



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

June 30, 2010

VIA UPS

Scott R. Dismukes, Esquire
Eckert Seamans Cherin & Mellott, LLC
U. S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Re: Consent Decree, Civil Action Numbers JFM-97-558 and JFM-97-559
EPA's Proposed Resolution of the Dispute of the Severstal's proposed Work Plan entitled
*Sediment, Surface Water and Groundwater Sampling Plan to Assess Current Groundwater
Discharge impacts to the Offshore Environment*

Dear Mr. Dismukes:

This letter concerns Severstal Sparrows Point LLC ("Severstal") obligations to investigate the extensive contamination at its Sparrows Point, Maryland facility ("the Facility," or "the Site"), and specifically addresses the Dispute raised by Severstal in its March 4, 2010 Notice of Dispute ("Notice") regarding its obligations under the 1997 Consent Decree referenced above ("Consent Decree"). Severstal's Notice responded to the partial disapproval of Severstal's October 13, Work Plan, entitled *Sediment, Surface, Water, and Groundwater Sampling Plan to Assess Current Groundwater Discharge Impacts to the Offshore Environment* (hereafter "proposed Sediment Work Plan") that was issued by the United States Environmental Protection Agency ("EPA") and the Maryland Department of the Environment's ("MDE's;" collectively, "Agencies") in a letter dated February 3, 2010. In accordance with Section XX. A.3. Dispute Resolution of the Consent Decree," EPA hereby sets forth its Proposed Resolution of the Dispute.

As explained in detail below, EPA finds no merit to any of the arguments Severstal raised in the Notice in support of its position. Therefore, in accordance with Section XX. A.3. of the Consent Decree, Severstal's Dispute shall be deemed resolved in accordance with this Proposed Resolution, and Severstal is required to submit a revised Sediment Work Plan which fully and completely comports with the specific comments set forth in the Agencies' February 3, 2010 partial disapproval of Severstal's October 13, Work Plan, within thirty (30) calendar days after your receipt of this Proposed Resolution.

Background

The requirement that Severstal complete the Sediment Work Plan is found in Section V., Paragraph B of the 1997 Consent Decree, which provides that the Bethlehem Steel Corporation (“BSC”), predecessor in interest to Severstal,¹ shall complete a Site Wide Investigation (“SWI”) for the Facility, beginning with submission of a workplan for scoping the SWI, followed by the “submission of interim reports for each phase of the investigation, supplemental workplans for supplemental phases of the investigation, and a final SWI report addressing the complete investigation.” Consent Decree, V.B.3. Although Severstal had not previously questioned its obligations to include offshore areas potentially impacted by its facility as part of the SWI, in a meeting held among the parties on July 29, 2009 Severstal raised the possibility that it would take a contrary position. In letters dated August 6, 2009 and August 13, 2009, MDE reiterated the Agencies’ view that the Consent Decree did specifically require Severstal to perform a sediment evaluation as part of the SWI. MDE August 6, 2009 letter, p. 1.

In a letter dated October 13, 2009 accompanying its proposed Sediment Work Plan, Severstal argued that its proposal to study offshore sediments was adequate to meet its obligations under the Consent Decree, and further argued that those obligations had been narrowed by virtue of the April 23, 2003 Section 363 Bankruptcy sale of the Facility to the International Steel Group (“ISG”). EPA rejected Severstal’s argument, and partially disapproved Severstal’s proposed Sediment Work Plan, in its February 3, 2010 letter. EPA stated that Severstal’s proposed Sediment Work Plan failed to meet the scope of work set forth in Attachment B, Section 4(b) of the Consent Decree, which requires collection of data necessary to support an ecological risk assessment showing the extent of risk posed to ecological receptors from all impacted media without regard to when the original contamination at the Facility took place, and without limitation to particular source areas at the Facility. Severstal submitted its March 4, 2010 Notice in response.

The Parties met on May 26, 2010 to review the matters raised by Severstal in its Notice, and discussed possible resolution of the disagreements related to the Sediment Work Plan submission. While some matters were clarified, there remain fundamental differences between EPA and Severstal regarding Severstal’s obligations under the Consent Decree.

