

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

UNITED STATES OF AMERICA, and the)	
STATE OF INDIANA)	
)	
Plaintiffs,)	
)	
)	
)	
v.)	
)	Civil No.
STEEL DYNAMICS, INC.)	
)	
Defendant.)	
_____)	

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	1
II.	APPLICABILITY	2
III.	DEFINITIONS.....	2
IV.	CIVIL PENALTY	4
V.	COMPLIANCE REQUIREMENTS.....	5
A.	New LMF Baghouse Installation, Operation, and Testing	6
B.	Pressure Drop Monitoring and Recordkeeping at the RHF Baghouse.....	7
C.	Scrubber Water Flow Rate Data.....	8
D.	Monitoring at the Electric Arc Furnace	8
E.	Approval of Deliverables	8
VI.	REPORTING REQUIREMENTS	10
VII.	STIPULATED PENALTIES	11
VIII.	FORCE MAJEURE	15
IX.	DISPUTE RESOLUTION	17
X.	INFORMATION COLLECTION AND RETENTION	18
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....	20
XII.	COSTS	21
XIII.	NOTICES.....	21
XIV.	EFFECTIVE DATE.....	23
XV.	RETENTION OF JURISDICTION.....	23
XVI.	MODIFICATION	23
XVII.	TERMINATION.....	23
XVIII.	PUBLIC PARTICIPATION	24
XIX.	SIGNATORIES/SERVICE.....	24
XX.	INTEGRATION	24
XXI.	FINAL JUDGMENT	25

Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Indiana, on behalf of the Indiana Department of Environmental Management (“IDEM”), have filed a complaint in this action pursuant to 42 U.S.C. § 7413(b) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7401 to 7671q, concurrently with this Consent Decree, alleging that Defendant, Steel Dynamics, Inc., violated the Indiana State Implementation Plan (“SIP”), the New Source Performance Standards (“NSPS”), the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”), and its Title V Permits at its Butler, Indiana facility. The Butler, Indiana facility has two plants: the Flat Roll Division (“FRD”) and the Iron Dynamics Division (“IDD”). While FRD and IDD have separate Title V Permits, the State of Indiana considers them a single source.

The Complaint alleges that, at the FRD, Defendant violated the capture and control efficiency requirements of its Title V Operating permit at electric arc furnace (EAF) #1 South and EAF #2 North; failed to use good air pollution control practices at EAF #2 North in violation of the NSPS and NESHAP; violated the requirements in its Title V permit for capturing and exhausting emissions from the Ladle Metallurgical Stations (LMS); and failed to maintain certain scrubber water flow records required by its Title V permit. The Complaint alleges that, at the IDD, Defendant operated its rotary hearth furnace (RHF) baghouse outside of the established pressure drop ranges in violation of its Title V permit. EPA issued a Notice of Violation and Finding of Violation to Defendant concerning these allegations on February 26, 2015.

Defendant does not admit any liability to the United States or the State arising out of the allegations in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413, and 28 U.S.C. §§ 1391 (b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court’s jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement evidencing transferee's assumption of the obligation to ensure that the terms of this Consent Decree are implemented, to EPA Region 5, the State, the United States Attorney for the Northern District of Indiana, and the United States Department of Justice, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. This Consent Decree shall not be construed to impede the transfer of any operational or ownership interests between Defendant and any transferee so long as the requirements of this Consent Decree are met.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Baghouse” shall mean a pollution control device designed to reduce emissions of particulate matter from one or more emission units at the Facility through the use of filter bags.

“Complaint” shall mean the complaint filed by the United States and the State in this action.

“Consent Decree” or “Decree” shall mean this Consent Decree.

“Continuously Operate” shall mean that the baghouse controlling emissions from the LMF shall be operated at all times when any LMS is in operation.

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

“Defendant” shall mean Steel Dynamics, Inc.

“EAF” shall mean Electric Arc Furnace.

“EAF #1 South” shall have the same meaning as the EAF identified in the FRD Title V Operating Permit.

“EAF #2 North” shall have the same meaning as the EAF identified in the FRD Title V Operating Permit.

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

“Effective Date” shall have the definition provided in Section XIV.

“Facility” shall mean Defendant’s plants -- IDD and FRD -- located in Butler, Indiana.

“FRD” shall mean the Flat Roll Division of Steel Dynamics, Inc., also known as the Flat Roll Group, Butler Division.

“FRD Title V Operating Permit” shall mean Part 70 Operating Permit, No. 033-28510-00043 issued on February 11, 2011, and all subsequent renewals and revisions to such permit.

“IDD” shall mean the Iron Dynamics Division of Steel Dynamics, Inc.

