



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

VIA UPS EXPRESS

May 3, 2010

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

Dear Mr Dismukes:

This letter responds to your letter dated December 24, 2009, on behalf of Severstal regarding the November 2, 2009 joint request of the U.S. Environmental Protection Agency (EPA) and the Maryland Department of the Environment's (MDE) to expedite the submission of 'partial' corrective measures studies (CMS) for the Former Sludge Bin Storage Area, Humphreys Impoundment, and Greys Landfill. While we have had several conversations with Severstal in the interim on these and related matters under the Consent Decree,¹ we do want to confirm in writing our position on this issue. As the agencies recognized in the letter, and have repeatedly discussed with Severstal, we believe that site investigation work at these three locations has been completed to a sufficient degree to form the basis of CMSs for these areas. Completion of satisfactory CMSs for these areas will allow preparation of the necessary decision documents by the agencies that will document the work that has been completed and (where applicable) that corrective measures have been selected which are protective of human health and the environment.

Severstal does not deny EPA's authority to request this work, and indeed says it is "supportive" of demonstrating the progress that has been made at the facility; but merely asserts that this "is not an appropriate approach." Severstal's position appears to be that there can only be one, facility wide CMS completed for the site, which must await completion of the Site Wide Investigation ("SWI"). While the Consent Decree does call for a final CMS to be prepared following completion of a SWI, there is nothing that bars preparation of CMSs for discrete portions of the facility where appropriate. As EPA has explained previously, the Consent Decree's Additional Work provisions would allow for such. Moreover, it is apparent that these are not the only provisions of the Consent Decree which authorize the agencies to seek performance of work prior to the implementation of a final remedy. Finally, EPA's proposed approach also accords with EPA's guidance governing RCRA corrective action activities. *See, e.g., Final Guidance on Completion of Corrective Action Activities at RCRA Facilities*, 68 Fed.

¹ This letter does not address the issues raised by Severstal in its invocation of dispute resolution under the Consent Decree in response to EPA's February 3, 2010 partial disapproval of Severstal's October 13, 2009 proposed work plan entitled *Sediment, Surface Water, and Groundwater Sampling Plan to Assess Current Groundwater Discharge Impacts to the Offshore Environment*. The agencies appreciated the vigorous discussion which the parties had on these topics during their meeting on April 26, 2010, and will respond in accord with the terms of the Consent Decree.

Reg. 8757, Feb. 25, 2003, (recognizing that completion determinations for portions of a facility may be appropriate in certain situations) (copy avail. at http://epa.gov/osw/hazard/correctiveaction/resources/guidance/gen_ca/compfedr.pdf).² Plainly, it would further the goals of the parties as well as the public to demonstrate progress at the site even as other work remains to be undertaken; thus EPA is puzzled at Severstal's refusal to complete these CMSs.

Severstal's refusal to complete CMSs at the three requested areas is of a piece with its position with respect to its work going forward at the facility as a whole. Specifically, while we agree that it would be useful to meet quarterly to review Severstal's progress under the Consent Decree, we are deeply concerned with Severstal's declared intent to focus those discussions on work that has been done to date ("evaluation of the status of corrective action of operating areas of the Facility") and areas of the facility that may not require further work ("the selection, timing and sequence of the Section XXXV written notices") rather than work that remains to be done to satisfy the Consent Decree.

The Agencies recognize that much work has been done, maintaining existing interim measures and characterizing conditions at portions of the facility. However, it has been thirteen years since the entry of the Consent Decree, a document which provided for deadlines and progress measured in terms of months. We believe that Severstal's obligation to carry out work under the Consent Decree "in a responsible manner," as set forth in Section II. (STATEMENT OF PURPOSE) of the Consent Decree, requires it to move much more expeditiously toward final satisfaction of the Consent Decree. Given Severstal's position that there can be only one, facility-wide CMS, to be completed following a final SWI (a view the Agencies do not share, as explained above), it is the agencies' expectation that Severstal will, at the least, complete the final SWI, in the manner required by the Consent Decree, by December 31, 2012. To assure that these goals can be met, EPA further requests that Severstal submit to EPA and MDE a proposed plan, with specific, interim milestones, by June 30, 2010.

In sum, we think it would be most productive, indeed imperative, to focus our discussions and collective efforts on identifying the specific steps necessary to satisfy the obligations under the Consent Decree in its entirety and to delineate a path to complete the work as anticipated above. Toward that end, we suggest that Russell Becker call Andrew Fan to arrange mutually convenient times and places for such meetings.

² Severstal points to the last sentence of Section XXXV of the Consent Decree, apparently in support of the argument that it alone has the ability to request that certain areas of the facility be deemed to require "no further investigation or CMS evaluation where the appropriate remedy is clearly apparent under the existing data." EPA disagrees that this provision, part of the "Termination and Satisfaction" paragraph of the Consent Decree, is the exclusive means by which portions of the facility may be individually addressed under the Corrective Action process. Moreover, EPA believes that the conditions at these three areas will require preparation of CMSs, for which sufficient information appears to be available.

Please call Charles Howland at (215)814-2643 if you have questions regarding the matters discussed above. You may, of course, call me at any time to discuss this letter or any other matter related to the Consent Decree.

Sincerely,



Susan Hodges
Senior Assistant Regional Counsel

cc: Abraham Ferdas, EPA
Jeff Sands, DOJ
Mitch McCalmon, MDE
Mathew Zimmerman, MDE