

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

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. 1:00-cv-00530-JPH

**CONSENT DECREE
FOR RCRA CORRECTIVE MEASURES IMPLEMENTATION**

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I. INTRODUCTION

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed an Amended Complaint (“U.S. Complaint”) against Defendant, at the time named AK Steel Corporation (“Defendant” or “AK Steel”), in this matter on October 18, 2001, seeking, among other things, 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), at its Middletown, Ohio steel production facility. In 2020, AK Steel Corporation’s parent company was acquired by Cleveland-Cliffs, Inc. and AK Steel Corporation subsequently changed its name to Cleveland-Cliffs Steel Corporation.

B. Plaintiff State of Ohio, on behalf of the Ohio Environmental Protection Agency (“OEPA”), filed a First Amended Complaint (“Ohio Complaint”) against Defendant in this matter on April 5, 2001, for injunctive relief and/or the assessment of civil penalties for violations of Ohio Revised Code (“Ohio Rev. Code”) Ann. § 3734 (Solid and Hazardous Waste) and the rules implementing that chapter. The Ohio Complaint also included claims under the Clean Water Act (“CWA”), the Clean Air Act (“CAA”), the regulations implementing those statutes, and the Ohio State Implementation Plan (“Ohio SIP”).

C. Plaintiffs Sierra Club and Natural Resources Defense Council (“Intervenors”) also filed a Complaint in Intervention (“Intervenors’ Complaint”) pursuant to RCRA’s citizen suit provisions, 42 U.S.C. § 6972(b)(1), against Defendant in this matter on January 3, 2003, seeking an order for Defendant to perform corrective action pursuant to Section 3008(h) of RCRA. Intervenors’ Complaint also included claims under the Clean Water Act (“CWA”), the Clean Air Act (“CAA”), and the regulations implementing those statutes.

D. On May 15, 2006, the Court entered a Consent Decree in Partial Resolution of Pending Claims (the “2006 Consent Decree”) in order to resolve Plaintiffs’ pending claims for certain interim measures and corrective measures studies under RCRA, as well as Plaintiffs’ pending claims for relief under the CWA, CAA, the Ohio SIP, and Ohio Rev. Code Ann. §§ 3734 and 6111 (Water Pollution Control). *See* 2006 Consent Decree, ECF No. 372-1 at PageID 10–11. The 2006 Consent Decree resolved all claims brought by the United States and the Intervenors with the exception of claims for corrective action implementation under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). The 2006 Consent Decree resolved all claims brought by the State of Ohio.

E. Among other requirements, the 2006 Consent Decree required Defendant to perform various corrective action investigations pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), 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.

F. At the time of the entry of the 2006 Consent Decree, the Parties agreed to defer resolution of issues relating to alleged liability of Defendant under Section 3008(h) of RCRA and to defer entering into an agreement governing implementation of any corrective measures that might be selected, until completion of the corrective action investigations required under the 2006 Consent Decree. *See* 2006 Consent Decree, ECF No. 372-1 at PageID 23–46.

G. Specifically, the 2006 Consent Decree required Defendant to perform the following corrective action investigations: (i) identify solid and hazardous waste management units and other areas of concern on the property; (ii) perform a RCRA Facility Investigation

(“RFI”) on those units to identify any threats to human health and the environment; and (iii) to develop a Corrective Measures Study (“CMS”) to summarize potential appropriate responses to threats to human health and the environment identified during the RFI. 2006 Consent Decree, ECF No. 372-1 at PageID 23–28.

H. During implementation of the 2006 Consent Decree, Defendant and EPA agreed to a phased implementation of the CMS. Defendant and EPA agreed that, rather than complete and submit a single CMS for the whole Facility all at once, Defendant would complete and submit multiple CMSs, with each CMS covering one or more identified geographic subdivisions of the Facility (“Site Areas”). These Site Areas, shown on the map in Appendix A, are: (1) the North Plant Area, (2) the Melt Plant Area, (3) the Coil Paint Area, (4) the South Plant Area, (5) the Slag Processing Area, (6) Solid Waste Management Unit (“SWMU”) 38 (formerly part of the Slag Processing Area), (7) SWMU 39 (formerly part of the Slag Processing Area) and (8) “Additional Areas,” as identified in the 2006 Consent Decree Attachment 2 RFI/CMS SOW, Exhibits A and C.

I. The 2006 Consent Decree also required Defendant to implement certain “Interim Measures” (“IMs”). 2006 Consent Decree, ECF No. 372-1 at PageID 27. Those IMs, as identified and fully described in Attachment 1 of the 2006 Consent Decree, include: IM 1 (Dicks Creek floodplain sampling and analysis); IM 2 (Dicks Creek floodplain remediation); IM 3 (free product in Monitoring Well MDA-33S); IM 4 (PCB soil remediation); IM 5 (PCB soil remediation); IM 6 (Monroe Ditch remediation); IM 7 (Dicks Creek Reach 2 remediation); IM 8 (restoration after remediation); IM 9 (groundwater interceptor trench); IM 10 (groundwater seep inspection and control); IM 11 (signs and fencing), and IM 12 (groundwater seeps to Dicks Creek).

J. Regarding the Additional Areas, as of the lodging of this Consent Decree, Defendant has submitted a CMS for the Additional Areas. Defendant, with the approval of EPA, is implementing corrective measures at the Additional Areas under the “Additional Work” provisions of the 2006 Consent Decree. 2006 Consent Decree, ECF No. 372-1 at PageID 28–31. Therefore, the Additional Areas from the 2006 Consent Decree will not be subject to this Consent Decree.

K. Regarding the Interim Measures, as of the lodging of this Consent Decree, Defendant has completed all Interim Measures from the 2006 Consent Decree, with the exception of ongoing operation and maintenance for IM 3 and IM 9, as identified in a letter from EPA dated February 28, 2014. Therefore, except for the ongoing operation and maintenance for IM 3 and IM 9, the Interim Measures will not be subject to this Consent Decree.

L. Regarding the RFI/CMSs apart from the Additional Areas, as of the lodging of this Consent Decree, following is the status:

Site Area	RFI/CMS Status
North Plant Area	RFI Workplan submitted November 15, 2017, and pending approval, with the exception of an expedited RFI for GM-27S Area. GM-27S RFI Data Summary Report, submitted August 27, 2018, pending approval.
Melt Plant Area	RFI Workplan Revision 3, submitted May 20, 2016 and approved by EPA on May 23, 2016, with RFI Work Plan Melt Plant Area Addendum 2: Phase 3, Step-Out Investigation 2, Revision 1 submitted August 26, 2020, approved by EPA on December 22, 2020
Coil Paint Area	No further action determination by EPA letter dated July 2, 2015
South Plant Area	RFI Workplan submitted September 7, 2016 and pending approval, with the exception of an expedited RFI for a portion of SWMU 50 that EPA concluded by letter dated December 23, 2022, that no further action was required for the area
Slag Processing Area	RFI Workplan Revision 2, May 2015, and revised via change pages submitted July 10, 2015 and approved by EPA on July 15, 2015, with Slag Processing Area RFI Step-out 2 Data Summary Report, submitted December 21, 2020 and Slag Processing RFI Area Work Plan Addendum 3, RFI Step-out 3, submitted March 26, 2021, pending approval
SWMU 38	Revised CMS submitted March 30, 2023, and pending approval
SWMU 39	Revised CMS submitted November 1, 2022, and pending approval

M. Pursuant to the Parties' agreement to defer entering into a settlement governing Corrective Measures Implementation ("CMI"), this Consent Decree provides for the development of CMI Workplans and subsequent implementation of the selected corrective actions at the Facility (except at Site Areas where EPA has determined that no further action is required). To govern performance of the remaining RFI/CMSs, the 2006 Consent Decree shall remain in effect and is not superseded or amended by this Consent Decree.

