA, after reasonable opportunity for review and comment by OEPA and the Intervenors, Defendant shall proceed to take any action required by the resubmitted plan, report, schedule or other item, as approved by EPA.

d. In the event that a resubmitted plan, report, schedule, or other item or deliverable is disapproved in whole or in part by EPA, after reasonable opportunity for review and comment by OEPA and Intervenors, EPA may again require the Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report, schedule, or other item or deliverable. If EPA disapproves or modifies the resubmitted plan, report, schedule or other item or deliverable pursuant to this Subparagraph, Defendant shall have the opportunity to meet or confer with EPA, as provided above in this Paragraph, to discuss and reach agreement on the deficiencies or modifications specified by EPA. OEPA and Intervenors may participate in any such meeting or conference. If Defendant does not exercise the opportunity to meet or confer with EPA in accordance with the preceding sentence, Defendant shall proceed to take any action required by the plan, report, schedule or other item, in accordance with the modifications and/or conditions specified by EPA. Following any meeting or conference, EPA shall provide the Parties with written notification of its decision either to withdraw, revise or reaffirm its disapproval or modification of the submission, and Defendant shall, subject only to formal dispute resolution pursuant to Paragraph 75:

i. correct the deficiencies, consistent with EPA's decision pursuant to Subparagraph 45.d, within fifteen (15) days or such other time as agreed to by EPA and Defendant; or

ii. proceed to take any action required by the resubmitted plan, report, schedule or other deliverable as modified by EPA pursuant to Subparagraph 45.d of this Paragraph.

46. Notwithstanding the receipt of a notice of disapproval pursuant to Subparagraph 42(d) or Subparagraph 45.d, Defendant shall proceed, if EPA so directs, to take any action required by

any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Defendant of any liability for stipulated penalties under Section X (Stipulated Penalties).

47. Subject only to formal dispute resolution procedures under Paragraph 75, and except as provided in Paragraph 77, upon disapproval of any plan, report, schedule or other item or deliverable under Subparagraph 42(d), Defendant shall be liable for stipulated penalties as provided in Section X (Stipulated Penalties). Stipulated penalties for disapproved plans, reports, schedules or other items or deliverables shall accrue beginning on the day after the initial plan, report, schedule or other item or deliverable was due under this Consent Decree (rather than the date of any resubmission authorized pursuant to this Section); provided, however, that such stipulated penalties shall be payable only if Defendant fails to resubmit the plan, report, schedule or other item or deliverable as required in Subparagraph 45.b.i, or if the resubmitted document is disapproved due to a material deficiency.

48. All plans, reports, schedules, and other items and deliverables required to be submitted to EPA for approval under this Consent Decree shall, upon written approval or modification by EPA, be enforceable under this Consent Decree, subject to applicable provisions of Section XIII (Dispute Resolution). In the event EPA approves, modifies, or conditions a portion of a plan, report, schedule, or other item or deliverable required to be submitted to EPA under this Consent Decree, such approval shall be in writing, and the approved, modified or conditioned portion shall be enforceable under this Consent Decree, subject to applicable provisions of Section XIII (Dispute Resolution).

X. STIPULATED PENALTIES

49. Defendant shall be liable for stipulated penalties to the United States and to Ohio, as specified below in this Section X (Stipulated Penalties), for failure to comply with the requirements of this Consent Decree, unless excused under Section XI (Force Majeure Between the United States, Intervenors and Defendant) or Section XII (Potential Force Majeure Between Ohio and Defendant). "Compliance" by Defendant shall include timely completion of the activities required by this Consent Decree, including Attachments 1, 2, and 3 of this Consent Decree, or any workplan, report, schedule, document, or other item or deliverable approved by EPA pursuant to this Consent Decree. The United States, or the State, or both may seek Stipulated Penalties under this Section. Either sovereign may waive Stipulated Penalties, or reduce the amount of Stipulated Penalties it seeks, in the exercise of its unreviewable discretion, and in accordance with this Paragraph. Where both sovereigns seek Stipulated Penalties for the same violation of this Consent Decree, Defendant shall pay fifty (50) percent of the Stipulated Penalty to the United States and fifty (50) percent to the State. Where only one sovereign demands Stipulated Penalties for a violation, and the other sovereign does not join in the demand within fifteen (15) days of receiving the demand, or timely joins in the demand but subsequently elects to waive or reduce Stipulated Penalties for that violation, Defendant shall pay the Stipulated Penalties due for the violation to the sovereign making the initial demand, less any amount paid to the other sovereign. The determination by one sovereign not to seek Stipulated Penalties, or subsequently to waive or reduce the amount sought, shall not reduce Defendant's liability to the other sovereign for Stipulated Penalties, except as provided above in this Paragraph.

50. Stipulated Penalties Relating to Corrective Action

a. For failure to complete the Interim Measures described in Section II, Paragraph 6 of Attachment 1 in accordance with the schedule approved by EPA pursuant to the Interim Measures SOW, the Defendant shall pay a stipulated penalty in the amount of $12,000 per day; provided, however, that stipulated penalties shall not accrue under this provision during the period between the original deadline for completion of such cleanup and any revised deadline approved by EPA for completion of such cleanup, to the extent that 1) Defendant has notified Plaintiffs of the need to revise the schedule for completion of this cleanup and the reasons for the revisions of the schedule at least thirty (30) days in advance of the original completion date, and 2) the Parties have agreed upon a revised schedule in advance of the original completion date.

b. For failure to meet any deadline for completion of any other Interim Measures identified in the Interim Measures SOW, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

Period of Failure To Comply	**Penalty Per Violation Per Day**
1st through 30th day	$1500
31st through 60th day	$2500
61st day and beyond	$5000

Provided, however, that stipulated penalties shall not accrue under this provision during the period between the original deadline for completion of an Interim Measure and any revised deadline approved by EPA for such Interim Measure, to the extent that 1) Defendant has notified Plaintiffs of the need to revise the schedule for completion of the Interim Measure and the reasons for the revisions of the schedule at least twenty-one (21) days in advance of the original completion date, and 2) the Parties have agreed upon a revised schedule in advance of the original completion date.

c. For failure to meet any document submittal deadline established in the Interim Measures SOW, or to comply with the notice requirements of Section XV (Emergency Response) of this Consent Decree, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

Period of Failure To Comply	**Penalty Per Violation Per Day**
1st through 30th day	$500
31st through 60th day	$1000
61st day and beyond	$2500

Provided, however, that stipulated penalties shall not accrue under this provision during the period between the original deadline proposed date for submittal of a document and any revised deadline approved by EPA for submittal of such document, to the extent that 1) Defendant has notified Plaintiffs of the need to revise the schedule for submittal and the reasons for the revisions of the schedule at least twenty-one (21) days in advance of the original submittal and 2) the Parties have agreed upon a revised schedule in advance of the original submittal date.

d. For failure to meet any deadline established pursuant to the RFI/CMS SOW of this Consent Decree, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

Period of Failure To Comply	**Penalty Per Violation Per Day**
1st through 30th day	$500
31st through 60th day	$1000
61st day and beyond	$2500

Provided, however, that stipulated penalties shall not accrue under this provision during the period between the original deadline for a particular milestone and any revised deadline

approved by EPA for such milestone, to the extent that 1) Defendant has notified Plaintiffs of the need to revise the deadline and the reasons for the revision of the deadline at least twenty-one (21) days in advance of the original deadline, and 2) the Parties have agreed upon a revised schedule in advance of the original deadline.

