UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
SWVA, Inc. d/b/a Steel of West Virginia, Inc. Second Avenue and 17th Street Huntington, WV 25703	:	**Docket No. RCRA-03-2008-0119**
RESPONDENT	:	
	:	
SWVA, Inc. Second Avenue and 17th Street Huntington, WV 25703	:	
	:	**CONSENT AGREEMENT**
FACILITY	:	

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III ("EPA", "Agency" or "Complainant") and SWVA, Inc. ("SWVA" or "Respondent") pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. This Consent Agreement ("CA") and the accompanying Final Order ("FO") address alleged violations by Respondent of RCRA and the West Virginia Hazardous Waste Management Regulations ("WVHWMR") Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 which incorporate by reference 40 C.F.R. Parts 260-279 (1999 ed.). The WVHWMR

were reauthorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926, on October 16, 2003, and became effective on December 15, 2003 (68 Fed. Reg. 59542 (Dec. 15, 2003).

3. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CA and the attached FO (hereinafter jointly referred to as this "CAFO") simultaneously commence and conclude an administrative proceeding against Respondent, brought under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to resolve alleged violations of RCRA and WVHWMR at Respondent's facility at Second Avenue and 17th Street, Huntington, West Virginia, 25703 (the "Facility").

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 4, above.

6. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.

7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.

8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

9. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the State of West Virginia

10. EPA has given the State of West Virginia, through the West Virginia Department of Environmental Protection ("WVDEP"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

11. Respondent is, and was at the time of the violations alleged herein, a corporation incorporated in West Virginia and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903 (15), and in WVHWMR § 33-20-2.1.a, which, with exceptions not

relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

12. Respondent is, and has been at all times relevant to this Consent Agreement, the "owner" and "operator" of a facility, described below, as those terms are defined in WVHMR § 33 -20-2.1a which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

13. The facility referred to in Paragraph 12, above, including all of its associated equipment and structures (hereinafter "Facility"), is a manufacturing facility located at Second Avenue and 17th Street, Huntington, West Virginia, 25703.

14. Respondent produces steel components for trucks and construction vehicles. Respondent's Facility is assigned SIC code 3312.

15. Respondent is a large quantity generator of hazardous waste. Respondent is assigned EPA ID No. WVD072667801.

16. Respondent is and, at all times relevant to this CAFO, has been a "generator" of, and has engaged in the "storage" at the Facility of materials described below that are "solid wastes" and "hazardous waste", as those terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

17. On November 15, 2006, representatives of EPA conducted a Compliance Evaluation Inspection (" CEI") at the Facility.

COUNT I
(Operating Without a Permit or Qualifying for a Permit Exemption)

18. The allegations of Paragraphs 1 through 17, above, are incorporated herein by reference as though fully set forth.

19. WVHWMR § 33-20-11.2, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e) provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.

20. WVHWMR § 33-20-5.1 which incorporates by reference 40 C.F.R. § 262.34(a)(4), provides, in pertinent part, that a generator who generates 1,000 kg or more of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without a permit or having interim status provided that the generator complies with, *inter alia*, the requirements for owners or operators in Subpart D in 40 C.F.R. Part 265, and

with the requirements of 40 C.F.R. §§ 265.16.

21. 40 C.F.R. § 265.51(a) (which is a part of 40 C.F.R. Part 265, Subpart D), provides that each owner or operator must have a contingency plan for his facility.

22. 40 C.F.R. § 265.52(c) (which is a part of 40 C.F.R. Part 265, Subpart D), provides that the contingency plan must describe the arrangements agreed to by local police departments, fire departments, hospitals, contractors and State and local emergency response teams to co-ordinate emergency services, pursuant to 40 C.F.R. § 265.37.

23. 40 C.F.R. § 265.53(a) (which is a part of 40 C.F.R. Part 265, Subpart D), provides that the contingency plan must be maintained at the facility.

24. 40 C.F.R. § 265.16(a)(1) provides that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA requirements.

25. 40 C.F.R. § 265.16(b) provides that facility personnel must successfully complete the program required by 40 C.F.R. § 265.16(a)(1) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later.

26. 40 C.F.R. § 265.16(c) provides that facility personnel must take part in an annual review of the training required by 40 C.F.R. § 265.16(a)(1).

27. 40 C.F.R. § 265.16(d)(1) provides that the owner or operator must maintain at the facility a record of the job title for each position at the facility related to hazardous waste management and the employee filling each job.