N. On October 3, 2024, the Parties filed a Stipulated Dismissal of all claims filed by the Intervenor in this action.

O. In furtherance of both judicial efficiency and the public interest, the Parties have agreed to enter into a Consent Decree to resolve the United States' remaining claims seeking corrective action under Section 3008(h) of RCRA, and to provide for Defendant to implement corrective action to address the releases of hazardous waste or hazardous constituents at or from the Facility in accordance with this Consent Decree.

P. 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 arm's 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 the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims asserted herein under RCRA pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and 28 U.S.C. §§ 1331, 1345, and 1355. This court also has jurisdiction over the Parties to this Consent Decree.

2. Venue is proper in this judicial district pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and 28 U.S.C. §§ 1391 (b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

III. APPLICABILITY

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

5. No transfer of ownership or operation of the Facility shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented unless:

a. The transferee agrees in writing to undertake the obligations required by this Consent Decree and to be substituted for Defendant as a Party to this Consent Decree and thus be bound by the terms thereof and the United States consents in writing to relieve Defendant of its obligations pursuant to Section XIX (Modification). At least 30 Days prior to such transfer,

Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States in accordance with Section XVII (Notices and Submissions) together with a request for approval of the substitution of obligations under this Consent Decree. The United States' decision whether to approve the transferee's substitution for Defendant under this Consent Decree and what conditions may attend approval will take into account: (i) the status of the Work to be Performed in Section V; (ii) whether the transferee has or will have prior to the transfer the financial and technical capability to comply with this Consent Decree; and (iii) other factors that the United States may deem relevant, including but not limited to the environmental compliance history of the proposed transferee and environmental management capabilities of the proposed transferee; or

b. Defendant submits to EPA at least 30 Days prior to such transfer, and EPA approves in writing, a request for approval of the transfer which includes a demonstration that: (1) Defendant is not subject to any obligations required by this Consent Decree or the 2006 Consent Decree regarding the portions of the Facility to be transferred; (2) access to the portions of the Facility to be transferred is not required for the implementation of this Consent Decree under Paragraph 28, unless the transferee has contractually granted such access; and (3) the portions of the Facility to be transferred are not included within the scope of any RCRA Facility Investigation or Corrective Measures Study under the 2006 Consent Decree or Corrective Measures Implementation pursuant to this Consent Decree. Approval of a transfer of a portion of the Facility under this subparagraph shall not relieve Defendant of its obligation to ensure that the terms of this Consent Decree or the 2006 Consent Decree are implemented with respect to any portions of the Facility not approved for transfer by EPA.

6. Any attempt to transfer ownership or operation of the Facility without complying with Paragraph 5 constitutes a violation of this Consent Decree.

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

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

IV. DEFINITIONS

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

10. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

a. “2006 Consent Decree” means the Consent Decree in Partial Resolution of Pending Claims, ECF No. 372-1 at Page ID 1, which was entered on May 12, 2006.

b. “Consent Decree” or “Decree” means this Consent Decree for RCRA Corrective Measures Implementation and all attachments hereto, as well as plans, reports, schedules, and other items and deliverables approved by EPA pursuant to this Consent Decree. If there is a conflict between a provision found in Sections I through XXIV of this decree and a provision in any appendix or deliverable, the provision in Sections I through XXIV controls.

c. “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 and 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 Ohio Rev. Code Ann. § 3734.01(J); and any “industrial waste” or “other waste” as defined in Ohio Rev. Code Ann. § 6111.01, 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.

d. “Contractor” means any contractor, subcontractor, consultant, or laboratory retained to conduct or monitor any portion of the corrective action undertaken pursuant to this Consent Decree.

e. “Corrective Measures Implementation Scope of Work” or “CMI SOW” means the Scope of Work for implementing the corrective measures under this Consent Decree, which is attached hereto as Appendix B.

f. “Corrective Measures Study” or “CMS” means that portion of the RCRA corrective action process under the 2006 Consent Decree and this Consent Decree 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 a RFI.

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

h. “Defendant” means Cleveland-Cliffs Steel Corporation, which was formerly named AK Steel Corporation, and which was acquired by Cleveland-Cliffs Inc. in 2020.

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

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

k. “Effective Date” means the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

l. “Facility” or “Middletown Works” 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 in Appendix A.

m. “Hazardous Constituents” shall mean those constituents 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.

n. “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, and shall include Hazardous Constituents as defined above.

o. “Intervenors” means the Sierra Club and Natural Resources Defense Council.

p. “Plaintiffs” means the United States, the State, and Intervenors collectively.

- q. “Paragraph” means a portion of this Decree identified by an Arabic numeral.
- r. “Parties” means the United States and Defendant.
- s. “Release” means 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.
- t. “Section” means a portion of this Decree identified by a Roman numeral.
- u. “State” means the State of Ohio.
- v. “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.
- w. “United States” means the United States of America, acting on behalf of EPA.
- x. “Work” means all activities performed pursuant to Section V (Corrective Action) and the CMI SOW attached as Appendix B to this Consent Decree.
- y. “Workplan” means a detailed plan prepared by Defendant to satisfy the requirements of this Consent Decree.

V. CORRECTIVE ACTION

11. Compliance With Applicable Law. All Work undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations, or permits, including, without limitation, federal or state laws and regulations governing the generation, management, treatment, storage, transport,

and disposal of hazardous waste, and the terms and conditions of any existing permit applicable to the Facility.

12. General Work Requirements. Pursuant to Section 3008(h) of RCRA, Defendant shall perform the Work in accordance with the CMI SOW and any EPA-approved Workplans or schedules developed pursuant to this Consent Decree, including any Attachments or Appendices thereto.

13. Selection of Corrective Measures.

a. After EPA review and approval of each “CMS Report” evaluating and recommending corrective measures as defined in Part 7 of Attachment 2 to the 2006 Consent Decree and submitted by Defendant as required by Paragraph 20 of the 2006 Consent Decree, EPA may provide the public with an opportunity to review and comment on the proposed corrective measures, including EPA’s justification for approving such corrective measures (a “Statement of Basis”). EPA may elect to submit a Statement of Basis for each CMS Report or to combine multiple CMS Reports into one or more Statements of Basis.

b. For each CMS Report submitted under the preceding Subparagraph, following the public comment period on the associated Statement of Basis, EPA shall select the final corrective measures for the Site Area(s) covered by the CMS Report and notify the public of the decision and rationale in a Final Decision and Response to Comments (“Final Decision”). If EPA determines that the corrective measures selected by EPA differ significantly from the corrective measures recommended in the Statement of Basis, EPA shall explain in the Final Decision the reason for such differences.