51. Stipulated Penalties Relating to Compliance Obligations

a. If Defendant fails to comply with any daily maximum effluent limitations, or thirty (30)-day average (monthly average) effluent limitations, unauthorized discharge, unauthorized bypass or any monitoring requirements of its current NPDES permit or any renewal or modification of such permit, Defendant shall pay the following stipulated penalties per violation per day as applicable:

Failure To Comply	**Penalty Per Violation Per Day**
Any daily maximum effluent limitation violation or monitoring violation	$600
Any monthly average violation	$1000
Any unauthorized discharge or bypass	$1000

b. For failure to comply with the requirements of Section XXI (Record Retention) of this Consent Decree, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

Period of Failure To Comply	**Penalty Per Violation Per Day**
1st through 30th day	$500
31st through 60th day	$1000
61st day and beyond	$2500

52. Stipulated Penalties Relating to SEP.

a. In the event that Defendant fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEP described in Attachment 3 hereto and/or to the extent that actual expenditures for the SEP do not equal or exceed the costs for the SEP described herein and Paragraph 27 above, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

i. If AK Steel fails to perform the Refrigerant Conversion SEP pursuant to this Consent Decree, Defendant shall pay a stipulated penalty in the following amount: $750,000.

ii. If the SEP is completed in accordance with this Consent Decree, but Defendant spends less than the $750,000 required to be spent for the project, Defendant shall pay a stipulated penalty equal to the difference between $750,000 and the amount actually spent.

iii. If Defendant commences implementation of the SEP but does not complete the SEP in accordance with the schedule set forth in Attachment 3, Defendant shall pay a stipulated penalty in the following amounts for each day after the SEP completion deadline in Attachment 3: for days one (1) through thirty (30) a penalty of $250 per day, and for every day thereafter a penalty of $500 per day. Provided, however, that following Plaintiffs' receipt of written notification that Defendant no longer intends to complete implementation of the SEP, no additional stipulated penalties shall accrue under this Subparagraph 52.a.iii, and Defendant shall be subject to stipulated penalties pursuant to Subparagraph 52.a.iv, below.

iv. Except for violations governed by Subparagraph 52.a.iii, above, if Defendant does not complete the Refrigerant Conversion SEP in accordance with this Consent Decree, Defendant shall pay the difference between $750,000 and the amount spent on portions of the SEP, if any, that were completed in accordance with this Consent Decree.

v. For failure to submit the SEP Completion Report in accordance with Paragraph 29.a. above, Defendant shall pay a stipulated penalty for each day after the report was originally due until the report is submitted: for days one (1) through five (5), a penalty of $500 per day, and for every day thereafter a penalty of $1,000 each to the United States and Ohio.

vi. For failure to submit any other report required by Subparagraph 29.b. above, Defendant shall pay stipulated penalty in the amount for each day after the report was originally due until the report is submitted: for days one (1) through five (5), a penalty of $500 per day, and for every day thereafter a penalty of $1,000.

c. Stipulated penalties for Subparagraphs 52.a.iii, 52.a.v and 52.a.vi, above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity, except as provided in Subparagraph 52.a.iii. Provided, however, that stipulated penalties shall not accrue under this provision during the period between the original deadline for completion of the SEP and/or submittal of a report and any revised deadline approved by EPA for completion of the SEP or submittal of such report, to the extent that 1) Defendant has notified Plaintiffs of the need to revise the schedule for completion of the SEP and/or the submittal of any report required by Paragraph 29, as

applicable, and the reasons for the revisions of the schedule at least thirty (30) days in advance of the original completion date, and 2) the Parties have agreed to a revised schedule in advance of the original completion date.

53. Stipulated Penalties Related to Payment of Civil Penalty.

a. For failure to make timely payment of the civil penalty to the United States required by Paragraph 35, Defendant shall pay to the United States a stipulated penalty in the amount of $5,000 for each day after the payment was due until complete payment is submitted.

b. For failure to make timely payment of the civil penalty to Ohio required by Paragraph 36, Defendant shall pay a stipulated penalty to Ohio in the amount of $5,000 for each day after the payment was due until complete payment is submitted.

54. Stipulated penalties shall be paid to the United States and Ohio as provided for in Section X (Stipulated Penalties) of this Consent Decree, within forty-five (45) days after the receipt of a written demand from the United States and/or Ohio, subject to the dispute resolution procedures of Section XIII (Dispute Resolution) of this Consent Decree. To the extent that Defendant invokes dispute resolution regarding the stipulated penalties and does not prevail, it shall pay accrued penalties, including those accruing during the dispute resolution, plus interest calculated in accordance with Paragraph 59 of this Consent Decree within thirty (30) days after resolution of the dispute. In the event Defendant fails to pay stipulated penalties when due, it shall be liable for interest and penalties for late payment in accordance with the provisions of Paragraph 59.

55. Any dispute with respect to liability for a stipulated penalty shall be resolved in accordance with Section XIII (Dispute Resolution) of this Consent Decree. Defendant shall bear the burden of proving that it is not subject to stipulated penalties.

56. Stipulated penalties shall not be the exclusive civil remedy of the United States or Ohio for Defendant's violations of this Consent Decree, and the United States and Ohio reserve the right to seek any remedies to which they are entitled, including, but not limited to, civil penalties, injunctive relief and contempt for Defendant's failure to comply with any provisions of this Consent Decree or other provisions of law, except that for any violation of applicable law or regulation for which this Consent Decree also provides for payment of a stipulated penalty, Defendant shall be allowed a credit for stipulated penalties paid against any statutory penalties imposed for such violation.

57. Except as provided in Section XVIII (Covenant Not To Sue of United States and of Intervenors) in Section XIX (Covenant Not To Sue of Ohio), nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the rights of the United States or Ohio to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations, except that for any violation of applicable law or regulation for which this Consent Decree also provides for payment of a stipulated penalty, Defendant shall be allowed a credit for stipulated penalties paid against any statutory penalties imposed for such violation.

58. Neither any stipulated penalty nor any interest or penalties for late payments of a stipulated penalty shall be deducted or otherwise relied upon by Defendant for a tax benefit for federal, state or local tax purposes.

59. If Defendant fails to make timely payment of a stipulated penalty set forth in this Section X (Stipulated Penalties), it shall be liable for interest and penalties for late payment. Such late payment charges shall include: (a) interest at the percentage rate established by the Department

of Treasury pursuant to 28 U.S.C. § 1961 (as of the due date), for any period after the due date; (b) a six percent per annum penalty charge assessed monthly on any portion of the penalty, including interest, which is more than ninety (90) days delinquent, and (c) administrative costs of collecting the penalty calculated in accordance with 40 C.F.R. § 13.11(b) and assessed monthly throughout the period the penalty is overdue.

60. The payment of penalties shall not alter in any way Defendant's obligation to complete the performance of the Work or the SEP SOW required under this Consent Decree.

61. The United States may, in its sole unreviewable discretion, waive the assessment of any stipulated penalty due to it under this Section X (Stipulated Penalties) of this Consent Decree.

62. Ohio may, in its sole unreviewable discretion, waive the assessment of any stipulated penalty due to it under this Section X (Stipulated Penalties) of this Consent Decree.

XI. FORCE MAJEURE BETWEEN THE UNITED STATES, INTERVENORS AND DEFENDANT

63. If any event occurs which causes the Defendant to violate any provision of this Consent Decree, Defendant shall notify the United States and the Intervenors in writing within ten (10) working days of when Defendant knew, or in the exercise of reasonable diligence under the circumstances should have known, of the event. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and the timetable pursuant to which those measures shall be implemented, and whether Defendant believes that the event which caused or may cause the delay constitutes a force majeure. Defendant shall make all reasonable efforts to identify events that cause or may cause a violation of this Consent Decree. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

64. Failure by Defendant to comply with the notice requirements of this Section shall constitute a waiver of Defendant's right to invoke the provisions of this force majeure Section as a basis for delay of performance under this Consent Decree.