28. 40 C.F.R. § 265.16(d)(2) provides that the owner or operator must maintain at the facility a written job description for each position listed under 40 C.F.R. § 265.16(d)(1).

29. 40 C.F.R.§ 265.16(d)(3) provides that the owner or operator must maintain at the facility a written description of the type and amount of introductory and continuing training that will be given to each person filling a position listed under 40 C.F.R. § 265.16(d)(1).

30. On November 15, 2006, at the time of the CEI, Respondent failed to maintain at the Facility, a contingency plan that described the arrangements agreed to by local police departments, fire departments, hospitals, contractors and State and local emergency services, as required by WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a)(4), which in turn, incorporates by reference 40 C.F.R. §§ 265.51(a), 265.52(c) and 265.53(a).

31. From January 1, 2002 through June 22, 2005, Respondent failed to provide hazardous waste training to employees responsible for signing hazardous waste manifests, and for the years 2002 - 2004 and 2006, Respondent failed to provided annual refresher training to employees responsible for handling hazardous waste, as required by WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a)(4) which, in turn, incorporates by reference 40 C.F.R. § 265.16.(a), (b), and (c).

32. On November 16, 2006, at the time of the CEI, Respondent failed to maintain documents which indicated: 1) the job title for each position in the facility related to hazardous waste management, and the name of the employee filling each job; and 2) a written job description for each position at the Facility related to hazardous waste management, as required by WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34 (a)(4), which in turn, incorporates by reference 40 C.F.R. § 265.16(d)(1) and (2).

33. On November 16, 2006, at the time of the CEI, Respondent failed to maintain documentation stating the amount and type of introductory and continuing training that is required for employees managing hazardous waste, as required by WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a)(4), which, in turn, incorporates by reference 40 C.F.R. § 265.16(d)(3).

34. On November 16, 2006, at the time of the CEI, "hazardous wastes" referred to in Paragraphs 19 and 20, above, and generated by Respondent, were in "storage" at the Facility as those terms are defined by WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

35. Respondent failed to qualify for the "less than 90-day" generator accumulation exemption of WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R.§ 262.34(a), by failing to satisfy the conditions for such exemption as set forth in WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a), referred to in Paragraphs 30 through 34, above.

36. The Facility is a hazardous waste treatment, storage or disposal "facility", as that term is defined by WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260. 10.

37. Respondent does not have, and never had, a permit or interim status pursuant to WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the storage of hazardous waste at the Facility.

38. Respondent was required by WVHWMR § 33-20-11.2, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for its hazardous waste storage activities described in this count.

39. Respondent violated WVHWMR § 33-20-11.2, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) by owning and operating a hazardous waste storage facility without a permit or interim status.

COUNT II
(Transporter EPA Identification Number)

40. The allegations of Paragraphs 1 through 39, above, are incorporated by reference as though fully set forth at length herein.

41. WVHWMR § 33-20.5.1, which incorporates by reference 40 C.F.R. § 262.12(a), provides that a generator must not offer hazardous waste to transporters that have not received an EPA identification number.

42. On eighty-eight (88) occasions, from April 27, 2005 until February 23, 2006, Respondent offered hazardous waste for transport to a transporter that had not received an EPA identification number.

43. Respondent violated WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.12(a), by offering hazardous waste for transport to a transporter that had not received an EPA identification number.

COUNT III
(Manifests)

44. The allegations of Paragraphs 1 through 43, above, are incorporated by reference as though fully set forth at length herein.

45. WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.40(a), requires the generator to keep a copy of each manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years or until the generator receives a signed copy from the designated facility which received the waste.

46. Respondent did not retain a copy of seventeen manifests signed in accordance with 40 C.F.R. § 262.23(a) for three years or until Respondent received signed copy from the designated facility which received Respondent's hazardous waste.

47. Respondent violated WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.40(a), by failing to keep a copy of each manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years or until the generator receives a signed copy from the designated facility which received the waste.

COUNT IV
(Training)

48. The allegations of Paragraphs 1 through 47, above, are incorporated by reference as though fully set forth at length herein.

49. Pursuant to WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16 (a)(1), Respondent is required to train employees to perform their duties in a way that ensures the Facility's compliance with RCRA requirements.

50. Pursuant to WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16 (b), Respondent is required to ensure facility personnel successfully complete the program required by 40 C.F.R. § 265.16(a)(1) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later.