14. Corrective Measures Implementation (“CMI”).

a. Within 90 Days after EPA's publication of a Final Decision under the preceding Paragraph, or 120 Days if EPA determines that the corrective measures selected by EPA differ significantly from the corrective measures recommended in the Statement of Basis, Defendant shall submit to EPA for review and approval a Corrective Measures Implementation Workplan ("CMI Workplan"), including a "Project Schedule" which provides a schedule for implementation of the corrective measures selected in that Final Decision in accordance with the CMI SOW attached hereto as Appendix B.

b. Each CMI Workplan shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of the corrective measures selected in the respective Final Decision. Each Project Schedule will provide for Defendant to complete all final corrective measures within a reasonable period of time to protect human health and the environment. The Project Schedule may take into consideration the need for a phased approach to commencement, implementation and completion of corrective measures across all of the CMIs for the Facility as is consistent with the phased implementation of the CMS identified in Paragraph I.I.

c. Consistent with the CMI SOW and selected corrective measures, each CMI Workplan and Project Schedule shall address the following information: (i) conceptual, intermediate, and final designs for construction and implementation of the selected corrective measures; (ii) criteria for construction completion; (iii) anticipated operation and maintenance; and (iv) outlines of anticipated reports, including a Construction Completion Report and a Corrective Measures Completion Report.

d. Each Corrective Measures Completion Report shall comply with the requirements outlined in Subparagraph 18.a.

e. Once approved by EPA, Defendant shall implement the CMI Workplan according to the approved Project Schedule unless a revised Project Schedule is approved by EPA.

15. Project Coordinator.

a. Within 15 Days of the effective date of this Consent Decree, EPA 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 and EPA 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 XVII (Notices and Submissions). EPA and Defendant shall each notify each Party in writing of the Project Coordinator it has selected.

b. Defendant and EPA may change their Project Coordinators but agree to provide at least 14 days written notice prior to any such change, where practicable.

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

16. If, prior to Defendant's Request for an Acknowledgement of Completion pursuant to Section VI (Completion of the Work) of this Consent Decree, EPA 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 in accordance with the approved CMI Workplan, 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 XVI(Dispute Resolution).

VI. COMPLETION OF THE WORK

17. Defendant shall document completion of all Work required pursuant to Section V of this Consent Decree by submitting to the United States one or more Corrective Measures Completion Reports and accompanying Request(s) for Acknowledgement of Completion, as provided in this Section. Defendant shall submit a separate Corrective Measures Completion Report and Request for Acknowledgment of Completion for each CMI Workplan, unless EPA otherwise agrees that multiple CMI Workplans can be combined into a single Corrective Measures Completion Report and Request for Acknowledgment of Completion.

18. Corrective Measures Completion Reports.

a. Each Corrective Measures Completion Report shall, at a minimum, include the following information: (i) purpose of the corrective measures; (ii) synopsis of the corrective measures; (iii) summary of the corrective measures' completion criteria (i.e., process and criteria for determining when corrective measures, maintenance, and monitoring may cease); (iv) demonstration that the completion criteria have been met; (v) summary of work accomplishments; (vi) summary of significant activities that occurred during construction and implementation of the corrective measures; (vii) summary of inspection findings; (viii) summary of total estimated operation and maintenance costs; (ix) as applicable, an estimate of the volume, in cubic yards, gallons, or other volumetric units as appropriate, for each of the following: soil, soil gas, sediment, groundwater, and surface water that the response actions addressed; (x) as applicable, an estimate of the mass of contaminants mitigated as part of those materials

addressed; and (xi) as applicable, an estimate of the number and types of jobs created as a part of the remedy construction.

b. Each Corrective Measures Completion Report and Request for Acknowledgement of Completion shall include one or more written reports by registered professional engineers or professional geologists in the relevant technical fields, certifying that all Work required by the CMI SOW has been completed in accordance with the CMI SOW.

c. Each Corrective Measures 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 officer or other individual specifically designated by Defendant for this purpose:

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 Cleveland-Cliffs Steel Corporation has completed in accordance with the Consent Decree the Work set forth in the Corrective Measures Implementation Scope of Work (“CMI SOW”) attached to the Consent Decree and the applicable CMI Workplan, 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.

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

19. Acknowledgments of Completion.

a. If after review of any Corrective Measures Completion Report and certifications submitted pursuant to this Section and any inspection EPA determines that the

Work has been completed in accordance with the Consent Decree, it shall issue an Acknowledgement of Completion for the Work completed.

b. If EPA determines that any portion of the certified Work has not been completed in accordance with this Consent Decree, 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 pursuant to Section XVII (Notices and Submissions).

20. Defendant shall have the opportunity to meet or confer with EPA within 30 Days after receipt of the notice referred to above in Paragraph 19, 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 Paragraph 19.

21. Based on any meeting or conference pursuant to Paragraph 20, EPA may decide to revise any determinations, schedules, or activities set forth in the notice issued by EPA pursuant to Paragraph 19.b, 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.

22. Following any meeting or conference pursuant to Paragraph 20, 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 19.b or Paragraph 21, as applicable, subject only to its right to invoke the dispute resolution procedures set forth in

Section XVI. Upon completion of these activities, Defendant shall submit revised written reports and certifications for the completed portion of the Work pursuant to Paragraph 17.

23. Within 90 Days of Defendant's completion of all Work required under this Consent Decree, Defendant shall submit to the United States a Request for Acknowledgement of Final Completion, referencing all written reports and certifications submitted pursuant to Paragraphs 17 and/or 22. 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. If EPA concludes that all Work required under this Consent Decree has been performed in accordance with this Consent Decree, EPA will so notify Defendant in writing, which notice shall constitute the Acknowledgement of Final Completion.

VII. ACCESS

24. Commencing upon the date of lodging of this Consent Decree, Defendant agrees to provide the United States and its representatives, including its 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 Defendant by the terms of the contract or agreement between Defendant and the property owner pursuant to Paragraph 28, 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:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States,

including inspecting, reviewing, and copying all documents, operating logs, and contracts that relate to activities pertaining to the Work 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;

c. Conducting investigations relating to the Work;

d. Obtaining samples relating to the Work;

e. Interviewing and obtaining oral, written, or recorded statements from personnel involved in activities pertaining to the Work required by this Consent Decree, whether such personnel are employed by Defendant or by its Contractors or subcontractors, following notification to Defendant and an opportunity for a representative of Defendant to be present;

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

g. 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.

h. Conducting such other monitoring and investigative activities as EPA deems necessary to oversee activities pertaining to the Work required by this Consent Decree; and

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

25. Defendant may assert that any written statement, photograph, videotape, sound recording, record, file, or other document obtained by EPA 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 Subpart B; 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, that is created or generated pursuant to the requirements of the Consent Decree. 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 confidential or privileged.