65. For the purposes of this Consent Decree, a "force majeure" is defined as any unforeseen event arising from circumstances beyond the control of Defendant that could not have been prevented by due diligence and that delays or may delay the performance of any obligation under this Consent Decree. If EPA determines, after reasonable opportunity for review and comment by OEPA and Intervenors, that the delay or anticipated delay in compliance with the Consent Decree has been or shall be caused by a force majeure, the time for performance hereunder shall be extended for a period no longer than the delay necessarily resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time. Neither unanticipated nor increased costs of achieving and maintaining compliance with any provision of this Consent Decree nor changed financial circumstances of Defendant shall be deemed a force majeure, except that Defendant shall not be denied force majeure due to its refusal to pay an unreasonable amount in compensation for access to a third party's property pursuant to Section XIV (Site Access). Failure to obtain any necessary permit or approval shall not be deemed a force majeure; provided, however, that depending upon the circumstances and Defendant's response to such circumstances, failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a force majeure where the failure of the permitting authority to act is beyond the control of Defendant and Defendant has taken all steps available to it to obtain the necessary permit, including, but not limited to, submitting a complete permit application, responding in a timely fashion to requests for additional information by the permitting authority,

accepting lawful permit terms and conditions, and prosecuting in an expeditious fashion appeals of any allegedly unlawful terms and conditions imposed by the permitting authority.

66. If the EPA determines that the delay was not or will not be caused by a force majeure, or if the Parties are unable to agree on a stipulated extension of time, the United States will inform the Defendant of its position in writing. The United States' position shall control unless Defendant petitions the Court for relief pursuant to the dispute resolution procedures of Section XIII (Dispute Resolution) of this Consent Decree. In submitting the matter to the Court, Defendant shall have the burden of proving that the delay was attributable to a force majeure event and that, as a result of the event, a particular extension period is appropriate.

67. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not result in an extension of a subsequent compliance date or dates unless specifically agreed to by the United States. Defendant must make a separate showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

XII. POTENTIAL FORCE MAJEURE BETWEEN OHIO AND DEFENDANT

68. If any event occurs that causes or may cause the Defendant to violate any provision of this Consent Decree, Defendant shall notify the OEPA in writing within ten (10) working days from when Defendant knew, or in the exercise of reasonable diligence under the circumstances should have known, that compliance with the Consent Decree would be prevented or delayed, describing in detail the precise cause or causes of the delay or violation, the anticipated length of the delay if applicable, the measures taken by Defendant to prevent or minimize the delay and

the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such violation. Defendant shall make all reasonable efforts to identify events that cause or may cause a violation of this Consent Decree.

69. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by Defendant and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that the proceeding to enforce this Consent Decree is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendant. Failure by Defendant to timely comply with the notice requirements of Paragraph 68, shall at the option of Ohio constitute a waiver by Defendant of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree shall not in any event constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Decree.

XIII. DISPUTE RESOLUTION

70. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section XIII (Dispute Resolution) shall be the exclusive mechanism for resolution of disputes between the Parties regarding matters arising under this Consent Decree.

However, the procedures set forth in this Section shall not apply to:

a. Actions by the Plaintiffs, or any one of them, to enforce obligations of Defendant that have not been disputed in accordance with this Section; or

b. Any disputes concerning the issuance, modification, revocation, or reissuance of any permit(s).

In addition, nothing in this Consent Decree shall be construed to authorize Intervenors to dispute determinations by EPA concerning the adequacy of financial assurance established by Defendant pursuant to Subparagraph 24.b, above.

71. The Parties shall make reasonable efforts to informally and in good faith resolve all disputes or differences of opinion regarding the meaning or implementation of this Consent Decree; provided, however, that if Defendant requests a meeting or conference pursuant to:

(i) Subparagraphs 16.a, 16.c, 16.d or 16.f concerning any determination of EPA regarding guidance documents,

(ii) Subparagraph 22.e concerning any determination of EPA regarding Additional Work, Subparagraph 88.b concerning any determination of EPA regarding completion of Work, or

(iii) Section IX (Submissions and Approvals) of this Consent Decree concerning EPA's determination regarding any plan, report, schedule or other item or deliverable submitted for approval pursuant to this Consent Decree,

the meeting or conference pursuant to Subparagraphs 16.a, 16.c, 16.d or 16.f, Subparagraph 22.e, Subparagraph 88.b, or Section IX (Submissions and Approvals) shall constitute informal

negotiations within the meaning of this Section and shall satisfy any requirement under this Section to attempt to resolve informally a dispute concerning such determination.

72. If, in the opinion of Defendant, the United States, Ohio, or Intervenors, there is a dispute between the Parties with respect to the meaning or implementation of this Consent Decree, the party that believes a dispute has arisen shall send to the other Parties a written Notice of Dispute which outlines the nature of the dispute and requests informal negotiations to resolve the dispute; provided, however, that any request for a meeting or conference pursuant to Subparagraphs 16.a, 16.c, 16.d or 16.f, Subparagraph 22.e, Subparagraph 88.b, or Section IX (Submissions and Approvals) of this Consent Decree shall be deemed to be a Notice of Dispute. The Notice of Dispute shall be sent in accordance with Section VIII (Notices and Submissions) of this Consent Decree. The period of informal negotiations pursuant to this Paragraph shall not extend beyond twenty (20) days from the date when the Notice of Dispute was received unless the period is extended by written agreement of the parties to the dispute.

73. If informal negotiations fail to resolve any dispute, the United States' position shall be binding unless another party invokes formal dispute resolution pursuant to Paragraph 74 of this Consent Decree.

74. A party shall commence formal dispute resolution pursuant to Paragraph 75 or 76 by serving on the other parties, within twenty-one (21) days after conclusion of informal negotiations, a Statement of Position on the matter in dispute, providing a description of the nature of the dispute, any relief requested, and any supporting information or documentation, including, without limitation, all factual data, non-privileged analysis and/or opinion relevant to the disputed matter. Within twenty-one (21) days after receipt of the initial Statement of

Position, other parties to the dispute may submit Statements of Position and any supporting information or documentation, including, without limitation, all non-privileged factual data, analysis and/or opinion relevant to the disputed matter.

75. The provisions of this Paragraph shall govern formal dispute resolution for disputes pertaining to the selection or adequacy of any Work or SEP required pursuant to Paragraphs 17, 18, 19, 22, 24.b.xiii(A) - (C) or 25, 88, and 89 or pursuant to Attachments 1-3 of this Consent Decree, including any dispute concerning approval of plans, reports (other than progress reports), schedules, or other items or deliverables required for such Work or SEP.

a. EPA shall maintain an administrative record of all disputes governed by this Paragraph. The administrative record shall include all Statements of Position, including accompanying supporting information and documentation. Where appropriate, EPA may allow submission of supplemental Statements of Position and supporting information, which shall also be part of the administrative record of the dispute.

b. Based on a review of the administrative record, the Director of the Waste, Pesticides and Toxics Division at EPA Region 5 will issue a final administrative decision resolving any dispute subject to this Paragraph. Such decision shall be binding upon all parties to the dispute, unless, within ten (10) working days after receipt of the decision or such longer time may be agreed to by the parties in writing, any party files with the Court a petition for judicial dispute resolution. Any petition for judicial dispute resolution shall describe the nature of the dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this

Consent Decree, and include a proposal for its resolution. Other parties to the dispute may file a response to the petition for judicial dispute resolution within ten (10) working days.

c. In any dispute governed by this Paragraph, this Court shall uphold the decision of EPA, unless this Court determines, based on review of the administrative record, that EPA's decision was arbitrary and capricious, an abuse of discretion or otherwise not in accordance with applicable law.