Discussion

The following discussion addresses each of the arguments Severstal raised in its Notice.

Objection 1: “The Work Plan’s Scope Must be Limited to an Evaluation of Current Releases from Identified SWMUs and AOCs “

Severstal offers a number of arguments in support of this objection, which EPA will address separately. Severstal’s first argument, set forth in both its March 4, 2010 and October 13, 2009 letters, is that it has “no obligation to address historic off-site disposal or releases that

¹ As Severstal acknowledged in its October 13, 2009 letter to EPA and MDE, ISG is the admitted predecessor in interest to Severstal, and was substituted for Bethlehem Steel on the Consent Decree in 2005, effective back to the 2003 sale.

predate the April 23, 2003 [Section 363 Bankruptcy] Sale Order in Bethlehem Steel's bankruptcy," Severstal March 4, 2010 letter at p. 2. Severstal argues that the Sale Order passed the Sparrows Point facility to new owner ISG,

'free and clear' of any and all of the seller's liability (except for those expressly assumed), including successor liability for environmental claims for off-site contamination that occurred prior to the sale.

Severstal Oct. 13, 2009 letter, p. 3.

There are two flaws in Severstal's bid to avoid addressing "historic," i.e. pre 2003, "off-site disposal or releases." First, at issue is Severstal's obligation under the terms of the Consent Decree to develop and implement a comprehensive, Site-wide investigation of Site conditions today. As was set forth in detail in the attachment to EPA's February 3, 2010 letter as well as in prior correspondence, EPA and MDE are requiring Severstal to assess **current** releases (and potential releases) to the environment at and/or from the Facility. Based in part on the discussion among the parties during the May 26, 2010 meeting, it appears that Severstal is confused by references in the Consent Decree and EPA's correspondence that the current site conditions that Severstal is required to address under the Consent Decree are the result of both current and prior activities at the Facility that go back many decades. While, for reasons set forth below, EPA and MDE believe that ISG did expressly assume liability for BSC's then existing, Facility-related environmental liabilities in the April 23, 2003 Sale Order, this issue is irrelevant to Severstal's obligation to submit and implement a comprehensive SWI that addresses current site conditions, including impacts on all media (air, soils, sediments, surface and groundwater) at and/or from the Facility. Whether such conditions are the result of activities and other dynamic site conditions that predate or postdate the bankruptcy sale is a nearly metaphysical question which in any event does not impact Severstal's obligations with respect to the SWI generally, or the Sediment Work Plan specifically, under the terms of the Consent Decree. A bankruptcy sale does not relieve an entity of liability as the post-acquisition owner or operator of the property. Anyone who owns or operates property purchased from a debtor must comply with the same environmental laws that apply to all owners and operators of property – even if the property was contaminated by prior owners. No one is entitled to maintain a nuisance. *See, e.g., Ohio v. Kovacs*, 469 U.S. 274, 285 (1985); *see also In re General Motors Corp.*, 407 B.R. 463 (S.D.N.Y. 2009) (a free and clear purchaser "would have to comply with its environmental responsibilities starting with the day it got the property, and if the property required remediation as of that time, any such remediation would be the buyer's responsibility").

The Consent Decree itself requires that "BSC shall submit to EPA and MDE for approval a Description of the **Current** Conditions at the Facility," Para. V.B. SITE WIDE INVESTIGATION, *emph. added*, which in turn sets the stage for the Sediment Work Plan at issue here. The specifics of the Consent Decree's requirements with respect to the SWI Work Plan are set forth in Attachment B to the Consent Decree, entitled "Bethlehem Steel Sparrows Point Plant and Shipyard Conceptual Plan for the Site Wide Investigation," and Attachment C to the Consent Decree, entitled "SITE WIDE INVESTIGATION SCOPE OF WORK." Both documents are replete with references to BSC's obligations to comprehensively assess current

conditions at the Facility (including offsite impacts), in aid of addressing current and future risk, without regard to when the original activities that led to a release may have taken place. For example, BSC is required to “[d]efine the horizontal and vertical extent of hazardous waste and hazardous constituents in the groundwater system,” Att. B, p. 2, and to

[i]dentify, characterize and determine the full impact of releases of any hazardous wastes or hazardous constituents from the SWMUs/AOCs to air, groundwater, surface water, sediment and soil, throughout the Facility, including on-site and off-site as appropriate.