“IDD Title V Operating Permit” shall mean Part 70 Operating Permit, No. T033-28976-00076 issued on February 19, 2010 and all subsequent renewals and revisions to such permit.

“LMF” shall mean a Ladle Metallurgical Furnace.

“LMF1,” “LMF2,” and “LMF3” shall have the same meaning as the LMFs identified in the FRD Title V Operating Permit.

“LMS” shall mean two Ladle Metallurgical Stations and consists of LMF1, LMF2, and LMF3.

“New LMF Baghouse” shall mean the new or expanded baghouse SDI shall install, maintain and Continuously Operate as set forth in Paragraph 14 of this Consent Decree.

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

“Parties” shall mean the United States, the State, and Defendant.

“PM” shall mean particulate matter as measured pursuant to 326 IAC 3-6-5(a)(1).

“PM10” shall mean particulate matter as measured pursuant to 326 IAC 3-6-5(a)(2).

“Stack Testing Conditions” shall mean the conditions that represent: (1) at a minimum, 95% of the permitted maximum emissions unit operating capacity description; (2) under conditions of worst case emissions, and if the worst case emission condition is not known, then the worst case emission condition shall be assumed to be the maximum process or operating rate of the emissions unit as listed in the permit’s emissions unit description; or (3) under other capacities or conditions as specified in an applicable requirement or approved by EPA, after consulting with the State. Stack Testing Conditions do not include operations during startup, shutdown, and malfunction for purposes of conducting a performance test.

“RHF” shall mean the Rotary Hearth Furnace at IDD.

“Section” shall mean a portion of this Decree identified by a roman numeral.

“State” shall mean the State of Indiana.

“United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$237,500 to the United States as a civil penalty, together with any interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions to be provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Indiana after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Tom Hartman, 4500 County Road 59, Butler, Indiana 46721, (260) 868-8130,
tom.hartman@steeldynamics.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA via email or regular mail in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Steel Dynamics, Inc.* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-11451.

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal or state income tax.

11. No later than 30 Days after the Effective Date, Defendant shall pay a civil penalty of \$237,500 to the State by check, payable to: “Environmental Management Special Fund.” At the time of payment, Defendant shall send the check, together with a transmittal letter by mail to:

Indiana Department of Environmental Management
Office of Legal Counsel
IGCN, Rm. N1307
100 North Senate Avenue
Indianapolis, IN 46204.

V. COMPLIANCE REQUIREMENTS

12. Defendant shall comply with applicable requirements of statutes, regulations, permits, or other legal requirements alleged in the Complaint to have been violated with respect to the Facility.

A. New LMF Baghouse Installation, Operation, and Testing

13. Defendant shall Continuously Operate the baghouse or baghouses that control emissions from LMF1, LMF2, and LMF3.

14. Within 30 Days after the Effective Date, Defendant shall apply for any needed permit(s) for the installation and initial operation of the New LMF Baghouse. No later than sixteen (16) months after the later occurrence of the Effective Date or the issuance of the permit(s) for the installation of the New LMF Baghouse, Defendant shall install, maintain, and, thereafter Continuously Operate a New LMF Baghouse at all times when any LMS is in operation:

- a. with a nominal airflow capacity of at least 300,000 actual cubic feet per minute (“acfm”), with Defendant having the choice of replacing the existing LMF baghouse completely with a new baghouse, maintaining the existing LMF baghouse and adding a second baghouse for control of LMS emissions, or expanding the existing LMF baghouse (the replacement, addition or expansion being referred to as the “New LMF Baghouse” whether it consists of one baghouse or two baghouses);
- b. with duct work from LMF1, LMF2, LMF3, and any scavenger hoods to the New LMF Baghouse; and
- c. with any modification to existing duct work and hoods necessary to operate the New LMF Baghouse effectively.

15. No later than 60 Days after completing construction of the New LMF Baghouse, Defendant shall begin operation of and Continuously Operate the New LMF Baghouse to control emissions from LMF1, LMF2, and LMF3. No later than 30 days after Defendant begins operation of the New LMF Baghouse, Defendant shall provide notice to EPA and IDEM pursuant to Section XIII (Notices) that Defendant has completed construction and commenced operation of the New LMF Baghouse.