51. Pursuant to WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16 (c), Respondent is required to provide employees with annual RCRA refresher training to train employees to perform their duties in a way that ensures the Facility's compliance with RCRA requirements.

52. On November 15, 2006, at the time of the CEI, Respondent had not trained all employees to perform their duties in a way that ensures the Facility's compliance with RCRA requirements within the time periods required by 40 C.F.R. § 264.16(b) in violation of WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16(a) and (b). Specifically, from January 1, 2002 through June 22, 2005, Respondent failed to provide such hazardous waste training to employees responsible for signing hazardous waste manifests in accordance with 40 C.F.R. § 262. 23(a).

53. For the years 2002 - 2004 and 2006, Respondent did not provide annual refresher training to employees responsible for handling hazardous waste.

54. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16(a), (b), and (c) by failing to train all employees to perform their duties in a way that ensures the Facility's compliance with RCRA requirements within the time periods required by 40 C.F.R. § 264.16 (b), and by failing to provide annual refresher training to employees as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16(a), (b), and (c).

COUNT V
(Training Records)

55. The allegations of Paragraphs 1 through 54 above, are incorporated by reference as though fully set forth at length herein.

56. Pursuant to WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16 (d)(1) and (2), Respondent is required to maintain at the Facility documents which indicate: 1) the job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job; and 2) a written job description for each position at the Facility related to hazardous waste management.

57. Pursuant to WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16 (d)(3), Respondent is required to maintain at the Facility documentation that describes the amount and type of introductory and continuing training that is required for employees managing hazardous waste required by 40 C.F.R. § 264.16.

58. On November 15, 2006, at the time of the CEI, Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.16(d)(1) - (3) by failing to maintain training records at the Facility as described in Paragraphs 56 and 57, above, as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C. F.R. § 264. 16 (d)(1) - (3).

COUNT VI
(Contingency Plan)

59. The allegations of Paragraphs 1 through 58, above, are incorporated by reference as though fully set forth at length herein.

60. Pursuant to WVHWMR§ 33-20-7.2, which incorporates by reference 40 C.F.R. § 264. 51(a), 52(c) and 53(a), Respondent is required to maintain at the Facility a contingency plan that includes, *inter alia*, a description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency services.

61. On November 15, 2006, at the time of the CEI until the date of this CA, Respondent did not maintain a contingency plan that included the information described in Paragraph 60, above, as required by WVHWMR 33-20-7.2, which incorporates by reference 40 C.F.R. § 264. 51(a), 52(c) and 53(a).

62. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R.

§ 264.51(a), 52(c) and 53(a), by failing to maintain at the Facility a contingency plan for the Facility as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.51(a), 52(c) and 53(a).

COUNT VII
(Waste Determination)

63. The allegations of Paragraphs 1 through 62 of this Consent Agreement are incorporated herein by reference.

64. WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste as defined in 40 C.F.R. § 261.2, which is incorporated by reference in WVHWMR § 33-2-20, shall determine if that waste is a hazardous waste using one of the methods set forth in WVHWMR § 33-20-5.1 which incorporates by reference 40 C.F.R. § 262.11.

65. As a person who generates solid waste, Respondent is required by WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11, to determine if the solid waste it generated is hazardous waste using a method prescribed by WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11.

66. From at least January 15, 2002 until June 20, 2007, Respondent failed to perform hazardous waste determinations for discarded cathode ray tubes, lamps and aerosol cans which were solid wastes generated by Respondent as required by WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262. 11.

67. Respondent violated WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform hazardous waste determinations for discarded cathode ray tubes, lamps and aerosol cans which were generated by Respondent and disposed at the Facility.

COUNT VIII
(Waste Oil Labeling)

68. The allegations of Paragraphs 1 through 67 of this Consent Agreement are incorporated herein by reference.

69. Respondent is a "used oil generator" within the meaning of WVHWMR § 33-20-14.1 which incorporates by reference 40 C.F.R. § 279.1.

70. WVHWMR § 33-20-14.1 which incorporates by reference 40 C.F.R. § 279.22, provides

that containers used to store used oil at used oil generator facilities must be labeled with the words on "Used Oil."

71. On November 15, 2006, at the time of the CEI, Respondent stored used oil in a fifty-five gallon drum and five, 5 - gallon containers at its Facility without labeling the containers with the words "Used Oil."