26. Defendant, upon request at the time of sampling, may obtain splits of any samples taken by the EPA, 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 24 of this Consent Decree.

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

28. 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 their representatives (including Contractors) necessary for conducting any activity related to the Consent Decree, including those activities listed in Paragraph 24 above, from the present owner(s) of such property. Defendant shall use its best efforts to obtain such an

agreement within 60 Days of either of the following, whichever is later: (i) the date of approval of any Workplan for which access is required; or (ii) the date that the need for access becomes known to Defendant. Within the same timeframe, Defendant shall either provide the United States 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 Defendant and the United States, to refrain from using the Facility, or other such property beyond the Facility boundary 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.

29. The agreements referenced in Paragraph 28, 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 Project Coordinator has copies of any such access agreement(s).

30. Best efforts as used in this Section shall include a certified letter from Defendant to the present owner(s) of such property requesting access agreement(s) consistent with Paragraph 28, and the payment of reasonable compensation in consideration of granting access.

31. If Defendant is unable to obtain an agreement for access in accordance with Paragraph 28, 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.

32. 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 with Section XIII (Force Majeure) of this Consent Decree.

VIII. FINANCIAL ASSURANCE

33. To ensure completion of the Work required under Section V, Defendant shall secure financial assurance for the benefit of EPA in accordance with this Section VIII.

34. Estimated Costs of the Work.

a. Defendant shall, within 60 Days of EPA's approval of each individual CMI Workplan and Project Schedule under Subparagraph 14.a, submit to EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work covered by that CMI Workplan and Project Schedule (an "Estimated Cost of the Work"). Each Estimated Cost of the Work shall account for the total costs of the Work covered by that CMI Workplan and Project Schedule, as described in Section V (Corrective Action) of the CD and the CMI SOW, and any EPA-approved work plan(s), including any necessary long term costs, such as operation and maintenance costs and monitoring costs. A third party is a party who (i) is neither a parent nor a subsidiary of Defendant and (ii) does not share a common parent or subsidiary with Defendant. The cost estimates shall 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.

b. Concurrent with the submission of additional EPA-approved work plan(s) required under Section V (Corrective Action), Defendant shall submit a revised Estimated Cost of the Work.

c. Defendant shall annually adjust all Estimated Costs of the Work submitted and approved under this Paragraph for inflation within 30 Days after the close of Defendant's fiscal year until the Work required by this Consent Decree is completed.

d. Defendant shall submit each Estimated Cost of the Work to EPA for review. EPA will review each cost estimate and notify Defendant in writing of EPA's approval, disapproval or modification of each Estimated Cost of the Work.

35. Assurances of Financial Responsibility for Completing the Work. In order to secure the full and final completion of the Work in accordance with this Consent Decree, Defendant shall establish and maintain financial assurance for the benefit of EPA in the amount of each Estimated Cost of the Work.

36. Defendant shall, within 60 Days after EPA's approval of each individual CMI Workplan and Project Schedule under Subparagraph 14.a, seek EPA's approval of the form of Defendant's financial assurance for the Work covered by that CMI Workplan and Project Schedule. Within 60 Days after such approval, Defendant shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA in accordance with Section XI.

37. The financial assurance must: (i) be one or more of the mechanisms listed below; and (ii) be satisfactory to EPA. Defendant may use multiple mechanisms if they are limited to

surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

a. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under federal and State law and whose trust operations are regulated and examined by a federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the EPA shall direct in writing: (1) to reimburse Defendant from the fund for expenditures made by Defendant for Work performed in accordance with this Consent Decree, or (2) 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 the Work under this Consent Decree has been successfully completed;

b. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Consent Decree or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Subparagraph 37.a above. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

c. An irrevocable letter of credit, payable at the direction of EPA, into a standby trust fund that meets the requirements of the trust fund in Subparagraph 37.a above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a federal or state agency;

d. A policy of insurance that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that: (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) whose insurance operations are regulated and examined by a federal or state agency. The insurance policy shall be issued for a face amount at least equal to each Estimated Cost of the Work to be performed under this Consent Decree, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 38. The policy shall provide that the insurer shall make payments as EPA shall direct in writing: (i) to reimburse Defendant for expenditures made by Defendant for Work performed in accordance with this Consent Decree, or (ii) to pay any other person whom 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. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) Defendant is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Defendant's failure to perform, under Paragraph 42 of this Consent Decree;

e. a guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of Defendant or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Defendant; and (2) demonstrates to EPA's satisfaction that it meets 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

f. a demonstration by Defendant that it meets the relevant test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

38. If Defendant seeks to provide financial assurance by means of a guarantee or demonstration under Subparagraph 37.e or 37.e, Defendant shall also comply with the other relevant requirements of 40 C.F.R. §§ 264.143(f), 264.151(f), and 264.151(h)(1) relating to these methods, including but not limited to, (i) initial submission of required financial reports and statements from the guarantor's chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within 90 Days after the close of each of the guarantor's fiscal years; and (iii) notification of EPA within 90 Days after the close of any of the guarantor's fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Defendant further agrees that if Defendant provides financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from Defendant or the corporate guarantor at any time.

39. For purposes of the corporate guarantee or the financial test described in Subparagraph 37.e or 37.e, references in 40 C.F.R. § 264.143(f) to "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, TSCA, and any other state or tribal environmental obligations) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Consent Decree.

40. If Defendant seeks to establish financial assurance by using a letter of credit, surety bond, or a corporate guarantee, Defendant shall at the same time establish, and thereafter maintain, a standby trust fund, which meets the requirements of Subparagraph 37.a above, into which funds from other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Subparagraph 42.b.

41. Defendant shall diligently monitor the adequacy of the financial assurance. If Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Defendant shall notify EPA of such information within fourteen Days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Defendant of such determination. Defendant shall, within 30 Days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Defendant, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 Days. Defendant shall follow the procedures of Paragraphs 36 and 37 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Defendant's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

42. Access to Financial Assurance.

a. In the event that EPA determines that Defendant (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in

its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Performance Failure Notice”) to both the Defendant and the financial assurance provider of Defendant’s failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide the Defendant with a period of 14 Days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by the Defendant to remedy the relevant Performance Failure to EPA’s satisfaction before the expiration of the 14-Day notice period specified in Subparagraph 42.a, shall trigger EPA’s right to have immediate access to and benefit of the financial assurance provided pursuant to Subparagraph 37.a–e. EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument; or (ii) arrange for performance of the Work in accordance with this Consent Decree.

c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Subparagraph 42.a 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 30 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.

d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 Days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Consent Decree.

e. Defendant may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 38 has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Subparagraph 42.b to fund the trust fund or perform the Work. Furthermore, notwithstanding Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Consent Decree until the earlier of (i) the date that Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), that Defendant has not failed to perform the Work in accordance with this Consent Decree.