Att. B, p. 3.

Similarly, Attachment C states that the

“...purpose of [the SWI] is to determine the nature and extent of releases consistent with Attachment B of the Consent Decree . . . and to gather all necessary data to support the Corrective Measures Study. The SWI includes the collection of site specific data to evaluate any human health or ecological impacts of contamination from the site.”

Att. C, 1.

In short, the activities that EPA and MDE are requiring that Severstal undertake as part of the Sediment Work Plan are plainly directed at current Site conditions, and thus are unaffected by any impact that the April 23, 2003 Sale Order in Bethlehem Steel’s bankruptcy (“363 Sale Order”) may have had on the issue of whether as a legal matter ISG (and thus Severstal) assumed BSC’s historic environmental liabilities.²

Turning directly to the bankruptcy issue, the second flaw in Severstal’s argument is that it misreads the express terms of the 363 Sale Order. As a general matter, EPA agrees that Section 363 of the Bankruptcy Code allows a bankruptcy court, in certain situations, to pass along real property to a new owner “free and clear” of prior owners’ environmental liabilities. However, Section 363 does not allow purchasers to acquire debtor property free and clear of the obligation to comply with environmental law. *See, e.g., Zerand-Bernal, Inc. v. Cox*, 23 F.3d 159, 163 (7th Cir. 1994) (“[N]o one believes . . . that a bankruptcy court enjoys a blanket power to enjoin all future lawsuits against a buyer at a bankruptcy sale . . . [or] . . . to immunize such buyer from all state and federal laws that might reduce the value of the assets bought from the bankrupt.”). And the Court’s order here does not immunize Severstal from its environmental obligations.

Section 1.3 of the Sale Order, entitled “Assumption of Liabilities,” provides that

[a]t the Closing, Buyer shall assume, and thereafter pay, perform and discharge when due,

² Additionally, acceptance of Severstal’s argument would require that samples be taken to somehow distinguish the impacts of pre and post 2003 activities, which would be technically impossible, particularly with respect to the near shore sediment samples at issue in the Sediment Work Plan.

all of the following liabilities (the "Assumed Liabilities"):

- ...
- (b) all liabilities and obligations arising after the Closing relating to the Acquired Assets;
- (c) except as set forth in Section 1.4(a), all liabilities and obligations of any Seller relating to the Acquired Assets and arising under any Environmental Law;
- ...

There is no dispute that the Sparrows Point Facility is included among the definition of "Acquired Assets," nor that BSC's obligations under the Consent Decree would be included among "all liabilities and obligations of any Seller relating to the Acquired Assets and arising under any Environmental Law." Thus the issue is whether BSC's legal obligations under the Consent Decree were excluded under the 363 Sale Order. Section 1.4 of the Sale Order sets forth several categories of "Excluded Liabilities," the only one of which with potential application to Severstal's obligations under the Consent Decree is 1.4(a), which excludes from the definition of "Assumed Liabilities"

- (a) all liabilities and obligations of Sellers for
 - (i) any environmental, health or safety matter (including, without limitation, any liability or obligation arising under any Environmental Law)
 - (A) relating to any property or assets other than the Acquired Assets;
 - (B) resulting from the transport, disposal or treatment of any Hazardous Materials by any Seller on or prior to the Closing Date to or at any location other than the Real Property; and
 - (C) relating to any personal injury of any Person resulting from exposure to Hazardous Materials or otherwise, where such exposure or other event or occurrence occurred on or prior to the Closing Date and
- ...