76. The provisions of this Paragraph shall govern all disputes that are not governed by Paragraph 75.

a. EPA shall issue a final administrative decision resolving the dispute, based on a review of the Statements of Position and supporting information and documentation submitted pursuant to Paragraph 74.

b. Decisions of EPA pursuant to Subparagraph 76.a shall be binding upon all parties to the dispute, unless, within ten working (10) days after receipt of the decision or such longer time as may be agreed to by the parties in writing, any party files with the Court a petition for judicial dispute resolution. Any petition for judicial dispute resolution shall describe the nature of the dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. Other parties to the dispute may file a response to the petition for judicial dispute resolution within ten (10) working days.

c. Judicial resolution of any dispute governed by this Paragraph shall be governed by applicable principles of law.

77. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Defendant under this Consent Decree, unless the United States, after reasonable opportunity for comment by Ohio and the Intervenors, so agrees or the Court so orders. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute; provided, however, that

a. during informal dispute resolution pursuant to Paragraph 71 or 72, stipulated penalties shall not accrue during any period beginning on the twenty-first (21st) day after Defendant submits its Notice of Dispute or requests a meeting or conference pursuant to Subparagraphs 16.a, 16.c, 16.d or 16.f, Subparagraph 22.e, Subparagraph 88.b, or Section IX (Submissions and Approvals) and ending upon expiration of the period for informal negotiations;

b. during formal dispute resolution pursuant to Subparagraph 75.a and 75.b or pursuant to Paragraph 76.a, stipulated penalties shall not accrue during any period beginning on the thirty-first (31st) day after EPA's receipt of the final Statement of Position submitted pursuant to Paragraph 74, and ending on the date of EPA's final administrative decision; and

c. during judicial dispute resolution pursuant to Subparagraph 75.c or pursuant to Subparagraph 76.b and 76.c, stipulated penalties shall not accrue during the period, if any, beginning on the thirty-first (31st) day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. To the extent that

Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIV. SITE ACCESS

78. a. Commencing upon the date of lodging of this Consent Decree, Defendant agrees to provide the Government Plaintiffs and their representatives, including their agencies, employees and authorized agents (including contractors and subcontractors), access at all reasonable times to the Facility, and any other property owned or controlled by Defendant or accessible to the Defendant by the terms of the contract or agreement between the Defendant and the property owner pursuant to Paragraph 82, to which access is required for the implementation of this Consent Decree, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

i. Monitoring the Work and/or SEP;

ii. Verifying any data or information submitted to the Plaintiffs, including inspecting, reviewing, and copying all documents, operating logs, and contracts that relate to activities pertaining to the Work and/or SEP required by this Consent Decree following reasonable notification to Defendant's Project Coordinator (or other person designated to act in the Project Coordinator's absence) and an opportunity to be present;

iii. Conducting investigations relating to the Work and/or SEP;

iv. Obtaining samples relating to the Work and/or SEP;

v. Interviewing and obtaining oral, written, or recorded statements from personnel involved in activities pertaining to the Work and/or SEP required by this Consent Decree, whether such personnel are employed by the Defendant or by its

contractors or subcontractors, following notification to the Defendant and an opportunity for a representative of the Defendant to be present;

vi. Observing, photographing, videotaping, taking a sound recording or otherwise documenting the performance or completion of activities pertaining to the Work and/or SEP required by this Consent Decree; provided that Defendant shall be provided with a copy of any such photographs, videotapes, or recordings, upon request;

vii. Inspecting and copying all records, files, photographs, documents, including all sampling and monitoring data, that pertain to Work undertaken pursuant to this Consent Decree and that are within the possession or under the control of Defendant or its Contractors, following reasonable notification to Defendant's Project Coordinator (or other person designated to act in the Project Coordinator's absence) and an opportunity to be present.

viii. Conducting such other monitoring and investigative activities as the Government Plaintiffs deem necessary to monitor activities pertaining to the Work and/or SEP required by this Consent Decree; and

ix. Assessing Defendant's compliance with this Consent Decree.

b. Defendant may assert that any written statement, photograph, videotape, sound recording, record, file, or other document obtained by Government Plaintiffs pursuant to this Consent Decree contains confidential business information entitled to protection from public disclosure subject to the requirements of 40 C.F.R. Part 2 and O.A.C. 3745-49-03 and 3745-49-031; provided, however, that no claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,

scientific, chemical, or engineering data, or any information evidencing conditions at or around the Facility and Additional Areas. No documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

c. In addition to providing the Government Plaintiffs and their representatives access as provided in Paragraph 78.a, above, Defendant agrees to provide Intervenors' technical expert with access to the Facility for the purpose of observing and monitoring the Work undertaken pursuant to the Consent Decree. Intervenors' technical expert may discuss matters related to the Work and/or SEP required by this Consent Decree solely with Defendant's Project Coordinator and the Government Plaintiffs as long as such discussions do not constitute formal interviews, and the discussions are not used in any manner except to assess compliance with this Consent Decree. Access to the Facility by Intervenors' technical expert shall be made in conjunction with access to the Facility provided to the Government Plaintiffs. Access by Intervenors' technical expert shall also be made in accordance with the terms of the Site Access and Confidentiality Agreement, attached hereto as Attachment 8.

d. Intervenors, upon request at the time of sampling, may obtain splits of any samples taken by the Government Plaintiffs, or their representatives. Upon request, Intervenors shall be provided with copies of the results of sampling, analysis, tests, or other raw data generated as a result of activities authorized under this Paragraph 78 of this Consent Decree, subject to the provisions of Subparagraph 78.b and Paragraph 79 of this Consent Decree. In the event that Government Plaintiffs take any pictures, video or sound recordings; conduct any tests, sampling, or laboratory analysis; or generate any other raw data in connection with their

oversight of Work required under the Consent Decree, and the Government Plaintiffs are or become aware that Intervenors have not received such information, the Government Plaintiffs shall provide Intervenors with a notice identifying the information collected. Upon request, Government Plaintiffs shall use their best efforts to make such information available to Intervenors on a timely basis, subject to the provisions of Subparagraph 78.b and Paragraph 79.

e. Whenever Defendant provides the Government Plaintiffs raw data pursuant to this Consent Decree, Defendant shall also provide such raw data to Intervenors' technical expert subject to the following provisions: (1) Intervenors' technical expert shall not share such raw data with anyone who does not already have access to such data, including, but not limited to, members or attorneys of the Sierra Club or Natural Resources Defense Council, members of the public, or the media; and (2) Intervenors' technical expert may communicate with EPA and/or OEPA regarding such raw data if Intervenors' designated representative(s) believe that the data may demonstrate a substantial risk to the public health, safety, or welfare or the environment. If Intervenors' technical expert elects to communicate with EPA and/or OEPA about raw data which may demonstrate a substantial risk to public health, safety, or welfare or the environment, Intervenors' technical expert shall not share such raw data with anyone who does not already have access to such data, including, but not limited to, members or attorneys of the Sierra Club or Natural Resources Defense Council, members of the public or the media, and shall otherwise protect and preserve the confidentiality of such data.

79. At the time of entering the Facility, or another property subject to this Section XIV (Site Access), Government Plaintiffs' employees and representatives shall present valid credentials or other official authorization. The Defendant shall have the right to accompany Government

Plaintiffs' representatives throughout their presence at the Facility or another property, and to monitor and record the investigative activities conducted by Government Plaintiffs, so long as such monitoring or recording does not unreasonably delay or impede the investigative activities of the Government Plaintiffs. If any recording of Government Plaintiffs' investigatory activities is made by Defendant, a copy of the recording shall be provided to the other Parties; provided, however, that Defendant may designate any such recording or portion thereof as containing confidential business information subject to the requirements of 40 C.F.R. Part 2 and O.A.C. 3745-49-03 and 3745-49-031 and Defendant shall not be required to release to Intervenors any recording that contains confidential business information that is not subject to the provisions of a confidentiality agreement.