43. Modification of Amount, Form, or Terms of Financial Assurance. Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Defendant may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Section XVII, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the

cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Defendant of its decision regarding the request. Defendant may initiate dispute resolution under Section XIV regarding EPA's decision within 30 Days after receipt of the decision. Defendant may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XV. Defendant shall submit to EPA, within 30 Days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

44. Release, Cancellation, or Discontinuation of Financial Assurance. Defendant may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Acknowledgment of Final Completion; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XVI.

IX. EMERGENCY RESPONSE

45. 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 Day to the Chief, Emergency Response Branch, EPA, Region 5, and Defendant shall notify EPA in writing within seven 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 XVII (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.

X. REPORTING REQUIREMENTS

46. Defendant shall submit a Public Involvement Plan (“PIP”) for public outreach and involvement for EPA review and approval within 90 Days of the filing of this Consent Decree. The PIP shall include the establishment of a publicly accessible repository and/or website for information regarding the status of on-site and off-site activities. Defendant shall maintain this repository until termination of this Consent Decree in accordance with Section XX (Termination).

47. Defendant shall submit the following reports to EPA and DOJ at the addresses set forth in Section XVII (Notices and Submissions):

a. Unless otherwise agreed upon by EPA and DOJ, by July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XX (Termination), Defendant shall submit a semi-annual report for the preceding six months that includes: the status of corrective action implementation; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; and operation and maintenance.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates

any requirement of this Consent Decree, Defendant shall notify DOJ and EPA of such violation and its likely duration, in writing, within 10 business Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XIII (Force Majeure).

48. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations.

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

50. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by RCRA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

XI. SUBMISSIONS AND APPROVALS

52. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA will in writing either: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

53. If the submission is approved pursuant to Paragraph 52(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 52(b) or (c), Defendant shall, upon written direction from EPA take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XV (Dispute Resolution).

54. If the submission is disapproved in whole or in part pursuant to Paragraph 52(c) or (d), Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

55. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

56. If Defendant elects to invoke Dispute Resolution as set forth in Paragraphs 53 or 55, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 88 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

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

58. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

XII. STIPULATED PENALTIES

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

a. Defendant shall pay stipulated penalties to the United States within 30 Days of a written demand by the United States.

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

60. Stipulated Penalties Relating to Corrective Actions.

a. For failure to meet any requirements of Section VII (Access) and Section VIII (Financial Assurance), or any deadline for completion of any corrective measure identified in the CMI SOW, CMI Workplans, or Project Schedules, Defendant shall pay stipulated penalties in the following amounts for each Day during which each violation continues:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th Day
\$2,500	15th through 30th Day
\$4,000	31st Day and beyond

b. For failure to meet any document submittal deadline established in the CMI SOW, CMI Workplans, or Project Schedules or to comply with the notice requirements of Section IX (Emergency Response) of this Consent Decree, Defendant shall pay stipulated penalties in the following amounts for each Day during which each violation continues:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

61. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section IX (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1st through 14th Day
\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

62. Transfer of Ownership. If Defendant fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States at least 30 Days prior to any transfer of any portion of the Facility; or (c) provide a copy of the proposed written agreement with the transferee as required by Paragraph 5, Defendant shall pay a stipulated penalty of \$10,000 per occurrence.

63. Except where otherwise provided, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

64. Defendant shall pay stipulated penalties to the United States within 30 Days of a written demand by the United States, subject to Defendant’s right to invoke dispute resolution in accordance with Section XV (Dispute Resolution).

65. Stipulated penalties shall continue to accrue as provided in Paragraph 63, during any Dispute Resolution, but need not be paid until the following:

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

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in Subparagraph 65.c, below.

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

66. Payment of Stipulated Penalties to the United States.

a. Defendant shall pay all Stipulated Penalties due to the United States by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Ohio after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Keith Nagel
Director Environment Land & Remediation
Cleveland-Cliffs Inc.
200 Public Square, Suite 3400

Cleveland, Ohio 44114-2315
Keith.Nagel1@clevelandcliffs.com

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

b. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XVII (Notices and Submissions); and (iii) to EPA in accordance with Section XVII. Such notice shall state that the payment is for a stipulated penalty owed pursuant to the Consent Decree in *United States et al v. Cleveland-Cliffs Steel Corp.* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-2189/4.

c. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section in calculating its federal or State or local income tax.

67. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIV, the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XIII. FORCE MAJEURE

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

69. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice by telephone or email to EPA within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of

time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's Contractors knew or should have known.

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

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

72. If Defendant elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 21 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 68 and 69. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIV. COVENANTS BY UNITED STATES

73. In consideration of the Work that will be performed under the terms of this Consent Decree, and except as specifically provided in Paragraphs 74 through 76, the United States covenants not to take civil judicial or administrative action against Defendant pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for the implementation of the Work at the Facility. This covenant not to sue is expressly conditioned upon the performance by Defendant of all its obligations under this Consent Decree, including the Appendices attached 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 Acknowledgement of Final Completion and is conditioned upon the veracity of Defendant's certifications and written reports as required in Section VI (Completion of the Work). This covenant not to sue extends only to Defendant and does not extend to any other person.

74. General Reservation of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all matters not expressly included within the United States' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States 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 for contamination at the Facility that was not identified pursuant to the investigations conducted under the 2006 Consent Decree;

c. 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 Additional Areas as defined in the 2006 Consent Decree;

d. liability arising from: (1) Defendant's ownership or operation of the Facility after signature of this Consent Decree by 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 Defendant (other than as provided in the Work, or otherwise ordered by EPA pursuant to this Consent Decree);

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

f. criminal liability; and

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

75. Notwithstanding any other provisions 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.

76. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the claims addressed in this Consent Decree or otherwise.

77. The rights reserved to the United States include the right to disapprove of Work performed by Defendant pursuant to this Consent Decree.

78. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 73, above.

79. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of RCRA or with any other provisions of federal, State, or local laws, regulations or permits.

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

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

XV. COVENANTS BY DEFENDANT

82. Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, its agencies, departments, officials, employees, Contractors, or agents, for matters arising under or related to this Consent Decree, including but not limited to:

a. Any claim against the United States under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law regarding the Work; and

b. Any claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA or any other law for costs regarding the Work.

83. In the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 74 through 76, 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, except as provided in Paragraph 78 (Waiver of Claim-Splitting Defenses).

84. 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).

85. Defendant shall not seek indemnification from the United States, its agencies, departments, officials, employees, Contractors, or agents relating to any of the United States' pending claims for relief; provided, however, that if the United States seeks additional relief with respect to any rights reserved under Section XIV (Covenant Not to Sue of United States),

Defendant reserves any right it may have to seek indemnification with respect to the subject matter of such claims for additional relief.

86. The Defendant reserves, and this Consent Decree is without prejudice to, all rights against the United States, with respect to all matters not expressly included within the United States' covenant not to sue under Paragraph 73. Subject to Paragraph 78, Defendant reserves its rights under federal and state law to assert any and all defenses against the United States for any claim not resolved by this Consent Decree.

