UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 22 2009

CERTIFIED MAIL- RETURN RECEIPT REQUESTED
Article number: 7005 3110 0000 5926 4409

Keith A. Nagel
Manager, Environmental Affairs
Tecumseh Redevelopment, Inc.
3250 Interstate Drive
Richfield, Ohio 44286

Re: **In the Matter of Tecumseh Redevelopment, Inc.**
Docket Number RCRA-02-2010-7102

Dear Mr. Nagel:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources"and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of: Tecumseh Redevelopment, Inc. Respondent, Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** **Docket No.: RCRA-02-2010-7102**

COMPLAINT

This is a civil administrative proceeding 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 ("HSWA"), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA") for injunctive relief and civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA's") preliminary determination that Tecumseh Redevelopment, Inc. (hereinafter "Tecumseh" or "Respondent") has violated RCRA and/or the federally authorized New York State regulations concerning hazardous waste management.

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.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA. Section 3008(a)(2)

of the Act, 42 U.S.C. § 6928 (a)(2), authorizes EPA to enforce the regulations constituting the authorized State program. EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), any person is subject to a civil penalty not to exceed $25,000 per day for each violation of any requirement of Subtitle C of RCRA occurring prior to January 31, 1997 and, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, a civil penalty not to exceed $32,500 per day for each such violation occurring after March 15, 2004 through January 12, 2009, and not to exceed $37,500 per day for each violation occurring after January 12, 2009. 40 C.F.R. Part 19.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

I. General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.

Respondent's Background

3. Respondent is a corporation.

4. 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).

5. Respondent "owns" and "operates" 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

6. Respondent's Lackawanna facility was formerly owned and operated by Bethlehem Steel Corporation ("BSC").

7. 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").

8. 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.

9. 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.

10. 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.

11. Respondent is presently a subsidiary of ArcelorMittal USA Inc. ("ArcelorMittal"). Respondent became a subsidiary of ArcelorMittal 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 acquired 91.9% of the share capital of Arcelor, and subsequently continued to increase its ownership of outstanding shares, until December 15, 2006 when Mittal Steel and Arcelor merged to create ArcelorMittal.

Relevant Regulatory Obligations

12. New York State's interim status standards for owners and operators of hazardous waste facilities are set forth in 6 NYCRR Subpart 373-3.

13. 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 and corporate guarantee, 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

14. 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.

15. In or December 2006, EPA and Respondent entered into a Consent Agreement and Final Order ("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.

Count 1

16. Complainant realleges each allegation contained in paragraphs "1" through "15," inclusive, as if fully set forth herein.

17. 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 90 days after the close of each succeeding fiscal year.

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

19. 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.

20. 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.

21. 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.

II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty

assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements."

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case and has used EPA's 2003 RCRA Civil Penalty Policy. A copy of this penalty policy is available upon request or can be found on the Internet at **www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf.** The penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the following: the September 21, 2004 document entitled Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, effective October 1, 2004); the January 11, 2005 document entitled Revised Penalty Matrices for the RCRA Civil Penalty Policy; the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule. The RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty per violation per day under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) is $32,500 for any violation occurring from March 16, 2004 through January 12, 2009, and $37,500 for any violation occurring after January 12, 2009. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent that Respondent be assessed the following civil penalty for the violation alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for the violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II and III, below.

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant proposes a civil penalty of thirty two thousand and four hundred and ninety nine dollars ($32,499) as follows:

Count 1: $32,499

Total Proposed Penalty: $32,499

Further details regarding the assessment of this proposed penalty are set forth in Attachments I - III.

III. COMPLIANCE ORDER

Based upon the foregoing and pursuant to the authority of Section 3008 of the Act, Complainant hereby Orders Respondent to:

1. Maintain financial assurance for closure and post closure care at the Lackawanna facility as required by 6 NYCRR § 373-3.8.

2. 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

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $37,500 per day for each violation occurring after January 12, 2009. (This penalty amount may be increased in the future to take into account inflation.)