80. Defendant, upon request at the time of sampling, may obtain splits of any samples taken by the Government Plaintiffs, or their representatives, and, upon request, shall be provided with copies of the results of sampling, analysis, tests, or other raw data generated as a result of activities authorized under Paragraph 78 of this Consent Decree.

81. Notwithstanding the foregoing Paragraph or any other provision of this Consent Decree, Government Plaintiffs hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under the CAA, CWA, RCRA and any other applicable federal or state statutes, regulations or permits.

82. To the extent that Work being performed pursuant to this Consent Decree must be done beyond the Facility property boundary, Defendant shall use its best efforts to obtain:

a. An agreement to provide access thereto for Defendant, the United States on behalf of EPA, and Ohio on behalf of OEPA, and their representatives (including contractors) necessary

for conducting any activity related to the Consent Decree, including those activities listed in Paragraph 78 above, from the present owner(s) of such property within forty-five (45) days of the date of approval of any Workplan for which access is required or, if later, within forty-five (45) days of the date that the need for access becomes known to Defendant. Within forty-five (45) days of the date of approval of any Workplan for which access is required or, if later, within forty-five (45) days of the date that the need for access becomes known to Defendant, Defendant shall either provide the Plaintiffs with a copy of all access agreements referred to above in this Subparagraph or a report outlining the steps that it has taken to obtain access to the property, the status of its efforts to obtain access and a projected date by which terms of an access agreement will be reached.

b. An agreement, enforceable by the Defendant, the United States, and Ohio, to refrain from using the Facility, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the Work to be performed pursuant to this Consent Decree.

The agreements referenced in Subparagraphs 82.a. and 82.b. above shall contain reasonable terms and conditions relating to access, and the payment of reasonable compensation in consideration of granting access. For purposes of this Paragraph, "reasonable terms and conditions relating to access" do not include terms and conditions that will significantly impair Defendant's ability to perform Work in compliance with any requirements of this Consent Decree. Defendant shall ensure that EPA's and OEPA's Project Coordinator have copies of any access agreement(s).

c. Best efforts as used in this Paragraph shall include a certified letter from Defendant to the present owner(s) of such property requesting access agreement(s) consistent with Subparagraphs 82.a and 82.b above, and the payment of reasonable compensation in consideration of granting access.

83. If Defendant is unable to obtain agreements for access in accordance with Paragraph 82, EPA may, at its discretion, assist Defendant in obtaining access. In the event EPA obtains access, Defendant shall undertake EPA-approved Work on such property.

84. Notwithstanding any provision of this Consent Decree, the United States and Ohio retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

85. Nothing in this Section shall be construed to limit or otherwise affect Defendant's liability and obligation to perform corrective action including corrective action beyond the Facility boundary. However, to the extent that Defendant is unable, despite its best efforts, to obtain access to property needed to perform Work required pursuant to this Consent Decree, Defendant may seek relief in accordance to Sections XI (Force Majeure Between the United States, Intervenors and Defendant) and XII (Potential Force Majeure Between Ohio and Defendant) of this Consent Decree.

XV. EMERGENCY RESPONSE

86. In the event of any action or occurrence during the performance of the Work that causes or threatens a release of Hazardous Waste or Hazardous Constituents that constitutes an emergency situation, or that may present an immediate threat to public health or welfare or the environment, Defendant shall, in addition to complying with any applicable notice requirement

specified by law or regulation, provide oral notice within one (1) day to the Chief, Emergency Response Branch, EPA, Region 5, and to OEPA's Emergency Phone Number, 800-282-9378, and Defendant shall notify EPA, OEPA, and the Intervenors in writing within seven (7) days (or sooner if applicable law so requires), summarizing the nature, immediacy, and magnitude of the actual or potential threats to human health or the environment. The written notice requirement may be satisfied by sending to the addresses specified in Section VIII (Notices and Submissions) of this Consent Decree a copy of any notice that includes the required information and that is generated pursuant to a requirement of CERCLA, or pursuant to a state statute or tribal regulation, together with a cover letter specifying that the notice is being provided pursuant to this Consent Decree, and including the docket number of this case.

XVI. COMPLETION OF THE WORK

87. Defendant shall document completion of all Work required pursuant to Attachments 1 and 2 to this Consent Decree by submitting to Plaintiffs one or more Completion Reports and accompanying Request(s) for Acknowledgment of Completion, as provided below in this Section XVI (Completion of the Work). Defendant may submit a separate Completion Report and Request for Acknowledgment of Completion for each of the following components of Work required under this Consent Decree: (1) the Interim Measures; (2) the RFI; and (3) the CMS. Alternatively, Defendant may submit separate Completion Reports and Requests for Acknowledgment of Completion after any two or more of such Work components have been completed.

a. Each Completion Report and Request for Acknowledgment of Completion required pursuant to this Section XVI (Completion of the Work) shall be submitted no later than

ninety (90) days after Defendant determines that it has completed all Work (other than operation and maintenance obligations) required under Attachments 1 and/or 2 to the Consent Decree, as applicable.

b. Each Completion Report and Request for Acknowledgment of Completion shall include one or more written reports by registered professional engineers in the relevant technical fields, certifying that all Work required by Attachments 1 and/or 2, as applicable, has been completed in accordance with the applicable SOW(s).

c. Each Completion Report submitted pursuant to this Paragraph shall indicate the case name and civil action number, and shall contain the following statement, signed by a responsible corporate officer or, if specifically designated by Defendant for this purpose, the plant manager of the Facility:

> To the best of my knowledge, after thorough investigation in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted, I certify, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, that AK Steel has completed in accordance with the Consent Decree the Work set forth in the [specify Interim Measures SOW or RFI/CMS SOW, as applicable] attached to the Consent Decree, and that the information contained in or accompanying this submission is 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.
>
> Signature: _____
> Name: _____
> Title: _____

d. If EPA so requests, Defendant shall schedule and conduct an inspection, to be attended by Defendant and EPA, and by OEPA and Intervenors at their option, to review the certified portion of the Work.

88. If, after review of any Completion Report and certifications submitted pursuant to this Section XVI (Completion of the Work) and any inspection, and after reasonable opportunity for review and comment from OEPA and Intervenors, EPA determines that the Work has been completed in accordance with the Consent Decree, it shall issue an Acknowledgment of Completion for the Work completed.

a. If EPA, after reasonable opportunity for review and comment from OEPA and the Intervenors, determines that any portion of the certified Work has not been completed in accordance with this Consent Decree and the applicable SOWs attached hereto, EPA will notify Defendant in writing of the activities that must be undertaken to complete this portion of the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and relevant SOW, or will require Defendant to submit a schedule to EPA for approval with copies to OEPA and Intervenors pursuant to Section VIII (Notices and Submissions).

b. Defendant shall have the opportunity to meet or confer with EPA within twenty (20) days after receipt of the notice referred to above in this Paragraph, or such longer time as may be agreed to by the Parties in writing, to discuss and reach agreement concerning any determinations, schedules or activities set forth in the notice issued by EPA pursuant to this Paragraph. OEPA and the Intervenors may participate in any such meeting or conference.

c. Based on any meeting or conference pursuant to Subparagraph 88.b, EPA may, after reasonable opportunity for review and comment by OEPA and Intervenors, decide to revise any determinations, schedules or activities set forth in the notice issued by EPA pursuant to this

Paragraph or EPA may decide that the originally proposed determinations, schedules or activities set forth in the notice are appropriate. Any such decision shall be in writing.

d. Except as provided in Subparagraph 88.c, following any meeting or conference pursuant to Subparagraph 88.b, Defendant shall perform all activities necessary to complete the work as determined by EPA in accordance with the specifications and schedules established pursuant to Subparagraph 88.a or 88.c, as applicable, subject only to its right, to invoke the formal dispute resolution procedures set forth in Paragraph 75. Upon completion of these activities, Defendant shall submit revised written reports and certifications for the completed portion of the Work.