XVI. DISPUTE RESOLUTION

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

88. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 21 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

89. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and

EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

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

91. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion must be filed within 21 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

93. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 89 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any

other items requiring approval by EPA under this Consent Decree, the adequacy of the performance of work undertaken pursuant to this Consent Decree, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 89, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

94. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 65. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XVII. NOTICES AND SUBMISSIONS

95. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email (with a preference for email containing either attached documents, or links to download documents if the document file size is too large for attachments), addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ #90-5-2-1-2189/4

As to DOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-5-2-1-2189/4

As to EPA by email (preferred): Leitz.Eric@epa.gov
McCormick.Erika@epa.gov

RCRA Corrective Action Mailbox
R5_RCRA_PCB_Remediation@epa.gov

As to EPA by mail: Eric Leitz
EPA Project Manager
US EPA
Region 5
Mail Code LL-16J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Erika McCormick
EPA Project Manager
US EPA
Region 5
Mail Code LR-16J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to Defendant: Keith Nagel
Director Environment Land & Remediation
Cleveland-Cliffs Inc.
200 Public Square, Suite 3400
Cleveland, Ohio 44114-2315
Keith.Nagel1@clevelandcliffs.com

Cleveland-Cliffs Steel Corp
Office of General Counsel
200 Public Square, Suite 3300
Cleveland, Ohio 44114
legalnotices@clevelandcliffs.com

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

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

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

XVIII. RETENTION OF JURISDICTION

98. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XV (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

99. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Minor changes, or changes to the technical provisions set forth in any approved CMI Work Plan, O&M Plan, or the extension of deadlines in any schedule by one year or less, are not considered “material changes” and may be made without approval of the Court, upon written agreement between EPA and the Defendant.

100. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XVI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 93, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

101. After Defendant has completed the requirements of this Consent Decree, including the completion of the Work required by Section V (Corrective Action), and has paid any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

103. Defendant may serve upon the United States a Request for Termination notwithstanding any obligation of Defendant under this Consent Decree for ongoing operation and maintenance of any corrective measure required pursuant to the CMI SOW, as long as (a) termination is otherwise provided for by the terms of an EPA-approved operation and maintenance plan, or as otherwise agreed in writing by Parties to this Consent Decree; and (b) EPA determines that such operation and maintenance plan or written agreement includes an

enforceable means to require continued compliance with such operation and maintenance requirements, such as, by way of example, an environmental covenant.

104. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XV (Dispute Resolution). However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

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

XXII. SIGNATORIES/SERVICE

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

107. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all

matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIII. INTEGRATION

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

XXIV. FINAL JUDGMENT

109. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXV. APPENDICES

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

“Appendix A” is the Facility Map; and

“Appendix B” is the CMI SOW.

Dated and entered this ___ day of _____, 2025

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

Date: 4/27/2026



PEDRO SEGURA
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC
(202) 532-3153
pedro.segura@usdoj.gov

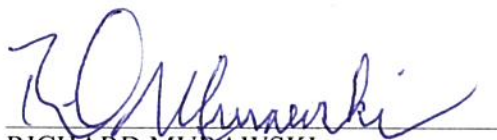
FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Date: 10-22-2025



ROBERT KAPLAN
Regional Counsel
U.S. Environmental Protection Agency, Region 5

Date: 9-24-25

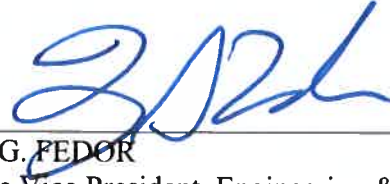


RICHARD MURAWSKI
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel

FOR CLEVELAND-CLIFFS STEEL CORPORATION:

9/16/25

Date



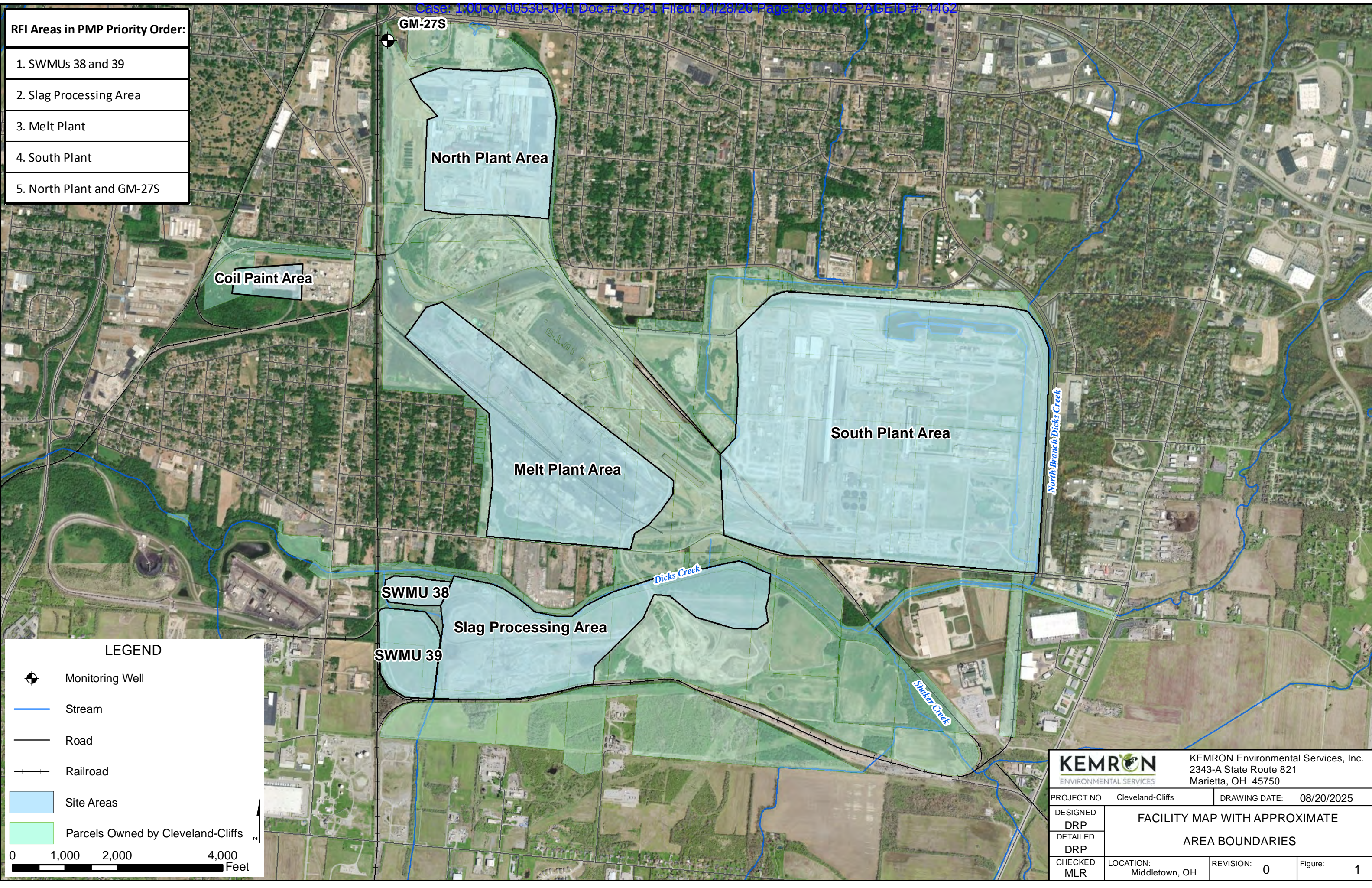
TERRY G. FEDOR

Executive Vice President, Engineering & Technology

Appendix A

Facility Map

- RFI Areas in PMP Priority Order:**
1. SWMUs 38 and 39
 2. Slag Processing Area
 3. Melt Plant
 4. South Plant
 5. North Plant and GM-27S