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB") pursuant to 40 C.F.R. § 22.30, and the initial decision becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Amy Chester, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3213

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any

of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its r right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties" agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

Date December 22, 2009

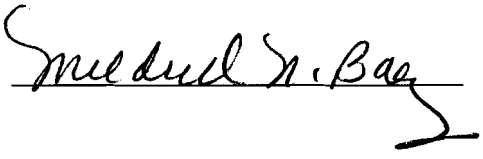
To: Keith A. Nagel
Manager, Environmental Affairs
Tecumseh Redevelopment, Inc.
3250 Interstate Drive
Richfield, Ohio 44286

cc: Thomas Killeen, Chief
New York State Department of Environmental Conservation
Bureau of Hazardous Waste Management
Division of Solid and Hazardous Materials
625 Broadway, 8th floor
Albany, NY 12233

CERTIFICATE OF SERVICE

This is to certify that on the day of DEC 24 2009, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number **RCRA-02-2010-7102** with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to Keith A. Nagel, Manager Environmental Affairs, Tecumseh Redevelopment, Inc., 3250 Interstate Drive, Richfield, Ohio 44286. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

Dated: DEC 24 2009
New York, New York



ATTACHMENT I
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

Respondent: Tecumseh Redevelopment, Inc.

Facility Address: Hamburg Turnpike
Lackawanna, New York 14218

Requirement Violated:

Count 1: 6 NYCRR § 373-3.8: Failure to timely comply with financial assurance requirements for closure and post closure care for fiscal year ending December 31, 2007.

PENALTY AMOUNT FOR COMPLAINT:

1. Gravity based penalty from matrix	$25,999
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation	N/A at this time
4. Add line 1 and line 3	$25,999
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	25%
8. Total lines 5 through 7.	25%
9. Multiply line 4 by line 8.	$6,500
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount inserted into the complaint.	$32,499

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet (Count 1)

1. **Gravity Based Penalty:**

a. Potential for Harm - The "Potential for Harm" is MAJOR. Financial responsibility requirements are important components of the RCRA program. Financial assurances for closure and post closure care ensure the existence of adequate funding to remediate regulated areas, thereby protecting both human health and the environment. The failure by a company to update its corporate guarantee and financial test, or to submit an alternative financial assurance mechanism, means the financial resources needed to complete closure and post closure care requirements at hazardous waste management units could be deficient, thereby substantially increasing the potential risk to human health and the environment. Failure to properly maintain financial assurances undermines and adversely impacts the purposes and procedures of the RCRA program.

b. Extent of Deviation - The extent of deviation is MODERATE. Although submitted late, Respondent eventually submitted its updated financial assurance information.

c. The applicable cell range is $19,500 to $25,999. EPA used the matrix for violations which occurred during the March 16, 2004 through January 12, 2009, since the violation alleged in this Complaint occurred in 2008. The high point of the range was selected because the timely submission of updated financial information is necessary in order to ensure that a facility has adequate financial assurance.

d. Multiple/Multi-day: EPA has not presently applied a multi day penalty to this violation.

2. **Adjustment Factors**

Good Faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: N/A

History of Compliance: The EPA cited Respondent for the same violation in 2006, and the Respondent entered into a CA/FO which required it to comply with

the financial assurance requirements for closure and post closure care in 2006. Accordingly, the penalty was increased by a factor of twenty-five percent (25%).

Ability to Pay: As this time, EPA has not made any adjustments based on ability to pay.

Other Unique Factors: N/A

3. **Economic Benefit**: The economic benefit derived from this violation was determined to be less than ten percent of the proposed penalty ($ 3,250). An economic benefit under this amount is deemed insignificant and is not reflected in the penalty calculation.

ATTACHMENT II

GRAVITY BASED PENALTY MATRIX

For Violations Occurring from March 16, 2004 January 12, 2009

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT			
		MAJOR	MODERATE	MINOR
	MAJOR	$32,500 to 26,000	$25,999 to 19,500	$19,499 to 14,300
	MODERATE	$14,299 to 10,400	$10,399 to 6,500	$6,499 to 3,900
	MINOR	$3,899 to 1,950	$1,949 TO 650	$649 TO 130

ATTACHMENT III

MULTI-DAY MATRIX

For Violations Occurring from March 16, 2004 through January 12, 2009

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT			
		MAJOR	MODERATE	MINOR
	MAJOR	$6,500 to $1,300	$6,499 to $975	$3,900 to $715
	MODERATE	$2,860 to $520	$2,080 to $325	$1,300 to $195
	MINOR	$780 to $130	$390 to $130	$130