89. Within ninety (90) days of Defendant's completion of all Work required under this Consent Decree, Defendant shall submit to Plaintiffs a Request for Acknowledgment of Final Completion, referencing all final written reports and certifications submitted pursuant to Paragraph 87 and/or Subparagraph 88.d. Following its receipt of the Request, EPA may request an inspection, provide notice of activities that must be undertaken to complete the Work, or approve the request as provided below. If EPA concludes, after a reasonable opportunity for review and comment by OEPA and Intervenors, that all Work (other than operation and maintenance obligations) required under this Consent Decree has been performed in accordance with this Consent Decree, EPA will so notify the Defendant in writing, which notice shall constitute the Acknowledgment of Final Completion.

XVII. ENFORCEMENT COSTS

90. Except as provided below in this Section, the parties to this Consent Decree shall bear their own costs of litigation in this civil action, including, but not limited to, attorney and expert

witness fees through the date of entry of this Consent Decree. In any subsequent proceeding by Plaintiffs to enforce this Consent Decree, if Defendant is determined to have violated this Consent Decree, Defendant shall be liable to Plaintiffs for all costs and attorneys fees incurred by Plaintiffs in connection with such proceeding.

91. Fees and Costs of Intervenors. Within thirty (30) calendar days after entry of this Consent Decree, Defendant shall pay Intervenors $450,000, which represents the fees and costs incurred by Intervenors in this matter. This amount includes all fees and costs for which Intervenors will seek payment, including all attorney fees, expenses, court costs and all costs associated with Intervenors' participation in the implementation of this Consent Decree and the Work undertaken pursuant to the Consent Decree. Intervenors shall not seek reimbursement for any additional fees or costs of any kind associated with this Consent Decree. Payment shall be made by corporate check, payable to Lerach Coughlin Stoia Geller Rudman & Robbins LLP, and shall be sent to:

Ex Kano S. Sams II
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111

Defendant has consented to the payment of Intervenors' fees and costs in order to resolve this matter without further litigation. Payment by Defendant of Intervenors' fees and costs does not, and is not intended to, constitute an admission of liability to any claims asserted by Plaintiffs, an admission that Intervenors were a prevailing party in this matter, or an admission that Intervenors were otherwise entitled to receive reimbursement of any attorney fees and costs under applicable law. Payment of Intervenors' fees and costs may not be used in this litigation or in subsequent litigation involving Defendant to demonstrate liability of Defendant for any

claims asserted in this matter, the status of Intervenors as prevailing parties or Intervenors' entitlement to fees and costs under applicable law.

92. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69 and the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308.

XVIII. COVENANT NOT TO SUE OF UNITED STATES AND INTERVENORS

93. In consideration of the Work and the SEP that will be performed and the penalties that will be paid by the Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 94, 95, 98 and 99, Intervenors covenant not to file a lawsuit and the United States covenants not to take civil judicial or administrative action against Defendant (1) pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Section 113 of the CAA, 42 U.S.C. § 7413, for the violations alleged in the U.S. Complaint and Intervenors' Complaint through the date of lodging; (2) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for the performance of the Interim Measures described in Attachment 1, the RFI and the CMS described in Attachment 2 to this Consent Decree, and any Additional Work implemented by Defendant pursuant to Paragraph 22; and (3) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for Existing Contamination in Reach 1 and Reach 2 of Dicks Creek, the Outfall 002 channel, and Monroe Ditch, and (4) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for Existing Contamination in the Floodplain. This covenant not to sue is expressly conditioned upon the performance by Defendant of all of its obligations under this Consent Decree, including the Attachments hereto, and may be voided if Defendant fails to comply with any of the requirements of this Consent Decree. This covenant becomes effective upon the issuance of the

Acknowledgment of Final Completion, and is conditioned upon the veracity of Defendant's certifications and written reports as required in Section XVI (Completion of Work). This covenant not to sue extends only to the Defendant and does not extend to any other person, except to the extent provided in a modification of this Consent Decree agreed to by the Parties in accordance with Paragraph 10 and approved by the Court.

94. General Reservations of rights. The United States and the Intervenors reserve, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all matters not expressly included within the United States' and Intervenors' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and, to the extent applicable, Intervenors, reserve all rights against Defendant with respect to:

a. claims based on a failure by Defendant to meet a requirement of this Consent Decree;

b. liability to implement any corrective action selected by EPA and/or OEPA following completion of the Corrective Measures Study required pursuant to this Consent Decree;

c. liability for contamination in Dicks Creek, Monroe Ditch or the Floodplain that is not Existing Contamination;

d. liability arising from the past, present, or future disposal, release, or threat of release of solid waste or Hazardous Waste outside of the Facility and the Additional Areas identified in Attachment 2;

e. liability arising from: (1) Defendant's ownership or operation of the Facility after signature of this Consent Decree by the Defendant; or (2) Defendant's transportation, treatment,

storage, or disposal, or arranging for the transportation, treatment, storage, or disposal, of solid waste or Hazardous Waste at or in connection with the Facility after signature of this Consent Decree by the Defendant (other than as provided in the Work, or otherwise ordered by EPA pursuant to this Consent Decree);

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. criminal liability; and

h. liability for violations of federal or state law which occur during or after implementation of the Work.

95. Notwithstanding any other provision of this Consent Decree, the United States also reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendant to perform additional corrective measures to address contamination in Reach 1 and Reach 2 of Dicks Creek, Monroe Ditch or the Floodplain if:

a. Conditions in Reach 1 or Reach 2 of Dicks Creek, Monroe Ditch or the Floodplain, previously unknown to EPA, are discovered; or

b. Information, previously unknown to EPA, is received in whole or in part, and these previously unknown conditions or information, together with any other relevant information, indicate that the Interim Measures required in Reach 1 and 2 of Dicks Creek, Monroe Ditch, and/or the Floodplain are not protective of human health or the environment.

96. For purposes of Paragraph 95 above, the information and the conditions known to EPA shall include only that information and those conditions set forth in the documents listed in Attachment 7.

97. Nothing in this Consent Decree is intended either to create any rights in or grant any cause of action to any person not a party to this Consent Decree, or to release or waive any claim, cause of action, demand, or defense in law or equity that any party to this Consent Decree may have against any person(s) or entity not a party to this Consent Decree.

98. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all actions authorized by law to protect human health and the environment.

99. The rights reserved to the United States includes the right to disapprove of Work performed by the Defendant pursuant to this Consent Decree, and to order that Defendant perform Additional Work in accordance with Paragraph 22.

XIX. COVENANT NOT TO SUE OF OHIO

100. In consideration of the Work and the SEP that will be performed, the penalties and the costs that will be paid by the Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 101, 102, and 105, Ohio covenants not to take civil judicial or administrative action against Defendant (1) pursuant to Section 505 of the CWA, 33 U.S.C. § 1365, R.C. Chapters 3734 and 6111, and the rules promulgated under those chapters in the O.A.C., for the violations alleged in the Ohio Complaint through the date of lodging; (2) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for the performance of the Interim Measures described in Attachment 1, the RFI and the CMS described in Attachment 2 to this Consent Decree and any Additional Work implemented by Defendant pursuant to Paragraph 22; and (3) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for Existing Contamination in Reach 1 and Reach 2 of Dicks Creek, the Outfall 002 channel, and Monroe

Ditch, and (4) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for Existing Contamination in the Floodplain. This covenant not to sue is expressly conditioned upon the performance by Defendant of all its obligations under this Consent Decree, including the Attachments hereto, and may be voided if Defendant fails to comply with any of the requirements of this Consent Decree. This covenant becomes effective upon the issuance of the Acknowledgment of Final Completion, and is conditioned upon the veracity of Defendant's certifications and written reports as required in Section XVI (Completion of Work). This covenant not to sue extends only to the Defendant and does not extend to any other person, except to the extent provided in a modification of this Consent Decree agreed to by the Parties in accordance with Paragraphs 10 and approved by the Court.