LEGEND

- Monitoring Well
- Stream
- Road
- Railroad
- Site Areas
- Parcels Owned by Cleveland-Cliffs

0 1,000 2,000 4,000 Feet

KEMRON ENVIRONMENTAL SERVICES		KEMRON Environmental Services, Inc. 2343-A State Route 821 Marietta, OH 45750	
PROJECT NO.	Cleveland-Cliffs	DRAWING DATE:	08/20/2025
DESIGNED DRP	FACILITY MAP WITH APPROXIMATE AREA BOUNDARIES		
DETAILED DRP			
CHECKED MLR	LOCATION: Middletown, OH	REVISION: 0	Figure: 1

Appendix B

CMI Scope of Work

APPENDIX B: CORRECTIVE MEASURES IMPLEMENTATION SCOPE OF WORK

The Corrective Measures Implementation Scope of Work (CMI SOW) will be developed and implemented in accordance with the specific Corrective Measure(s) (CMs) selected in the USEPA-issued Final Decision and Response to Comments (FDRTC) and any amendments thereto, and, unless the selected CMs are amended or modified by the FDRTC, as described in the Corrective Measures Study for each Area of Concern (AOC) and/or Solid Waste Management Unit (SWMU). Cleveland-Cliffs will provide necessary personnel, materials, and services for the implementing the CMs.

For those RCRA Facility Investigations (RFIs) that lead to CMSs, CMI will proceed in accordance with four key tasks:

Task I: Corrective Measure(s) Implementation Work Plan

Task II: Corrective Measure(s) Design

Task III: Corrective Measure(s) Construction

Task IV: Corrective Measure(s) Completion Report

The Middletown Works CMI SOW for each location or area will generally conform to the USEPA guidance and resources including the current USEPA template for a *Consent Decree Attachment A: CMI SOW*, available at: [Documents Pertaining to Remedy Implementation at Corrective Action Sites | US EPA](#). Given the size and variability of the areas/locations at the Middletown Works that are subject to RFI and CMS under the 2006 Consent Decree, it is important to note that location-specific CMI requirements will vary among the AOCs and SWMUs. Multiple portions of the Middletown Works remain in the RFI phase of RCRA Corrective Action, with some RFI Area Work Plans remaining under USEPA review for comment or approval. Thus, uncertainty as to the CMs to be implemented at a given area or location of the Facility remains high. The understanding of and need for CMI will be refined as the RFIs are completed, and CMSs are prepared and approved. Therefore, this CMI SOW follows USEPA's standard CMI SOW template while also providing flexibility and an adaptive approach that will result in time-efficient CMI from initial planning through completion.

Where specific subtasks from the template are not applicable or necessary, based on location-specific knowledge and CM relative simplicity, and as determined by USEPA, they will be eliminated to allow expedited implementation of CMs. For instance, some locations or areas requiring CMI may be addressed solely through application of an Environmental Covenant, while others may require multiple constructed elements such as capping, water treatment systems, and/or other elements that require site-specific planning, design, and implementation. The need for and applicability of various CMI subtasks will be determined based on the outcomes of the RFIs conducted as specified in the 2006 Consent Decree, the final determination of the environmental media and contaminants of concern requiring CMs, the specific CMs selected for each release/area in each FDRTC, and in preparation, review, and approval of CMI Task I, Corrective Measures Implementation Work Plans.

The CMSs for SWMUs 38 and 39, both closed landfills, currently remain under USEPA review. Based on the priority order of the RFIs and CMSs in the final Project Management Plan (PMP;

ARCADIS, 2012) that is applicable to the Facility, these two CMSs are expected to be the first to move to the CMI RCRA CA phase. Any portion of the RFI Areas listed below that is determined to require preparation of a CMS will move to CMI Phase after USEPA issuance of the FDRTC.

Unless mutually agreed by Cleveland-Cliffs and USEPA, the following CMI priority order will be followed, consistent with the RFI/CMS order defined in the PMP:

1. **SWMU 39:** closed landfill;
2. **SWMU 38:** closed landfill;
3. **Slag Processing RFI Area:** Includes areas within the slag management area south of Dicks Creek and east of Monroe Ditch. SWMUs 40, 41, 42, 46, 47, 48, 49 and AOCs 11 through 16;
4. **Melt Plant RFI Area:** Currently identified RFI Area lies north of Dicks Creek in the southwestern portion of the plant in the vicinity of the Coke Plant. Includes SWMUs 11, 15, 16, 17, 20 and AOCs 1, 2, 4, 6, 21 and 25ⁱ. (Coke Oven Gas Pipeline, added during RFI).
5. **South Plant RFI Area:** SWMUs 31, 37, 50ⁱⁱ and AOC 23.
6. **North Plant RFI Area:** Includes SWMUs 2, 3, 4, 6, 7, 8, and 9 and the GM-27S Areaⁱⁱⁱ.
7. **Sitewide Groundwater CMS:** Will be developed to address Sitewide groundwater quality and containment based on all RFI groundwater outcomes requiring CMS for RFI Areas 3 through 6 listed above.

An RFI Work Plan has been submitted for each RFI Area. A Public Involvement Plan (PIP) has been established for RFI/CMS work and will be revised to include CMI work within 90 days of the filing of this Consent Decree. Interest expressed by the public has been minimal since the Interim Measures defined in the 2006 Consent Decree have been completed. . A Cleveland-Cliffs project manager and Cleveland-Cliffs environmental consulting firm point of contact will be established for each CMI phase in the CMI Work Plan. Together with the Cleveland-Cliffs public relations personnel, the Cleveland-Cliffs team members, in consultation with USEPA, will ensure appropriate responses to any public interest in the CMI work that occurs within the Middletown Works.

