



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

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William V. Shaklee, Esq.
Counsel for Tecumseh Redevelopment, Inc.
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114


Re: In the Matter of Tecumseh Redevelopment, Inc.,
Docket No.: RCRA-02-2010-7102

Dear Mr. Shaklee:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) under Section 3008 of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928, regarding the above referenced action.

Thank you for your cooperation in this matter.

Sincerely,

 Amy R. Chester
Assistant Regional Counsel
212 637-3213

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 JUL -8 P.13:24
REGIONAL HEARING
CLIENT

In The Matter of: Tecumseh Redevelopment, Inc. Respondent, Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	CONSENT AGREEMENT AND FINAL ORDER Docket No.: RCRA-02-2010-7102
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PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is Tecumseh Redevelopment, Inc. ("Tecumseh" or "Respondent"). The Tecumseh facility is located on Hamburg Turnpike in Lackawanna, New York.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (Aug. 1, 2002), 70 Fed. Reg. 1825 (Jan. 11,

2005) and 74 Fed. Reg. 31380 (July 1, 2009). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about December 22, 2009. The Complaint alleged that Respondent failed to maintain financial assurance for the closure and post-closure of regulated hazardous waste units for its facility in Lackawanna, New York as required by the federally authorized New York State regulations. Complainant and Respondent conducted settlement negotiations which led to this agreement. During these negotiations, the parties also agreed to resolve a related later violation (described in paragraphs 20-25 in the Findings of Facts and Conclusions of Law below) without a formal amendment of the Complaint to plead the additional allegation.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent

1. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") §370.2(b).
2. Respondent is the "owner" and "operator" of a "facility" located on Hamburg Turnpike in Lackawanna, New York (the "Lackawanna Facility"), as those terms are defined in 6 NYCRR § 370.2(b).

Past Regulatory Filings/Changes of Ownership

3. Respondent's Lackawanna Facility was formerly owned and operated by Bethlehem Steel Corporation ("BSC").
4. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or about August 18, 1980 BSC notified EPA that it manages hazardous waste at the Lackawanna Facility ("Section 3010 Notification").
5. Pursuant to 40 C.F.R. § 270.13, on November 19, 1980 BSC submitted a Part A hazardous waste permit application to EPA for the Lackawanna Facility.
6. Pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), the Lackawanna Facility received interim status based on BSC's submission of a Section 3010 Notification and Part A permit application.
7. On Oct. 15, 2001, BSC filed for protection under the United States Bankruptcy Code, and pursuant to an Asset Purchase Agreement that was approved by the United States Bankruptcy Court for the Southern District of New York on April 23, 2003 (Case No. 01-15288 (Jointly Administered)), sold certain assets, including its Lackawanna facility.
8. Respondent informed EPA that BSC conveyed the Lackawanna Facility to Respondent in May 2003.
9. On or about June 17, 2004, Respondent submitted a revised Part A application to EPA indicating that it was the new owner and operator of the interim status Lackawanna Facility as of March 7, 2003.
10. Respondent is presently a subsidiary of ArcelorMittal USA, Inc., which is a subsidiary of ArcelorMittal, S.A. Respondent became a subsidiary of these entities through a series of mergers and acquisitions which are briefly summarized herein. On April 15, 2005, Mittal Steel

Company, N.V. acquired Respondent's prior parent corporation, International Steel Group, Inc. ("ISG"), which was renamed Mittal Steel USA ISG Inc. Effective December 31, 2005, Mittal Steel USA ISG Inc. merged with another subsidiary of Mittal Steel Company N.V., Ispat Inland Inc. Mittal Steel USA ISG Inc. was the surviving subsidiary of that merger and was renamed Mittal Steel USA Inc. On August 1, 2006, Mittal Steel, N.V. (the parent corporation of Mittal Steel USA, Inc.) acquired 91.9% of the share capital of Arcelor, S.A., and subsequently continued to increase its ownership of outstanding shares, until December 15, 2006 when Mittal Steel and Arcelor merged to create ArcelorMittal, S.A.