101. General Reservations of rights. Ohio reserves, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all matters not expressly included within Ohio's covenant not to sue. Notwithstanding any other provision of this Consent Decree, Ohio reserves all rights against Defendant with respect to:

a. claims based on a failure by Defendant to meet a requirement of this Consent Decree;

b. liability to implement any corrective action selected by EPA and/or OEPA following completion of the Corrective Measures Study required pursuant to this Consent Decree;

c. liability for contamination in Dicks Creek, Monroe Ditch or the Floodplain that is not Existing Contamination;

d. liability arising from the past, present, or future disposal, release, or threat of release of solid waste or Hazardous Waste outside of the Facility and the Additional Areas;

e. liability arising from: (1) Defendant's ownership or operation of the Facility after signature of this Consent Decree by the Defendant; or (2) Defendant's transportation, treatment, storage, or disposal, or arranging for the transportation, treatment, storage, or disposal, of solid waste or Hazardous Waste at or in connection with the Facility after signature of this Consent Decree by the Defendant (other than as provided in the Work, or otherwise ordered by EPA pursuant to this Consent Decree);

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. criminal liability; and

h. liability for violations of federal or state law which occur during or after implementation of the Work.

102. Notwithstanding any other provision of this Consent Decree, Ohio also reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendant to perform additional corrective measures to address contamination in Reach 1 and Reach 2 of Dicks Creek, Monroe Ditch or the Floodplain if:

a. Conditions in Reach 1 or Reach 2 of Dicks Creek, Monroe Ditch or the Floodplain, previously unknown to OEPA, are discovered; or

b. Information, previously unknown to OEPA, is received in whole or in part, and these previously unknown conditions or information, together with any other relevant information, indicate that the Interim Measures required in Reach 1 and 2 of Dicks Creek, Monroe Ditch, and/or the Floodplain are not protective of human health or the environment.

103. For purposes of Paragraph 102 above, the information and the conditions known to OEPA shall include only that information and those conditions identified in documents listed in Attachment 7.

104. Nothing in this Consent Decree is intended either to create any rights in or grant any cause of action to any person not a party to this Consent Decree, or to release or waive any claim, cause of action, demand, or defense in law or equity that any party to this Consent Decree may have against any person(s) or entity not a party to this Consent Decree.

105. Notwithstanding any other provision of this Consent Decree, Ohio retains all authority and reserves all rights to take any and all actions authorized by law to protect human health and the environment.

XX. COVENANT NOT TO SUE OF DEFENDANT

106. Except as set forth in Attachment 8 with respect to the Intervenors, Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, Ohio, and/or the Intervenors, their agencies, departments, officials, employees, contractors, or agents, for matters arising under or related to this Consent Decree, including but not limited to

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Facility; or

c. Except as provided in Paragraph 107, any claims arising out of Work at or in connection with the Facility, including any claim under the United States Constitution, the Ohio Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

In the event that the United States, Intervenors or Ohio brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 94, 95, 98, 99, 101, 102, and 105, Defendant reserves, and this Paragraph is without prejudice to, any defenses and any claims, whether by counterclaim or otherwise, regarding and limited to the subject matter of and in response to the cause of action brought by, or order issued by, the United States, Intervenors or Ohio, except as provided in Paragraph 110 (Waiver of Claim-Splitting Defenses).

107. The Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. No such claim shall include a claim based on EPA's selection of response actions, or the approval of the Defendant's plans or activities. The provisions of this Paragraph shall apply only to claims which are brought pursuant to any statute other than CERCLA and/or which the waiver of sovereign immunity is found in a statute other than CERCLA.

108. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

109. Except as set forth in Attachment 8 with respect to the Intervenors, Defendant shall not seek indemnification from the United States, Ohio, Intervenors, their agencies, departments, officials, employees, contractors, or agents relating to any of Plaintiffs' pending claims for relief; provided, however, that if Plaintiffs seek additional relief with respect to any rights reserved under Sections XVIII (Covenant Not to Sue of United States and Intervenors) and XIX (Covenant Not to Sue of Ohio), Defendant reserves any right it may have to seek indemnification with respect to the subject matter of such claims for additional relief.

110. In any subsequent administrative or judicial proceeding initiated by the United States or Ohio for injunctive relief, recovery of response costs, or other appropriate relief relating to the Facility, 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-splitting, or other defenses based upon any contention that the claims raised by the United States or Ohio in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII (Covenant Not to Sue of United States and Intervenors) and Section XIX (Covenant Not to Sue of Ohio).

XXI. RECORD RETENTION

111. Defendant shall preserve and maintain, during the pendency of this Consent Decree, and for a minimum of five (5) years after termination of this Consent Decree, at least one legible copy of all reports required to be generated by Defendant under this Consent Decree, together with documentation, in either electronic or hard copy form, of the research and data used to generate such reports or which otherwise demonstrate the performance of Defendant's

obligations under this Consent Decree. In addition, all memoranda, written or electronic communications, meeting minutes, and drafts prepared in connection with each report required to be generated by Defendant under this Consent Decree, and relevant to the issue of the adequacy of Defendant's performance of its obligations under this Consent Decree, shall be maintained until one (1) year following EPA's written approval of each final report, regardless of any corporate document retention policy to the contrary.

112. Notwithstanding the provisions of Paragraph 111, Defendant may request in writing permission from EPA to not preserve, to not maintain, or to destroy certain specified categories of documents. Defendant's obligations under Paragraph 111 will remain unchanged, however, unless and until EPA, after consultation with OEPA and the Intervenors, in its discretion issues written approval of the request.

113. Upon the expiration of any obligation under Paragraph 111, Defendant shall provide no less than 90 days notice to the Plaintiffs that no further preservation or maintenance of records is planned, or that destruction of records is planned, and shall make such non-privileged records available to EPA and OEPA for inspection, copying or retention. This notification will identify the nature of the records and their storage location or locations.

114. Defendant further agrees that within thirty (30) days of retaining or employing any agent, consultant or Contractor for the purpose of carrying out the terms of this Consent Decree, Defendant will enter into an agreement, with any such agents, consultants or Contractors whereby such agents, consultants and/or Contractors will be required to provide a copy to Defendant for subsequent retention by Defendant in accordance with Paragraph 111, of all documents produced pursuant to this Consent Decree. Such agreement shall require said agents,

consultants and/or Contractors upon completion of their work to furnish Defendant a copy or originals of all documents, data, analyses, and all other materials created or obtained during their performance of Work specified in this Consent Decree.

115. Nothing in this Consent Decree in any way limits Defendant's obligations under any federal or state law, regulation or permit to preserve any record, log or document for more than five (5) years from the date of creation or receipt by Defendant of such record, log, or document.

XXII. GENERAL PROVISIONS

116. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, tribal, or local permit required in order to implement this Consent Decree or to continue or alter operations of the Facility (including but not limited to construction, operation, or closure permits required under RCRA), and Defendant shall remain subject to all such permitting requirements. Defendant shall be responsible for obtaining any federal, state, or local permit(s) for any activity at the Facility, including those necessary for the performance of the Work required by this Consent Decree.