72. Respondent violated WVHWMR § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.22, by failing to label containers of used oil stored at Respondent's Facility with the words "Used Oil" as required by WVHWMR § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.22.

III. SUPPLEMENTAL ENVIRONMENTAL PROJECT

73. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protections. Respondent shall undertake a paving project at the Facility consistent with the areas shown in Attachment A (herein "Paving SEP Project") as described in the SEP Statement of Work ("SEP SOW") appended to this Consent Agreement as Attachment B.

74. The SEP SOW (Attachment B) shall be fully implemented within THREE HUNDRED SIXTY FIVE (365) DAYS of the effective date of the CAFO.

75. The total required Actual SEP Expenditures required to be incurred by Respondent pursuant to this SEP shall not be less than $168,000. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 77.

76. Respondent hereby certifies that, as of the date of its signature to this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, or grant or as injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.

77. Respondent shall submit a SEP Completion Report to EPA no later than FOUR HUNDRED FIFTY- FIVE (455) DAYS after the effective date of this CAFO. The SEP Completion Report shall contain the following information:

(i) A detailed description of the SEP as implemented, describing how the SEP has fulfilled all the requirements described in the SEP SOW;

(ii) A description of any operating problems encountered and the solutions utilized by Respondent to address such problems;

(iii) An itemization of costs incurred in implementing the SEP. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Actual SEP Expenditures as provided by Paragraph 79. Where the SEP Completion Report includes costs incurred by Respondent not eligible for SEP credit, such costs must be clearly identified in the SEP Completion Report as ineligible for SEP credit. For purposes of this Paragraph, "Actual SEP Expenditures" shall include the costs for the design, development, installation and implementation of the Paving SEP as specified in the SEP SOW;

(iv) Certification in accordance with the form set forth in Paragraph 78 below that the SEP has been fully implemented pursuant to the provisions of this CAFO; and

(v) A description of the environmental and public health benefits resulting from implementation of the SEP (quantify the benefits and pollution reductions, if feasible).

78. Submissions to EPA: Any notice, certification, data presentation, or other document submitted by Respondent pursuant to this CAFO which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this CAFO shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared 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 am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Except as otherwise provided herein, notifications or submissions to EPA required by this CAFO shall be sent to the attention of:

Stacie Peterson (3WC31)
RCRA Enforcement and Compliance Officer
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029; and

Joyce A. Howell (3WC31)
Sr. Asst. Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

79. In itemizing the costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Actual SEP Expenditures. For purposes of this Paragraph, "acceptable documentation" for itemizing Actual SEP Expenditures includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the Actual SEP Expenditures for the goods and/or services for which payment is being made by Respondent. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual cost of the goods and/or services for which payment is being made.

80. EPA may inspect any location listed in the SEP SOW at any time to confirm that the SEP is being undertaken in conformity with the specifications referenced herein.

81. Respondent shall maintain for inspection by EPA the original records pertaining to Actual SEP Expenditures incurred in implementing the SEP, such as purchase orders, receipts, and/or canceled checks, for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction of Settlement Conditions" for the SEP as provided in Paragraph 98 of this CAFO. Respondent shall also maintain non-financial records, such

as work orders and work reports, documenting the actual implementation and/or performance of the SEP for a period of one year following EPA's issuance of a Letter Remittance Upon Satisfaction of Settlement Conditions for the SEP as provided in Paragraph 98 of this CAFO.

82. Following receipt of the SEP Completion Report described in Paragraph 77 above, EPA will do one of the following:

A. Notify Respondent in writing of any deficiency in the SEP Completion Report itself ("Notice of Deficiency") and grant an additional THIRTY (30) DAYS for Respondent to correct the deficiency;

B. Notify Respondent in writing of EPA's determination that the project has been completed satisfactorily ("Notice of Approval"); or

C. Notify Respondent in writing that the project has not been completed satisfactorily ("Notice of Disapproval"), in which case, EPA may seek stipulated penalties in accordance with Paragraph 86 herein.

83. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. If EPA, in its sole discretion and after completion of the Dispute Resolution Process set forth in Paragraphs 84 and 85 of this CAFO, if applicable, determines that the SEP and/or any report due pursuant to this CAFO has not been completed as set forth herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 86 herein.

