UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 29 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph C. Alter
Vice President, General Counsel and Corporate Secretary
AK Steel Corporation
1801 Crawford Street
Middletown, Ohio 45043

Dear Mr. Alter:

Enclosed is a file-stamped Consent Agreement and Final Order ("CAFO") which resolves the AK Steel Corporation case, docket number **CAA-05-2016-0030**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 29, 2016.

Pursuant to paragraph 39 of the CAFO, AK Steel Corporation must pay the civil penalty within 30 days of the filing date. Your check must display the case name and the docket number.

Please direct any questions regarding this case to James Morris, Associate Regional Counsel, at (312) 886-6632.

Sincerely,

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Branch, MN/OH Section

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0030**
AK Steel Corporation	)	**Proceeding to Assess a Civil Penalty**
Middletown Works	)	**Under Section 113(d) of the Clean Air Act,**
Middletown, Ohio	)	**42 U.S.C. § 7413(d)**
	)	
Respondent.	)	

REGIONAL HEARING CLERK
RECEIVED
JUN 29 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act or CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is AK Steel Corporation ("AK Steel"), a corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in Paragraphs 1 through 6, and 8 in this CAFO and neither admits nor denies the factual allegations and legal conclusions in Paragraphs 9 through 37 in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

Federal NESHAP

9. Under Section 112 of the Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coke Ovens: Quenching, Pushing and Battery Stacks, at 40 C.F.R. Part 63, Subpart CCCCC ("Coke Oven MACT" or "Subpart CCCCC").

10. Pursuant to 40 C.F.R. § 63.7283(a) of the Coke Oven MACT, a facility is subject to the requirements of Subpart CCCCC if the facility owns or operates a coke oven battery at a coke plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions.

11. Pursuant to 40 C.F.R. § 63.7283(a) of the Coke Oven MACT, a facility subject to the Coke Oven MACT is required to comply with each work practice standard requirement of the Coke Oven MACT that applies to the facility by no later than April 14, 2006.

12. Pursuant to 40 C.F.R. § 63.7310(a) of the Coke Oven MACT, a facility subject to the Coke Oven MACT must be in compliance with its work practice standards requirements at all times, except during periods of startup, shutdown, and malfunction.

13. Pursuant to 40 C.F.R. §§ 63.7334(a)(1)-(8) of the Coke Oven MACT, a facility subject to the Coke Oven MACT must demonstrate continuous compliance with the work practice standards that apply to each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions. Specifically, the facility must meet, *inter alia*, the following requirements:

a. Observe and record the opacity of fugitive emissions for four consecutive pushes per operating day;

b. Observe and record the opacity of fugitive emissions from each oven in a battery at least once every 90 days;

c. Make all observations and calculations for opacity observations of fugitive pushing emissions in accordance with Method 9 in Appendix A to 40 CFR part 60 using a Method 9 certified observer; and

d. Begin observations for a push at the first detectable movement of the coke mass, and end observations of a push when the quench car enters the quench tower.

Ohio State Implementation Plan

14. EPA approved the Ohio Administrative Code (OAC) Chapter 3745-17-07(A)(1) as part of the federally enforceable Ohio SIP on May 27, 1994, at 59 Fed. Reg. 27464, and again on November 15, 2007, at 72 Fed. Reg. 58523.

15. OAC Chapter 3745-17-07(A)(1)(a) states that, with certain exceptions, visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average.

16. OAC Chapter 3745-17-07(A)(1)(b) states that visible particulate emissions from any stack may exceed twenty percent opacity, as a six minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed sixty percent opacity, as a six-minute average, at any time.

17. OAC Chapter 3745-17-07(B)(2)(e) states that visible particulate emissions during any pushing operations shall not exceed an average of twenty percent opacity read above the battery top. For purposes of OAC Chapter 3745-17-07(B)(2)(e), the duration of a pushing operation shall commence with the first detectable movement of the coke mass and shall conclude when the quench car enters the quench tower.

18. Federal regulations at 40 C.F.R. § 52.23 provides that failure to comply with any approved regulatory provision of a SIP shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

Title V Permit

19. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that it shall be unlawful for any person to violate any requirement of a Title V permit after the effective date of any Title V permit program approved by EPA.

20. The State of Ohio operating permit program was granted full approval by EPA on August 15, 1995, with an effective date of October 1, 1995 (60 Fed. Reg. 42045; 40 C.F.R. Pt. 70, App. A).

21. Federal regulations at 40 C.F.R. § 70.6(b)(1) specify that all terms and conditions in a permit issued under a Part 70 program are enforceable by EPA under the Act.

22. The Ohio Environmental Protection Agency issued a Title V permit to AK Steel for the facility, ID No. 14-09-01-0006, on November 1, 2004.