117. Nothing in this Consent Decree shall relieve Defendant of its obligation to comply with all applicable provisions of federal, state or local law, nor shall anything in this Consent Decree be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Defendant in connection with the SEP under the terms of this Consent Decree. After exercising due diligence and conducting appropriate inquiries, Defendant certifies that, to its knowledge, as of the date of lodging of this Consent Decree, the Facility is in compliance with

each of the specific requirements that is the basis of Plaintiff's pending claims for relief under the CWA and CAA.

118. Non-Waiver. Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will constitute or result in compliance with the provisions of the CWA, RCRA, and/or CAA nor shall EPA's approval of any submission made by Defendant under this Consent Decree constitute a warranty that implementation by Defendant of the approved submission will result in compliance with the provisions of the CWA, RCRA, and/or CAA. Except as expressly provided in Paragraphs 93 and 100 of this Consent Decree (Covenant Not To Sue of United States and Intervenors, and Covenant Not to Sue of Ohio), the parties agree that compliance with this Consent Decree shall not be a defense to any actions commenced pursuant to such laws or regulations.

119. Modifications. Except as specifically provided for herein, no modifications shall be made to this Consent Decree without written agreement of all parties and written approval of the Court. Changes to the technical and schedule provisions set forth in the Attachments hereto may be made without approval by the Court under the terms set forth in the respective Attachments, or upon written agreement between Defendant and EPA, after reasonable opportunity for review and comment by OEPA and Intervenors. Nothing in this Section XXII (General Provisions) shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

120. Retention of Jurisdiction. The Court shall retain jurisdiction of this matter. Plaintiffs retain the right to seek to enforce the terms of this Consent Decree and take any other action

authorized by federal, state or local law to achieve or maintain compliance with this Consent Decree.

121. Indemnification. Defendant agrees to indemnify and save and hold harmless the United States and Ohio, their agencies, departments, agents and employees, from any and all claims or causes of action arising from or on account of the acts or omissions of Defendant or its agents, representatives, employees, Contractors, and subcontractors in carrying out the SEP and Work required by this Consent Decree.

122. Entire Agreement. This Consent Decree, including the attached Attachments, represents the entire agreement among the parties. Attached hereto are the following: Attachment 1 is the Interim Measures Scope of Work; Attachment 2 is the RCRA Facility Investigation/Corrective Measures Study Scope of Work; Attachment 3 is the Supplemental Environmental Project Scope of Work; Attachment 4 is the References list; Attachment 5 is a Map of Facility, Showing Relationship to Dicks Creek and Monroe Ditch; Attachments 6a - 6d are maps showing the boundaries of the Floodplain; Attachment 7 is a list of documents describing information and conditions known to Plaintiffs; and Attachment 8 is a Site Access and Confidentiality Agreement. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree.

123. Survivability/Permit Integration. This Consent Decree shall survive the issuance or denial of a RCRA permit for the Facility, and this Consent Decree shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Defendant shall continue to be liable for the performance of obligations under this Consent Decree notwithstanding the issuance or denial of such permit.

124. Termination.

a. After Defendant has maintained compliance with Subparagraphs 14.a-14.d and 15.a-15.c of this Consent Decree for a period of one (1) year after the Effective Date of this Consent Decree, Defendant may serve upon the Plaintiffs a request to terminate its obligations under such provisions. Any such request shall include a certification that Defendant has satisfied the requirements of such provisions and shall provide all necessary supporting documentation.

i. If the United States, after consultation with Ohio and the Intervenors, agrees that Defendant has satisfied the requirements of Subparagraph 124.a, above, the Parties shall submit for the Court's approval a joint stipulation providing for termination of the Defendant's obligations under Subparagraphs 14.a-14.d and 15.a-15.c.

ii. If the United States, after consultation with Ohio and the Intervenors, does not agree that Defendant has satisfied the requirements of Subparagraph 124.a above, the United States shall notify Defendant of its determination, and Defendant may seek Dispute Resolution under Section XIII of this Consent Decree.

b. After Defendant has (1) received a Acknowledgment of Final Completion pursuant to Paragraph 89 of this Consent Decree, (2) paid all penalties, interest, and other amounts due pursuant to this Consent Decree and (3) complied with all other requirements of this Consent Decree (including those relating to the SEP required by Section VI of this Consent Decree) except for requirements relating to continuing operation and maintenance of any Interim Measures or Stabilization measures required pursuant to Attachment 1 or Paragraph 22 or to continuing Financial Assurance for such operation and maintenance obligations, Defendant may

serve upon the Plaintiffs a request to terminate its remaining obligations under this Consent Decree, subject to the provisions of Subparagraph 124.c. Any such request shall include a certification that Defendant has satisfied the requirements identified in this Subparagraph 124.b and shall provide all necessary supporting documentation.

i. If the United States, after consultation with Ohio and the Intervenors, agrees that Defendant has satisfied the requirements of Subparagraph 124.b, above, the Parties shall submit, for the Court's approval, a joint stipulation providing for termination of the Defendant's remaining obligations under this Consent Decree, subject to the provisions of Subparagraph 124.c.

ii. If the United States, after consultation with Ohio and the Intervenors, does not agree that Defendant has satisfied the requirements of Subparagraph 124.b above, the United States shall notify Defendant of its determination, and Defendant may seek Dispute Resolution under Section XIII of this Consent Decree.

c. Notwithstanding termination of any obligations of Defendant pursuant to Subparagraphs 124.a or 124.b of this Paragraph,

i. any obligation of Defendant under this Consent Decree for operation and maintenance of any Interim Measure or stabilization measure required pursuant to Attachment 1 or Paragraph 22 of this Consent Decree shall remain in effect and enforceable under this Consent Decree except as otherwise provided by the terms of an approved operation and maintenance plan or as otherwise agreed in writing by Parties to this Consent Decree;

ii. any Financial Assurance obligations relating to such operation and maintenance activities, shall remain in effect and enforceable under this Consent Decree, except as provided in Subparagraph 24.b.xviii.

XXIII. EFFECTIVE DATE

125. This Consent Decree shall be effective upon the date of its entry by the Court.

XXIV. PUBLIC COMMENT

126. Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate. After reviewing public comments, if any, the United States shall advise the Court and Defendant by motion whether it seeks entry of this Consent Decree. Defendant agrees to the entry of this Consent Decree without further notice.

Judgment is hereby entered in accordance with the foregoing Consent Decree this 12th day of May 2006. There is no just reason for delay.

SO ORDERED.

HERMAN J. WEBER
SENIOR UNITED STATES DISTRICT JUDGE

Consent Decree: *United States, et al. v. AK Steel Corporation*, Civil Action No. C-1-00530

FOR THE UNITED STATES OF AMERICA:

Date: _____

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources
Division

Date: 3/28/06 By: _____

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Consent Decree: *United States, et al. v. AK Steel Corporation*, Civil Action No. C-1-00530

Date: March 30, 2006

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U.S. Environmental Protection Agency
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Consent Decree: *United States, et al. v. AK Steel Corporation*, Civil Action No. C-1-00530

Date: March 16, 2006

THOMAS V. SKINNER
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

Date: March 15, 2006

ROBERT GUENTHER
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Consent Decree: *United States, et al. v. AK Steel Corporation*, Civil Action No. C-1-00530

FOR THE STATE OF OHIO:

JIM PETRO
ATTORNEY GENERAL

Date: March 20, 2006

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Consent Decree: *United States, et al. v. AK Steel Corporation*, Civil Action No. C-1-00530

FOR SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL:

Date: 3/22/06

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Consent Decree: *United States, et al. v. AK Steel Corporation*, Civil Action No. C-1-00530

FOR AK STEEL CORPORATION:

Date: 3/20/06

DAVID C. HORN
Senior Vice President,
General Counsel and
Secretary
AK Steel Corporation