Admittedly, Para. 1.4(a)(i) is not a paragon of clarity or internal consistency. However, given the presence of the conjunctive "and" at the end of Para. 1.4(a)(i)(B), on its face Para. 1.4(a)(i) excludes only those liabilities and obligations of the seller related to personal injury claims, arising pre-sale, involving an environmental, health or safety matter which arose in the context of the transport, disposal or treatment of Hazardous Materials by a Seller to or at any location other than the Real Property, and related to any property or assets other than the Acquired Assets. Thus, for example, under this provision a claim of personal injury arising from the exposure of a truck driver transporting hazardous waste materials from one of the Seller's (ISG) facilities who was involved in an accidental spill off site would be excluded from the BSC liabilities assumed by ISG. It is a well-settled principle of construction that where there is ambiguity in the terms of a contract or agreement, the language of the agreement is generally

construed against the drafter. *See, e.g.*, Restatement (Second) of Contracts § 206 (1981).

Even if, notwithstanding the word “and” at the end of Para. 1.4(a)(i)(B), subparagraphs (A) – (C) in Para. 1.4(a)(i) are read in the disjunctive, none of these provisions exclude ISG’s (and thus Severstal’s) obligations under the Consent Decree. Preliminarily, there is no dispute that the Consent Decree addresses contamination today that was created by many decades of steelmaking activities at Severstal’s Sparrows Point Facility, which is included in the definitions of both “Acquired Assets” and “Real Property,” and that the disputed Sediment Work Plan is aimed at assessing the impacts of groundwater at the facility on adjacent sediments. Of the specific liabilities excluded in Para. 1.4(a)(i) of the 363 Sale Order, neither subparagraphs (B) or (C) of Paragraph 1.4(a)(i) applies because both provisions exclude liabilities from activities with, or exposure to, respectively, “hazardous materials.”³

Furthermore, 1.4(a)(i)(A) does not apply because the liability at issue here plainly relates to the Sparrows Point facility, not “any property or assets other than the Acquired Assets,” even if it is the offsite impacts of that contamination which is being assessed. Similarly, 1.4(a)(i)(B) does not apply because the groundwater at the Facility whose potential impact on the adjacent water bodies and sediments is the subject of the Sediment Work Plan would have been contaminated, if at all, by steelmaking activities at the Facility, i.e. not the “transport, disposal or treatment of any Hazardous Materials by any Seller on or prior to the Closing Date to or at any location other than the Real Property.”⁴ Finally, Paragraph 1.4(a)(i)(C) does not apply because neither the Consent Decree nor the Sediment Work Plan concern liability “relating to any personal injury of any Person resulting from exposure to Hazardous Materials.”

Severstal’s reliance on In Re General Motors Corp., 407 B.R. 463 (Bankry. S.D.N.Y. 2009) (“GM”) is puzzling, as that case fully supports EPA’s position here. At issue in GM was a 363 sale order whose assumed liabilities were at least different (and arguably narrower), and excluded liabilities broader, than those at issue in the BSC 363 Sale Order. See GM at 500 (under the order, “New GM” would voluntarily assume liability for warranty and product liability claims asserted by those injured after the sale even for autos manufactured pre-sale; New GM would not assume “Old GM” liabilities for “injuries or illnesses” that arose pre-sale). As detailed above, and contrary to the 363 sale order in GM, ISG assumed “all liabilities and obligations of any Seller relating to the Acquired Assets and arising under any Environmental Law” subject to matters

³ Section 12.1 of the Asset Purchase Agreement defines “Hazardous Materials” as

means any hazardous or toxic substance or waste or any contaminant or pollutant regulated or otherwise creating liability under Environmental Laws, including, without limitation, “hazardous substances” as defined by the Comprehensive Environmental Response Compensation and Liability Act, as amended, “toxic substance” as defined by the Toxic Substance Control Act, as amended, “hazardous wastes” as defined by the Resource Conservation and Recovery Act, as amended, “hazardous materials” as defined by the Hazardous Materials Transportation Act, as amended, thermal discharges, radioactive substances, PCBs, natural gas, petroleum products or byproducts and crude oil.