Relevant Regulatory Obligations

11. New York State's interim status standards for owners and operators of hazardous waste facilities are set forth in 6 NYCRR Subpart 373-3.
12. Six NYCRR § 373-3.8 requires owners and operators of interim status facilities to maintain financial assurance for closure and post-closure for each hazardous waste management unit using one or more of the financial mechanisms specified therein. These mechanisms include the submission of a financial test with a corporate guarantee, and/or a letter of credit, in accordance with the requirements set forth in 6 NYCRR §§ 373-3.8(d)(5) and (f)(5), for closure and post closure care, respectively.

Prior Financial Assurance Violations and Settlement

13. In or about July 2006, EPA issued Respondent a Complaint, Compliance Order and Notice of Opportunity for Hearing ("2006 Complaint") alleging that Respondent failed to timely update its financial test and corporate guarantee for closure and post-closure care at its facility for Respondent's fiscal year ending on December 31, 2005, or to submit an alternative financial assurance mechanism, as required by federally authorized New York State regulations.

14. On or about December 1, 2006, EPA and Respondent entered into a Consent Agreement and Final Order (the “2006 CA/FO”) resolving the 2006 Complaint. The 2006 CA/FO required Respondent to pay a civil penalty in the amount of twenty thousand dollars (\$20,000.00) and “within 25 calendar after the effective date of ... [the CA/FO], comply with the financial assurance requirements for closure and post closure care set forth in 6 NYCRR § 373-3.8.” *See*, 2006 CA/FO - Docket No. RCRA-02-2006-7111, pages 5-6.

Financial Assurance Submissions for Fiscal Year 2007

15. Pursuant to 6 NYCRR §§ 373-3.8(d)(5) and (f)(5), owners or operators using the financial test and corporate guarantee must submit updated financial information to the New York State Department of Environmental Conservation (“NYSDEC”) within ninety (90) days after the close of each succeeding fiscal year.

16. The 2007 fiscal year for Respondent and its parent corporation closed on December 31, 2007.

17. Pursuant to 6 NYCRR §§ 373-3.8(d)(5) and (f)(5), Respondent was required to submit an updated financial test and corporate guarantee to NYSDEC by March 31, 2008 for its fiscal year ending December 31, 2007.

18. On or about December 5, 2008, ArcelorMittal submitted a corporate guarantee to NYSDEC for financial assurance for both closure and post-closure care at Respondent’s Lackawanna Facility for the fiscal year ending December 31, 2007. The guarantee was accompanied by financial information to demonstrate that Respondent’s guarantor and parent corporation, ArcelorMital, passed the requisite financial test.

19. Respondent's failure to submit an updated financial test and corporate guarantee to NYSDEC by March 31, 2008 for its fiscal year ending December 31, 2007 constitutes a violation of 6 NYCRR § 373-3.8.

Financial Assurance Submissions for Fiscal Year 2008

20. Pursuant to 6 NYCRR §§ 373-3.8(d)(5) and (f)(5), owners or operators using the financial test and corporate guarantee must submit updated financial information to NYSDEC within ninety (90) days after the close of each succeeding fiscal year, or to submit an alternative financial assurance mechanism within 120 days after the end of such fiscal year, as required by federally authorized New York State regulations.

21. The 2008 fiscal year for Respondent and its parent corporation closed on December 31, 2008.

22. Pursuant to 6 NYCRR §§ 373-3.8(d)(5) and (f)(5), Respondent was required to submit an updated financial test and corporate guarantee to NYSDEC by March 31, 2009 for its fiscal year ending December 31, 2007, or an alternative financial assurance mechanism by April 30, 2009.

23. On June 30, 2009, Respondent and NYSDEC entered into a Corrective Measures Study Order on Consent, File No. 03-73 (the "CMS Order"). Section II.A. of the CMS Order requires Respondent to provide financial assurance for its Lackawanna Facility in accordance with 6 NYCRR § 373-3.8. Section II.A. further provides that Respondent must submit financial assurance for closure and post-closure care activities, as well as for corrective action activities, to NYSDEC by December 31, 2009. Pursuant to Section II.B. of the CMS Order, Respondent must submit revised cost estimates by June 30th of each calendar year and provide additional financial assurance, if any, within sixty (60) days after submission of the new cost estimates.