The AOCs and/or SWMUs subject to CMI for a given RFI/CMS Area may be addressed in a single or in multiple CMI Work Plans, depending upon the specific CMs, the CMI schedules, and their similarity and relationship to one another. As is applicable to a given CM for one or more areas or locations, the following elements will be completed under each of the four key CMI tasks:

Task I: Corrective Measures Implementation Work Plan

- A. **Management Plan:** Defines the Cleveland-Cliffs Project Manager and key personnel for a specific CMI phase, and the conceptual means and methods planned for the CMI, including, but not limited to, a proposed CMI schedule and performance objectives for CMI.
- B. **Community Relations Plan:** A Community Relations Plan (CRP) may be necessary. The CRP may be incorporated into the existing PIP for RFI/CMS.
- C. **Sampling and Analysis Plan:** As applicable, should additional environmental, geotechnical, or other sampling and analysis be required for design of selected

CM(s), or if operations and maintenance (O&M) sampling and analysis is an element of a CM, a Sampling and Analysis Plan will be developed. This plan also may be incorporated into a CMI Phase-specific Quality Assurance Project Plan (QAPP), or amendment or addendum to an existing, approved Middletown Works RCRA Corrective Action QAPP.

- D. QAPP: A CMI QAPP shall be developed to address sample analysis and data handling regarding the CMI work. The QAPP shall include a detailed explanation of quality assurance, quality control, and chain of custody procedures for all CMI sampling, monitoring, and analytical activities. The QAPP shall be developed in accordance with “EPA Requirements for Quality Assurance Project Plans,” QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006) and “Quality Assurance Project Plan Standard,” Directive No: CIO 2105-S-02.1 (Aug. 2023), or the most current applicable published QA guidance as USEPA identifies.
- E. Corrective Measures Permitting Plan: As applicable, dependent upon the selected CM(s), and based on federal, state, and local permitting requirements, a Corrective Measures Permitting Plan will be developed. Where permitting requirements are limited (for example, general permit or notification, authorization by rule, etc.), the permitting requirements will be summarized and plans to achieve necessary requirements may be incorporated into the CMI Work Plan text.
- F. Supplemental Field Investigation Work Plan: This plan will be developed if additional environmental, geotechnical, or other data beyond that completed in the RFI and CMS phases of work are necessary for design or refinement of selected CM(s), pilot testing, or establishing O&M specifications or performance criteria.

Task II: Corrective Measure Design

- A. Design Plans and Specifications: This subtask is required where CM(s) include construction of one or more remedial elements.
- B. Operation and Maintenance Plan: This plan is required as applicable for demonstrating and/or providing continued demonstration of CM efficacy over time.
- C. Cost Estimate: Updated cost estimating is required for all CMs, and will include the estimated costs, where applicable, in current dollars, for third-party CMI planning/design, construction, O&M, and long-term monitoring.
- D. Construction Quality Assurance Plan: Required for active construction of CMs.
- E. Health and Safety Plan (HASP): Will be developed to conform to current applicable Occupational Safety and Health Administration (OSHA) and Cleveland-Cliffs Steel Corporation requirements. The HASP will be provided to regulatory personnel for their information as a courtesy copy, to define the CM Site health and safety requirements should regulatory personnel choose to oversee any CMI elements or otherwise enter the CMI Site.
- F. Sampling and Analysis Plan/Performance Monitoring Plan: This Plan identifies the specific analytical or other data and measurements that will be used to demonstrate that CMIs will meet the Corrective Measures Objectives (CMOs) and media cleanup objectives (MCOs) specified in the FDRTC, and any amendments thereto, as well as the CMS. Quality Assurance (QA) and Quality Control (QC) metrics for chemistry sampling and analysis and, as applicable, other testing or data gathering will be specified in a Quality Assurance Project Plan (QAPP). The requirement for the CMI

QAPP may be addressed as a stand-alone document, or through submittal of an amendment or addendum to an existing, approved Middletown Works QAPP.

- G. Design Phases: Typically, a 30% and a Final Design phase will be prepared and submitted, as described in the generic USEPA CMI SOW (*USEPA Attachment A: Corrective Measures Implementation Scope of Work*, available at: [Documents Pertaining to Remedy Implementation at Corrective Action Sites | US EPA](#)). Where the design is similar to or substantially the same as previously approved Middletown Works CMI Design(s), or as otherwise agreed between Cleveland-Cliffs and USEPA, a single design phase may be acceptable. Alternately, additional phases may be necessary for more complex CMs. The planned design phases will be identified in the CMI Work Plan for each CM location/area.

Task III: Corrective Measure Construction

- A. Project Review Meetings: Cleveland-Cliffs will provide opportunities for regulatory personnel to attend both a CMI planning/kick-off meeting and a CMI completion meeting. The need for additional project review meetings will be determined during the CMI Work Plan preparatory phase, and as determined necessary by USEPA throughout CMI work phases depending on the CM complexity and duration of CMI. Meetings may be held virtually or in-person at the CMI location/area, as determined appropriate.
- B. Inspections: Where construction is required for any CM, a pre-construction site inspection and a construction completion inspection will be conducted on a schedule mutually agreed on by USEPA and Cleveland-Cliffs. Throughout the CM construction, regulatory field review and inspection will be conducted as determined by the regulatory project manager(s). Specific inspections may be scheduled at key CMI milestones, as jointly determined during the CMI Work Plan development, and as may be additionally identified throughout construction.
- C. CMI Completion Report: A CMI Completion Report will be prepared for each approved CMI Work Plan area/location. Consistent with the USEPA CMI SOW template, this report will describe all activities performed during CM construction, provide final specifications and as-built drawings of the constructed or implemented CM(s), and provide the preliminary assessment of CMI performance as compared to the performance measurements and criteria established in the CMI Work Plan and Final Design Report.

Task IV: Reports

- A. Progress Reports and Corrective Measures Assessment Reports: Progress reporting may be applicable to CMI, depending upon complexity of the CM(s) selected and the duration of the planned SOW from CMI Work Plan development through CMI Completion. USEPA will determine the applicability and appropriate frequency of progress reporting. This frequency is subject to change throughout the duration of the CMI SOW.
- B. CMI Work Plan: May be applicable to CMI, depending upon complexity of the CM(s) selected and subject to agreement between Cleveland-Cliffs and USEPA.

- C. CMI Design Report: Required for any CM that requires remedial construction. Depending upon complexity of the CM, one, two (e.g., preliminary and final) or additional phases (for example, preliminary, 30%, 60%, Final) may be necessary.
- D. CMI Completion Report: A CMI Completion Report will be prepared and submitted for USEPA approval as described in Subtask III.C.

ⁱ AOC 25, the Coke Oven Gas Pipeline, was added during the RFI Work Plan preparation at the request of USEPA.

ⁱⁱ The majority of the area encompassing SWMU 50 had RFI completed in 2021 on an expedited basis, as requested by Cleveland-Cliffs and agreed by USEPA. The 2022 RFI Data Summary Report as submitted and approved will be incorporated into the South Plant RFI Report, and, if/as determined necessary, will inform South Plant Area CMS and CMI.

ⁱⁱⁱ The GM-27S Area RFI was completed on an expedited basis in 2018 as requested by USEPA and agreed by Cleveland-Cliffs. The RFI Data Summary Report concluded that the GM-27S area did not require further action. GM-27S RFI Data Summary Report, submitted August 27, 2018, pending approval. The Data Summary Report will be incorporated into the North Plant RFI Report, and, if/as determined necessary, will inform North Plant Area CMS and CMI.