23. Part III.A.I.1 of AK Steel's Title V permit for Emissions Unit B918, incorporating OAC Chapter 3745-17-07(A)(1)(a) requirements, states that visible particulate emissions from the

Wilputte Battery's combustion stack shall not exceed twenty percent opacity as a six-minute average, except as provided by OAC Chapter 3745-17-07(A)(1)(b).

24. Part III.A.I.1 of AK Steel's Title V permit for Emissions Unit B918, incorporating OAC Chapter 3745-17-07(B)(e), states that visible particulate emissions during any pushing operation shall not exceed an average of twenty percent opacity read above the battery top.

25. The Administrator of EPA ("Administrator") may assess a civil penalty of up to $32,500 per day of violation up to a total of $270,000 for violations of a NESHAP and/or a Title V permit that occurred after March 15, 2004, through January 12, 2009, and may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for violations of a NESHAP and/or a Title V permit that occurred after January 12, 2009, through December 6, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

26. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

27. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

EPA's Factual Allegations and Alleged Violations

28. AK Steel owns and operates an integrated steel-producing facility located at 1801 Crawford Street, Middletown, Ohio ("facility").

29. AK Steel's facility is a major source of HAPs because it emits a combination of HAPs at a rate of 25 tons or more per year.

30. At the Middletown facility, AK Steel owns and operates a coke oven battery, among other emission sources, known as the Wilputte Battery, or emissions unit B918.

31. The Wilputte Battery produces coke, which is coal purged of many of its impurities.

32. AK Steel's Wilputte Battery is a short by-product coke oven battery, because its ovens are less than 6 meters (20 feet) in height.

33. AK Steel's Wilputte Battery is a by-product coke oven battery with vertical flues.

34. Data submitted in response to an EPA CAA Section 114 information request, dated March 2, 2011, indicated that, from the Coke Oven MACT's compliance date of April 14, 2006, AK Steel had not properly taken Method 9 visible emissions observations at the Wilputte Battery pushing operations for the duration of each push, in accordance with the Coke Oven MACT's work practice standards, by ending observations of a push prior to the quench car entering the quench tower.

35. From April 14, 2006, to June 1, 2011, AK Steel violated 40 C.F.R. §§ 63.7283(a), 63.7310(a), and 63.7334(a) of the Coke Oven MACT, the Ohio SIP at OAC Chapter 3745-17-07(A)(1), and Part III.A.I.1 of its Title V permit by not continuously meeting the work practice standards that apply to its coke battery's pushing operations.

36. In 2011 and 2012, data measuring visible emissions from AK Steel's Wilputte Battery combustion stack – calculated at six-minute increments for three distinct three-month periods and

submitted to EPA in response to CAA Section 114 information requests – indicated that AK Steel had exceeded its twenty percent opacity limit, as a six-minute average, at the combustion stack.

37. On numerous occasions from April 2011 to August 2012, AK Steel violated the Ohio SIP at OAC Chapter 3745-17-07(A)(1)(a) by exceeding the applicable opacity standard at its Wilputte Battery's combustion stack.

Civil Penalty

38. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and the cooperation of the Respondent, Complainant has determined that an appropriate civil penalty to settle this action is $15,000.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a $15,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

40. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Reza R. Bagherian (AE-17J)
Enforcement Officer
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

James Morris (C-14J)
Associate Regional Counsel

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 55, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environmental Project

44. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by upgrading the pushing emissions control (PEC) hood that captures particulate matter emissions from the Wilputte Battery pushing operations at

its Middletown, Ohio, facility by designing, installing, and operating a new PEC hood. Respondent shall implement and maintain the SEP in accordance with the SEP Statement of Work (SOW) attached to this CAFO as Attachment A.

45. Respondent must spend at least $450,000, up to a maximum of $700,000, to complete the SEP as described above and in Attachment A to this CAFO. With respect to the detailed engineering analysis described in paragraph 1.a. of Attachment A to this CAFO, up to $125,000 of costs associated with the detailed engineering analysis may be credited toward the total value of the SEP.

46. Respondent certifies as follows:

> I certify that Respondent is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Respondent has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
>
> I certify that Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

47. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

48. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to the CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

49. Respondent must submit the reports required by the scope of work to EPA according to the schedule in Exhibit A.

50. Respondent must submit a SEP completion report within 60 days following completion of the SEP. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any operating problems and the actions taken to correct the problems;

c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

f. A video recording of, at a minimum, five pushes using the existing hood, and five pushes after the new hood begins operation.

51. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 40, above.

52. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know

that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

53. Following receipt of the SEP completion report described in paragraph 50, above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 55.

54. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 55, below.

55. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. If Respondent does not complete the SEP satisfactorily, or abandons work on the SEP, Respondent must pay a penalty of $450,000; however, if EPA determines that Respondent made good faith and timely efforts to complete the SEP, and Respondent certifies, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 45, Respondent will not be liable for any stipulated penalty under this subparagraph.

b. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 45, Respondent must pay a penalty of the difference between the amount spent and $450,000.

c. If Respondent did not submit timely the SEP completion report required by paragraph 50, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$150	1st through 14th day
$250	15th through 30th day
$500	31st day and beyond

56. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith and timely effort to satisfactorily complete the SEP shall be in the sole discretion of EPA.

57. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 39, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

58. Any public statement that Respondent makes referring to the SEP must include the following language, "AK Steel undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against AK Steel for violations of the Title V permit requirements of the Act, 42 U.S.C. §§ 7661a and 7661b, federal work practice standards delineated in the Coke Oven MACT, and the opacity limits contained in the Ohio SIP."

59. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

60. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the SEP.

General Provisions

61. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Morris.James@epa.gov (for Complainant), and SWesloh@fbtlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

62. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO, including the violations alleged by EPA in the Notice and Finding of Violations (NOV/FOV) dated August 3, 2011 (EPA-5-11-OH-15), the FOV dated September 29, 2011 (EPA-5-11-OH-17), and the NOV/FOV dated June 28, 2012 (EPA-5-12-OH-18).

63. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violation of law or Respondent's right to assert any defenses thereto.

64. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 62, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

65. Respondent certifies that it is complying fully with those NESHAP requirements in the Coke Oven MACT, the Ohio SIP provisions, and the Title V permit terms and conditions that are identified in this CAFO.

66. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

67. The terms of this CAFO bind Respondent, its successors and assigns.

68. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

69. Each party agrees to bear its own costs and attorney's fees in this action.

70. This CAFO constitutes the entire agreement between the parties.

71. This CAFO shall terminate when Respondent has satisfied all of the terms and conditions of this CAFO.

AK Steel Corporation, Middletown Works, Respondent

6-15-16
Date

Joseph C. Alter
Vice President, General Counsel and Corporate Secretary
AK Steel Corporation

United States Environmental Protection Agency, Complainant

6/21/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: AK Steel Corporation
Docket No. CAA-05-2016-0030

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

June 27, 2016
Date

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: AK Steel Corporation
Docket No. CAA-05-2016-0030

Certificate of Service

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2016-0030** which was filed on June 29, 2016, in the following manner to the following addressees:

Copy by Certified Mail to the Respondent:

Joseph C. Alter
Vice President, General Counsel and Corporate Secretary
AK Steel Corporation
1801 Crawford Street
Middletown, Ohio 45043

Copy by E-mail to Attorney for Complainant:

James Morris
morris.james@epa.gov

Copy by E-mail to Attorney for Respondent:

Steven M. Wesloh
SWesloh@fbtlaw.com

Copy by E-mail to Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 29, 2016

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7186

Attachment A
Supplemental Environmental Project
Statement of Work

1. No later than 45 days from the effective date of the CAFO, Respondent shall retain an independent third-party engineering firm ("third-party firm") with experience in ventilation studies and pollution control equipment capture and control efficiency to conduct a detailed engineering analysis of the PEC hood in order to identify an appropriate PEC hood necessary to optimize capture of fugitive particulate matter emissions from the Wilputte Battery pushing operations.

2. The engineering analysis of the PEC hood shall include computational fluid dynamics modeling to identify the most appropriate design of a new PEC hood, determining design factors, such as (1) the hood shape and size, (2) the offtake diameter, length and flow path, (3) the potential use of internal hood baffles, and (4) the distance of the hood above the quench car.

3. No later than five months from the effective date of the CAFO, Respondent shall submit to EPA a copy of the third-party firm's report that provides the firm's conclusions, options for improvements, recommendations, and justifications for those recommendations regarding a new PEC hood. For each of the third-party firm's recommendations, Respondent shall include a statement of whether Respondent agrees or disagrees with the recommendation. Respondent may also submit additional recommendations of its own, or substitute its own recommendation for any third-party firm's recommendation with which Respondent disagrees. For any recommendation not contained in the third-party firm's report, Respondent shall provide a technical analysis to support the recommendation.

4. EPA shall approve or disapprove of each recommendation made by the third-party firm or by Respondent. EPA shall provide an explanation for any recommendation with which it disapproves, along with a revision to the disapproved recommendation.

5. For each recommendation disapproved and revised by EPA, Respondent must, within 10 days of receiving notice of EPA's decision, either (1) accept EPA's recommendation as revised, or (2) provide notice in writing of its objection. If Respondent objects to EPA's decision, the parties will conduct good faith negotiations for a period no longer than 30 days, in an attempt to resolve Respondent's objection. The 30-day negotiation period may be extended only by agreement of both parties.

6. By no later than eight months from the date when the parties reach final agreement on the recommendations for a new PEC hood, Respondent shall design, complete construction, and begin operation of the new PEC hood pursuant to those recommendations. This deadline can be extended upon approval of EPA, which shall not be unreasonably withheld, in consideration of possible construction difficulties that can be inherent in cold weather conditions.

7. Subsequent to construction completion of the agreed-to recommendations for a new PEC hood, Respondent shall operate the new PEC hood at the Wilputte Battery during all pushing operations