16. No later than 90 Days after the Defendant begins operation of the New LMF Baghouse, Defendant shall conduct a performance test for PM, PM10, and opacity (using EPA Method 9) at the New LMF Baghouse stack and for opacity (using EPA Method 9) at the building opening(s) located nearest where the LMFs are located (“LMF Area Building Opening(s)”) while operating under Stack Testing Conditions. Defendant shall conduct concurrent opacity readings at the LMF Baghouse and the LMF Area Building Opening(s). Defendant shall record process information that is necessary to document the operating conditions during the test and include in such record an explanation to support that such

conditions represent Stack Testing Conditions. The testing shall also include volumetric flow rate measurement taken in accordance with EPA Methods 1 and 2, taken at a location in the ductwork downstream of each hood at LMF1, LMF2, and LMF3 that is representative of the actual volumetric flow rate. The volumetric flow rate measurements shall be conducted either simultaneously at each LMF duct or individually at each LMF duct and note which LMFs are in operation at the time of the test. Defendant shall conduct the stack test in accordance with the applicable requirements of 326 IAC 3-6 *et seq.*

17. No later than 45 Days after the completion of the performance test, Defendant shall submit to EPA and the State a report that contains the results of the performance test (all test runs), with all appendices, including but not limited to, the process and operating parameters, production/processing rates at the time of the performance test, and all calculations.

18. Within one week following the completion of the performance testing required in Paragraph 16, the Defendant shall conduct weekly EPA Method 9 (opacity) readings at the LMF Area Building Opening(s) for a duration of at least six-minutes. The Method 9 reading shall be conducted when at least two LMFs are in operation. Method 9 records shall be included in semi-annual reporting (Section VI). Defendant's obligations under this Paragraph are terminated one year after completion of the performance testing required in Paragraph 16.

B. Pressure Drop Monitoring and Recordkeeping at the RHF Baghouse

19. When Defendant records a pressure drop reading outside the normal range of 4.0 and 10.0 inches of water unless a different upper-bound or lower-bound value for this range is determined during the latest stack test, Defendant shall take reasonable response steps. Whether Defendant took reasonable response steps shall be determined using requirements of IDD Title V Operating Permit C.15. Records of response steps shall be included in semi-annual reporting (Section VI). If a new upper-bound or lower-bound value is established during a stack test conducted after the Effective Date, Defendant shall report that new bound to EPA and the State within 30 Days of establishing the new bound.

20. No later than 30 Days after the Effective Date of the Consent Decree, Defendant shall monitor and record the observed pressure drop at the RHF Baghouse every six hours. In the event of an out of range reading, Defendant shall commence hourly readings and continue until the reading is back within range. When a within-range reading is recorded, monitoring shall return to the regularly scheduled readings at least every six hours. Pressure drop records shall be included in semi-annual reporting (Section VI).

21. No later than 30 Days after the Effective Date of the Consent Decree, Defendant shall maintain records of response steps taken upon detecting an out-of-range pressure drop

reading. This record shall include the date(s) and time(s) the response steps were taken and the date(s) and time(s) the pressure drop returned to the normal range.

22. Defendant's obligations under Paragraphs 19 – 21 are terminated one year after the Effective Date of the Consent Decree.

C. Scrubber Water Flow Rate Data

23. No later than 30 Days after the Effective Date of the Consent Decree, Defendant shall ensure that all scrubber water flow rate data records required by the FRD Title V Operating Permit are maintained. Scrubber water flow rate data records shall be included in semi-annual reporting (Section VI). Defendant's obligations under this Paragraph are terminated one year after the Effective Date of the Consent Decree.

D. Monitoring at the Electric Arc Furnace

24. At all times, Defendant shall operate and maintain EAF #1 South and EAF #2 North and associated air pollution control equipment in a manner consistent with safety and good air pollution control practices for minimizing emissions as required by 40 C.F.R. § 63.6(e)(1)(i).

25. Defendant shall comply with the opacity requirements of Section D.1.8(b) of the FRD Title V Operating permit. Defendant's obligations under Paragraphs 24 – 25 are terminated one year after the Effective Date of the Consent Decree.

E. Approval of Deliverables

26. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA, after consultation with the State, shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

27. If the submission is approved pursuant to Paragraph 26(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 26(b) or (c), Defendant shall, upon written direction from EPA, after consultation with the State, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions, subject to Defendant's right to dispute the determination regarding severability of specified conditions or the disapproved portions, under Section IX (Dispute Resolution).