IV. DISPUTE RESOLUTION

84. If EPA issues a written Notice of Disapproval rejecting a SEP Completion Report pursuant to Paragraph 82, above, EPA shall grant Respondent the opportunity to object in writing to such notification of disapproval within twenty (20) days of receipt of EPA's notification. EPA and Respondent shall have an additional (30) days from the receipt by EPA of the objection by Respondent to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within such thirty (30) day period, EPA shall provide to Respondent a written Statement of Decision and the rationale therefor.

85. In the event EPA determines after the expiration of the aforesaid 30-day dispute resolution period that a SEP has not been completed as specified herein or has issued a written Notice of Disapproval for which a timely objection has not been filed as provided in Paragraph 84, above, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 86 of this CAFO. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to submit a timely SEP

Completion Report for the purposes of the stipulated penalty provisions set forth in Paragraph 86E, below, except that the calculation of any such stipulated penalties shall not run during the pendency of the dispute resolution procedure set forth in Paragraph 84 above, but shall instead run from the date on which Respondent receives EPA's Statement of Decision pursuant to Paragraph 84 above, or, in the event that Respondent has not filed a timely objection to an EPA Notice of Disapproval, the date following the day of expiration of the 30-day dispute resolution period.

V. STIPULATED PENALTIES

86. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP described in the SOW and/or to the extent that the Actual Expenditures for the SEP do not equal or exceed the amount of Actual SEP Expenditures required to be incurred under Paragraph 75 of this Consent Agreement, Respondent shall be liable for stipulated penalties according to the provisions below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of $42,000.

B. If the SEP is not completed in accordance with Paragraphs 73 - 81, but the Complainant determines that Respondent: (i) has made good faith and timely efforts to complete the project; and (ii) has certified, with supporting documentation, that at least 95% of the Actual SEP Expenditures required to be incurred under Paragraph 75 of this Consent Agreement were expended on the SEP, Respondent shall not be liable for any stipulated penalty;

C. If the SEP is completed in accordance with Paragraphs 73 - 81, but the Respondent spent less than ninety percent (90%) of the amount of the Actual SEP Expenditures required to be incurred under Paragraph 75 of this Consent Agreement, Respondent shall pay an additional penalty of $10,500.00

D. If the SEP is completed in accordance with Paragraphs 73 - 81, and the Respondent spent at least 90% of the Actual SEP Expenditures required to be incurred under Paragraph 75 of this Consent Agreement, Respondent shall not be liable for any stipulated penalty;

E. For failure to submit the SEP Completion Report required by Paragraph 77, above, Respondent shall pay a stipulated penalty of ONE THOUSAND DOLLARS ($1,000) for each day after the deadline set forth in Paragraph 77 until the report is submitted.

87. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be within the sole discretion of EPA after completion of the Dispute Resolution process set forth above in Paragraphs 84 and 85 of this CAFO, if applicable.

88. Except as provided in Paragraph 85, stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

89. Respondent shall pay stipulated penalties within FIFTEEN (15) DAYS after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with Paragraph 101.

90. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

VI. LANGUAGE TO BE INCLUDED IN PUBLIC STATEMENTS

91. In any public statement referring to this SEP, Respondent shall include language that the SEP was undertaken in connection with a settlement of an enforcement action taken by EPA. This Paragraph does not compel Respondent to make any public statement concerning the implementation of the SEP.

VII. NON-DEDUCTIBILITY OF SEP PROJECT COSTS

92. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VIII. PROVISIONS IN EVENT OF DELAY OR ANTICIPATED DELAY

93. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing not more than FIFTEEN (15) days after the delay or when Respondent learned or should have known of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the

notice requirements of this Paragraph shall render this Paragraph void or of no effect as to the particular incident involved and constitutes a waiver of the Respondent's right to seek an extension of the time for performance of its obligations under this CAFO.

94. If the Parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event the Parties shall stipulate to such extension of time.

95. In the event that EPA does not agree that the delay in achieving compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

96. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event be a basis for changes in this CAFO or extensions of time under Paragraph 93 of this CAFO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of a subsequent step.

IX. SATISFACTION OF SETTLEMENT CONDITIONS

97. A determination of compliance with the conditions set forth herein will be based upon, *inter alia*, copies of records and reports submitted by Respondent to EPA under this CAFO and any inspections of work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Factual Allegations and Conclusions of Law are false or, in any material respect, inaccurate.

98. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state Respondent has performed fully the conditions set forth in this CAFO and paid all the penalty amounts due pursuant to the terms of this CAFO.

X. CIVIL PENALTIES

99. Respondent agrees to pay a civil penalty in the amount of **$64,715** in settlement of the alleged violations, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty and compliance with the terms and conditions of this CAFO as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

100. Having determined that this Consent Agreement is in accordance with law and that the civil penalty was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which includes the seriousness of the violations and any good faith efforts to comply with the applicable requirements, EPA hereby agrees and acknowledges that payment of the civil penalty and compliance with the terms and conditions of this Consent Agreement shall be in full and final satisfaction of all civil claims for penalties which Complainant may have for the violations and facts alleged in this Consent Agreement

101. Respondent shall remit the payment for the civil penalty specified in Paragraph 99 above, payable to United States Treasury, using one of the payment methods set forth below:

By regular U.S. Postal Service:

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

For overnight deliveries, street address:

United States Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson

314-418-4087

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Automated Clearing House (ACH) Transfers:

PNC Bank
ABA = 051036706
Transaction Code 22 -checking
Account 310006
CTX Format
Environmental Protection Agency
808 17th Street NW
Washington DC 20074
Contact: Jesse White 301-887-6548

On-Line Payment:

www.pay.gov
Enter sfo 1.1 in the search field, open form and complete the required fields.

All payments by Respondent shall reference its name and address and the Docket Number of this action (RCRA-03-2008-0119).

At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3WC31)
1650 Arch Street
Philadelphia, PA 19103-2029

102. This civil penalty, as specified in this Consent Agreement and the attached Final Order, is not deductible for federal tax purposes.

103. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

104. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

105. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

XI. OTHER APPLICABLE LAWS

106. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

XII. PARTIES BOUND

107. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of each party acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the that party to the terms and conditions of this Consent Agreement and the accompanying Final Order.

XIII. EFFECTIVE DATE

108. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, SWVA, Inc.:

Date: 5/5/08 By: Timothy R Duke

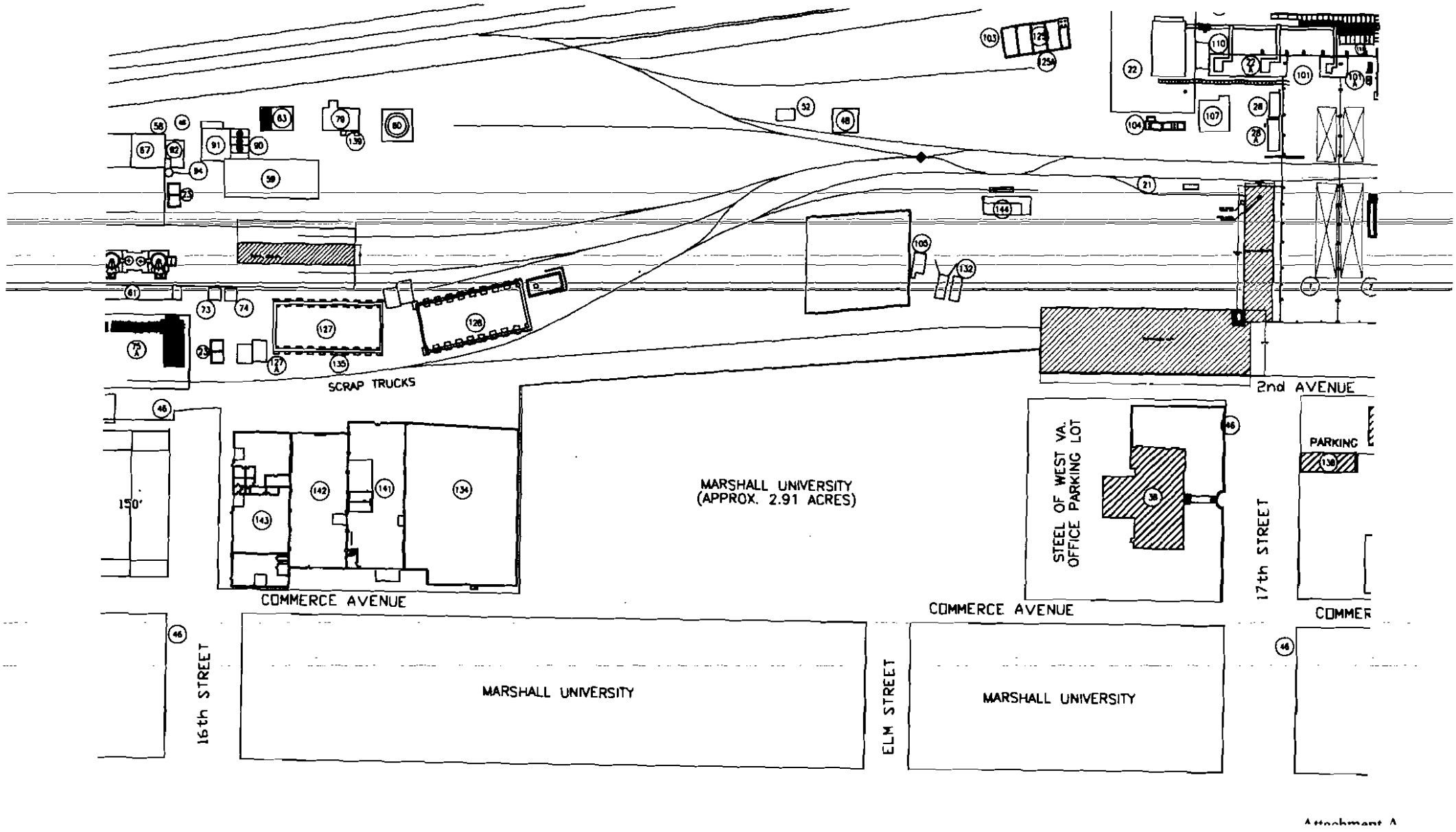
For Complainant, United States Environmental Protection Agency, Region III:

Date: 5/27/2008 By: _____
Joyce A. Howell
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Waste and Chemicals Management Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

6/19/08 By: _____
Date
Abraham Ferdas
Director
Waste and Chemicals Management Division

ATTACHMENT A



Attachment A

ATTACHMENT B:
SEP Statement of Work

Steel of West Virginia, Inc. ("SWVA") will implement a SEP consistent with the following statement of work:

Currently, roadways in the scrap holding, billet holding, and 17th Street entry areas of the SWVA facility are dirt and gravel. Large vehicles associated with steel production pass through these areas every day. Paving these high-traffic areas of the facility would reduce airborne dust, providing a benefit to the surrounding community. To that end, SWVA will pave the areas consistent with the three cross-hatched areas shown on Attachment A of this CAFO.

While the timeline is subject to change based on contractor availability, weather, and other factors, SWVA anticipates project completion to occur on or before one year from the effective date of this CAFO.

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
SWVA, Inc., d/b/a	:	
Steel of West Virginia	:	
Second Avenue and 17th Street	:	**Docket No. RCRA-03-2008-0119**
Huntington, WV 25703	:	
	:	
RESPONDENT	:	
	:	
	:	
SWVA, Inc.	:	
Second Avenue and 17th Street	:	
Huntington, WV 25703	:	
	:	
FACILITY		

FINAL ORDER

Complainant, the Director, Waste and Chemical Management Division, U.S. Environmental Protection Agency, Region III, and Respondent, SWVA, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 3008(a) of the Resource Conservation and Recovery Act of 1976, as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. Section 6928(a), and the Consolidated Rules of

Practice, and having determined, on the basis of the parties' representations in the Consent Agreement, that the penalty agreed to therein by the parties is based on a consideration of the factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), it is hereby ordered that Respondent pay $64,715 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

The effective date of this Consent Agreement and Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

6/24/08
Date

Renée Sarajian
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:

SWVA, Inc. d/b/a
Steel of West Virginia, Inc.
Second Avenue and 17th Street
Huntington, WV 25703

Docket No. RCRA-03-2008-0119

RESPONDENT

SWVA, Inc.
Second Avenue and 17th Street
Huntington, WV 25703

CERTIFICATE OF SERVICE

I hereby certify that I caused the original and one copy of the Consent Agreement and Final Order to be hand-delivered to the Regional Hearing Clerk, EPA Region III, and a true and correct copy of the same to be sent via Federal Express to:

David L. Hatchett
HATCHETT & HAUCK LLP
111 Monument Circle, Suite 301
Indianapolis, Indiana 46204-5124

Date: 6/30/2008

Joyce A. Howell
Senior Assistant Regional Counsel

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

A. Such proceeding is material to the business or financial condition of the registrant;
B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.