⁴ As Severstal’s own reports show, the direction of groundwater flow under the Sparrows Point facility appears to emanate from the facility in multiple directions toward the adjacent water bodies and sediments. *See, e.g.*, Severstal’s proposed Sediment Work Plan, pp. 1-1 – 1-4.



excluded in Section 1.4(a), none of which exclusions apply to BSC's obligations under the Consent Decree.

For these reasons EPA finds no merit to Severstal's argument that somehow the 363 Sale Order relieves it of responsibility to carry out the terms of the Consent Decree with respect to the Sediment Work Plan.

Severstal next argues that the Sediment Work Plan's scope must be limited to "current releases from the identified SWMUs and AOCs within the five Special Study Areas that have not been previously investigated," and that "SWMUs, AOC's and historic contamination located outside of the boundary of the Facility (defined today as property currently owned by Severstal Sparrows) do not fall within the scope of Severstal's obligations to evaluate releases throughout the Facility." Severstal March 4, 2010 letter, pp. 4 & 3. Frankly, EPA finds these assertions to be difficult to understand, given that they are contradicted by numerous specific provisions in the Consent Decree, and the SWI, some of which Severstal actually quotes. Indeed, Severstal's statement that "Attachment B [SWI Conceptual Plan] refers only to the evaluation of releases from the SWMUs and AOCs to air, groundwater, surface water, and soil throughout the facility," Severstal March 4, 2010 letter, p. 3, is simply false.

EPA recognizes that it has thus far focused Severstal's SWI work on the SWMUs and AOCs originally identified in the Consent Decree, as well as the Special Study Areas, reflecting the areas emphasized in Paragraphs 2 and 3 of the SWI Conceptual Plan, respectively. However, in refusing to undertake work outside of these areas as called for by EPA in its February 3, 2010 letter, Severstal is choosing to ignore Paragraph 1 of SWI Conceptual Plan, which calls for an investigation of groundwater throughout the entire site. Att. B, pp. 2-3 (the SWI shall "[d]efine the horizontal and vertical extent of hazardous wastes and hazardous constituents in the groundwater system"). This groundwater investigation is a necessary predicate to the Ecological Risk Assessment required under Paragraph 4.b. of the SWI Conceptual Plan, which requires Severstal to "assess the risk posed by Facility-impacted media to terrestrial, avian and aquatic receptors representative of the local ecosystem on **and offsite**." Att. B, p. 5, *emph. added*. Severstal's limited view of the scope of the Sediment Work Plan would render this required risk assessment impossible to complete.

Moreover, as Severstal itself quotes from the Consent Decree,

BSC may begin a phased, SWI at the perimeter of the Facility . . . to assess off-site releases. . . However, BSC remains responsible for identifying and evaluating all releases of hazardous wastes and hazardous constituents at or from the facility . . . Each release of hazardous wastes or hazardous constituents discovered during the SWI that cannot be attributed to a SWMU or AOC identified in the RFA will be investigated and, unless the release is an 'allowed release' or is a release that has been or is being addressed under another program consistent with the purpose of the SWI, it will be incorporated into the SWI.

Severstal March 4, 2010 letter, pp. 2 – 3, quoting Att. B, pp. 1 - 2.

Indeed, the ecological risk assessment specified in Attachment B requires collection of data necessary to support a showing the extent of risk posed to ecological receptors from all impacted media, including specifically offsite surface waters and sediments.

Attachment B, p. 6.

Similarly, with respect to the five Special Study Areas, Severstal's argument is contradicted by the terms of the Consent Decree, which provides that while BSC shall complete the "area-specific characterizations" for these areas within four years of the effective date of the Consent Decree (not including government agency review time), "[u]ltimately, BSC shall characterize all releases of hazardous wastes and hazardous constituents which present a threat or potential threat to human health and the environment . . ." Att. B, p. 3.