24. On or about December 30, 2009, Respondent submitted a letter of credit, rather than updating its financial test and corporate guarantee, to NYSDEC as financial assurance for closure and post closure care at Respondent's Lackawanna Facility for the fiscal year ending December 31, 2008. .

25. Respondent's failure to submit updated financial information or an alternative financial assurance mechanism to NYSDEC by April 30, 2009 for its fiscal year ending December 31, 2008, constitutes a violation of 6 NYCRR § 373-3.8

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Respondent shall maintain financial assurance for closure and post-closure care at the Lackawanna Facility as required by 6 NYCRR § 373-3.8.
2. Respondent shall annually update, and timely submit to NYSDEC, financial assurance information for closure and post-closure care at the Lackawanna Facility as required by 6 NYCRR § 373-3.8, unless an extension of time is approved by NYSDEC. Evidence of such compliance shall also be submitted annually to:

Mr. John Wilk, Compliance Officer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

3. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall send a Compliance Report to EPA detailing its present compliance with the financial assurance requirements set forth in Paragraph 1 of this Consent Agreement. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to Mr. John Wilk at the address set forth in Paragraph 2 above.

4. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint as applied to its facility and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.

5. Respondent shall pay a civil penalty to EPA in the total amount of **Fifty Two Thousand Dollars and 00/100 (\$52,000.00)**. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Each check shall be identified with a notation thereon: **In the Matter of Tecumseh**

Redevelopment, Inc., and shall bear thereon the Docket Number: **RCRA-02-2010-7102**. If

Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727"

- Environmental Protection Agency.”
- 6) Name of Respondent: **Tecumseh Redevelopment, Inc.**
- 7) Case Number: **RCRA-02-2010-7102.**

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Payment must be received on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. The date by which payment must be received shall hereinafter be referred to as the “Due Date.”

- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Further, if the payment is not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A

six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.

- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the specific civil and administrative claims alleged in the Complaint, as well as civil and administrative claims set forth in Paragraphs 20 -25 of the CA/FO's FINDINGS OF FACT AND CONCLUSIONS OF LAW. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

6. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

7. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it

be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.

8. Each party shall bear its own costs and fees in this matter.

9. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

10. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

11. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

Tecumseh Redevelopment, Inc.

BY: 

NAME: Keith A. Nagel

TITLE: Director, Environmental
Affairs and Real Estate

DATE: _____

COMPLAINANT:

United States Environmental Protection
Agency – Region 2

BY: 

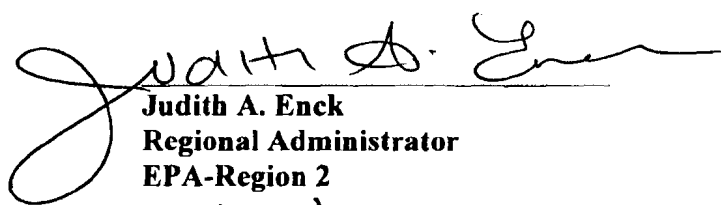
NAME: Dore LaPosta

TITLE: Director, Division of
Enforcement & Compliance
Assistance

DATE: JUNE 29, 2010

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.



Judith A. Enck
Regional Administrator
EPA-Region 2

DATE: 6/28/10

CERTIFICATE OF SERVICE

I hereby certify that on the JUL - 8 2010 I caused a copy of the Consent Agreement and Final Order entered in In the Matter of Tecumseh Redevelopment, Inc., Docket No.: RCRA-02-2010-7102, to be sent to the following persons in the manner indicated:

By United States First Class Mail:

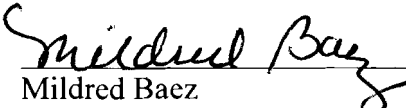
William V. Shaklee, Esq.
Counsel for Tecumseh Redevelopment, Inc.
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

Keith A Nagel, Director
Environmental Affairs & Real Estate
Tecumseh Redevelopment, Inc.
Subsidiary of ArcelorMittal USA, Inc.
4020 Kinross Lakes Parkway
Richfield, Ohio 44286-9000

By Hand Delivery:

Karen Maples
Regional Hearing Clerk
290 Broadway, 16th Floor
New York, New York 10007

Date: JUL - 8 2010


Mildred Baez