In short, there is simply no support in the Consent Decree for Severstal's argument that the geographic scope of its SWI obligations under the Consent Decree are limited to the SWMUs, the AOCs, or the five Special Study Areas generally.⁵

With respect to the shipyard portion of the Sparrows Point shoreline, EPA agrees that Severstal is not required to conduct an evaluation **within the shipyard itself** of the impact from shipyard activities. However, as plainly stated in the Consent Decree, Severstal is required to collect information on the surface water and sediment through "conduct[ing] a program to characterize the surface water bodies **in the vicinity of the Facility**" as part of the SWI. Att. C., p. 17, *emph. added*.⁶ Moreover, given the extensive historic contamination at the rest of the Facility; the presence of storm drains throughout the facility some of which run through the shipyard;⁷ and the fact that water and sediments can move back and forth across the shoreline property boundaries along the peninsula as a whole, Severstal is required under the Consent Decree at least to collect reference samples along the shipyard shore area as part of the overall

⁵ Attachment C to the Consent Decree is also replete with provisions that negate Severstal's argument that its obligations are somehow limited to addressing releases from the previously identified SWMUs, AOCs, or the five Special Study Areas, and that it need not at this point investigate the offshore sediments. *See, e.g.* Att. C, p. 4 ("BSC shall prepare an assessment and description of the existing degree and extent of contamination" including "(b) all potential migration pathways including information on geology, pedology, hydrogeology, physiography, hydrology, water quality, meteorology, and air quality; and (c) potential impact(s) on human health and the environment, including demography, groundwater and surface water use, and land use"), p. 17 ("BSC shall collect information to supplement and verify existing information on the environmental setting at the facility. BSC shall characterize the following: . . . BSC shall conduct a program to characterize the surface water bodies in the vicinity of the facility"), & p. 20 ("BSC shall collect analytical data on groundwater, soils, surface water, sediment, and subsurface gas contamination in the vicinity of the facility. . .").

⁶ It is clear from the plain language of the Consent Decree that Severstal is required to collect information regarding contamination along the shoreline, given its multiple use of the phrase "in the vicinity of the Facility" in the Consent Decree. *See* provisions from the Consent Decree quoted in fn. 5 above.

⁷ There are two storm water discharge points (Outfalls #12 and #13) at the shipyard which originate from the steel mill, and the Graving Dock dewatering wells have been pulling and discharging untreated contaminated groundwater originating from the Coke Oven area. Thus, direct impact from the steel mill onto the shipyard shore area is already evident.



characterization of site conditions.

Objection 2: Perimeter Well Screening Item in Attachment A.1

Severstal objects to EPA's requirements for the Sediment Work Plan to the extent that they call for Perimeter Well Screening in the shipyard property or outside of current releases from the identified AOCs and SWMUs. EPA disagrees that Severstal has no responsibility for any investigation other than current releases from identified AOCs and SWMUs, for the reasons given in response to Severstal's Objection No. 1 above.

Additionally, Severstal appears to have misunderstood EPA's requirement in Attachment A.1 of its February 3, 2010 letter as requiring additional well installation and sampling of perimeter wells along the shoreline at this time. Currently EPA is only requiring Severstal to screen existing perimeter well data, while reserving the right to require Severstal to install additional wells or collect additional samples in the future if the data justify the need for additional wells, in accordance with the requirements of the Consent Decree.⁸

Objection 3: Storm Water Release Evaluation in Attachment A.2

Severstal objects to EPA's requirements for the Sediment Work Plan to the extent that they call for an evaluation of stormwater releases outside of the current releases from identified AOCs and SWMUs or in the shipyard property. For reasons set forth in response to Severstal's Objection Nos. 1 and 2 above (including specifically the presence of storm drains that traverse the shipyard), EPA disagrees that Severstal has no responsibility under the Consent Decree to address releases other than current releases from previously identified AOCs and SWMUs. Thus EPA requires that Severstal conduct this evaluation in accordance with EPA's February 3, 2010 letter.

Objection 4: Bathymetric Survey in Attachment A.4

Severstal objects to EPA's requirements for the Sediment Work Plan to the extent that they call for a bathymetric survey that is not limited to areas impacted by current releases from the identified AOCs and SWMUs or in the shipyard property. For reasons set forth in response to Severstal's Objection No. 1 above, EPA disagrees that Severstal has no responsibility under the Consent Decree to address current releases from previously identified AOCs and SWMUs. Thus, EPA requires that Severstal conduct this survey in accordance with its February 3, 2010 letter.

Objective 5: Ecological Risk Assessment in Attachment B.1

Severstal objects to EPA's requirements for the Sediment Work Plan with respect to an

⁸ EPA notes that in a high energy tidal zone such as exists at Sparrows Point, sediments can transport some distance upstream and downstream from discharge points, such that contaminated sediments originating from the steel mill could potentially reach the shipyard shore area. Indeed, Severstal's own proposed Sediment Work Plan acknowledges the potential for tidal impacts. See Severstal's proposed Sediment Plan, p. 1-4.

ecological risk assessment because certain terms were “vague and ambiguous.” EPA notes that there was a typographical error in Attachment B.1 to EPA’s February 3, 2010 letter. The beginning phrase in the second sentence in Att. B.1. should have read in part that “sampling locations should be **areally** representative. . . “, meaning that Severstal should take an adequate number of appropriately located samples to characterize a given area. Additionally, EPA uses the term “appropriately biased” to mean that samples should be taken from locations that will assure that any offshore locations which potentially received site COCs are properly sampled.

Severstal objects to EPA’s requirements for the Sediment Work Plan to the extent that they call for an ecological risk assessment that is not limited to areas impacted by current releases from the identified AOCs and SWMUs which are located on property presently owned by Severstal. For reasons set forth in response to Severstal’s Objection No. 1 above, EPA disagrees that Severstal has no responsibility under the Consent Decree to address current releases from other than previously identified AOCs and SWMUs.

Severstal's objection to any "unnecessary ecological risk assessment," and its proposal to focus the ecological assessment “only on areas where there is co-occurrence of viable habit and current releases from RCRA related AOCs and SWMUs,” is vague. First, EPA is not aware of any offshore areas that do not constitute viable habitat. Second, an ecological assessment can only be conducted on total present contamination; it is technically impossible to conduct a partial assessment on either pre or post 2003 contamination (see also EPA’s response to Objection 1). Thus, EPA requires that Severstal conduct the ecological risk assessment in accordance with EPA’ February 3, 2010 letter.

Objection 6: Surface Water Sampling in Attachment B. 2

Severstal objects to EPA’s requirements for the Sediment Work Plan to the extent that they call for an evaluation of surface water contamination that is in an area impacted by current releases from the identified AOCs and SWMUs which are located on property presently owned by Severstal. For reasons set forth in response to Severstal’s Objection No. 1 above, EPA disagrees that Severstal has no responsibility under the Consent Decree to address current releases other than from previously identified AOCs and SWMUs. Severstal’s additional objection to Attachment B.2 is vague. The turnover rate of the water surrounding the steel mill is fast, so any water column samples reflect impacts from current releases, not historical releases. See also EPA’s response to Objection 1 above regarding investigation outside of current releases from identified AOCs and SWMUs. Thus, EPA requires that Severstal conduct surface water sampling in accordance with EPA’s February 3, 2010 letter.

Objection 7: Sediment Pore Water Sampling in Attachment B. 3

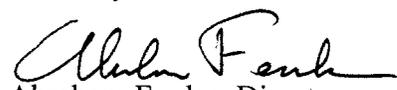
See EPA’s response to Objection 1 above regarding investigation outside of current releases from identified AOCs and SWMUs.

Conclusion

For the reasons set forth above, EPA and MDE require Severstal to resubmit the Sediment Work Plan to adequately cover the scope of work for an ecological assessment as required under Section V, Paragraph B of the Consent Decree, including Attachments B and C, in accord with the terms of EPA's February 3, 2010 partial disapproval letter.

As required by Section XX Paragraph A.3 of the Consent Decree, Severstal must resubmit the Work Plan within thirty (30) days after receipt of this Proposed Resolution of the Dispute.

Sincerely,


Abraham Ferdas, Director
Land and Chemicals Division
EPA Region III

cc: Barbara Brown, MDE
Mathew Zimmerman, MDE
Jeff Sands, USDOJ
Susan Hodges, ORC
Charles Howland, ORC
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