28. If the submission is disapproved in whole or in part pursuant to Paragraph 26(c) or (d), Defendant shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

29. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the State, may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves correct any deficiencies subject to Defendant's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

30. Any stipulated penalties applicable to the original submission, as provided in Section VII, shall accrue during the 45 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

31. Permits.

a. When Defendant applies for a permit to install for the New LMF Baghouse in accordance with Paragraphs 14 through 16, IDEM shall modify the FRD Title V Operating Permit as needed to reflect that it requires continuous operation of the New LMF Baghouse at all times when any LMS is in operation. The requirement to Continuously Operate the New LMF Baghouse at all times when any LMS is in operation shall cite to SDI's Construction Permit No. CP 03 9187 0043 as its basis, is considered an "applicable requirement" as that term is defined in 40 C.F.R. Part 70.2, and will continue as an applicable requirement after termination of the Consent Decree.

b. Where any compliance obligation under this Paragraph or Paragraph 14 requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit a timely and complete application and take all other actions necessary to seek such permit or approval. Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted a timely and complete application and has taken all other actions necessary to seek such permit or approval. The provisions of Section

VIII (Force Majeure) of the Consent Decree apply only for purposes of the Consent Decree and Defendant shall not include them in any Permit application submitted pursuant to this Paragraph.

VI. REPORTING REQUIREMENTS

32. Defendant shall submit the following reports:

By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII, Defendant shall submit a semi-annual report for the preceding six months that shall include the status of the following items to the extent they are required under Section V of this Consent Decree: any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; and reports to state agencies. Specifically, the report shall include all information required by this Section VI. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States and the State of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report, shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

33. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew

of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

34. All reports shall be submitted to the persons designated in Section XIII (Notices).

35. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

37. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

38. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

39. Defendant shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

40. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

41. Failure to Install and Begin Operation of the New LMF Baghouse. The following stipulated penalties shall accrue per violation for each Day Defendant fails to install and begin operation of the New LMF Baghouse in accordance with Paragraph 14 of this Consent Decree.

Penalty Per Violation Per day	Period of Noncompliance
\$1,000	1st through 30th day
\$2,000	30th through 90th day
\$3,000	91st day and beyond

42. Failure to Continuously Operate the New LMF Baghouse. The following stipulated penalties shall accrue for each day Defendant fails to satisfy the obligation to Continuously Operate the New LMF Baghouse.

Penalty Per Violation Per day	Period of Noncompliance
\$1,500	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

43. Failure to Perform the PM Performance Test, Associated Airflow Test, or Submit Reporting Results. The following stipulated penalties shall accrue per violation for each Day Defendant fails to perform the PM performance test, Associated Airflow Test, or fails to submit report results in accordance with the requirement set forth in Paragraph 16.

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$4,000	15th through 30th day
\$6,000	31st day and beyond

44. Failure to Take EPA Method 9 (Opacity) Readings. The following stipulated penalty shall apply for each Day the Defendant fails to take weekly EPA Method 9 (opacity) readings as required by Paragraph 18:

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,500	31st day and beyond

45. Failure to take Reasonable Response Steps when Defendant Records a Pressure Drop Reading Outside the Normal Range. The following stipulated penalty shall apply for each Day the Defendant fails to take reasonable response steps as required by Paragraph 19.

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

46. Failure to Record Scrubber Water Flow Rate Data. The following stipulated penalty shall apply for each Day the Defendant fails to record scrubber water flow rate data as required by Paragraph 23.

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

47. Opacity Violations at the EAF Building Openings. The following stipulated penalties shall accrue for each Day that Defendant violates its opacity limit as required by Paragraph 25.

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$4,000	15th through 30th day
\$8,000	31st day and beyond

48. Permit Application Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of any permit application requirements of Paragraph 31:

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

49. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of any reporting requirements of Sections V and VI.

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

50. The following stipulated penalties shall accrue per violation per Day for all other violations of the Consent Decree.

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

51. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

52. Defendant shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Defendant shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

53. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

54. Stipulated penalties shall continue to accrue as provided in this Section, during any Dispute Resolution, as described in Section IX, below, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or the State that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

55. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Defendant shall pay stipulated penalties owing to the State in the manner set forth in Paragraph 11.

56. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

57. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

58. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. Where a violation of this Consent Decree is also a violation of the Clean Air Act, its regulations, or a state law, regulation, or permit, the United States and the State will not seek civil penalties where a Plaintiff already has demanded and secured stipulated penalties from Defendant for the same violations nor will the United States or the State demand stipulated penalties from Defendant for a Consent Decree violation if the United States or the State has commenced litigation under the Clean Air Act for the same violations. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the

delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide written notice to EPA and the State, no later than 5 days of when Defendant first knew that the event might cause a delay. Within 21 days thereafter, Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant’s contractors knew or should have known.

61. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

63. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA’s notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 59 and 60.

If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

64. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States or the State to enforce any obligation of Defendant arising under this Decree.

65. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after a reasonable opportunity for review and comment by the State, shall be considered binding unless, within 21 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

66. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

67. The United States, after a reasonable opportunity for review and comment by the State, shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

68. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 21 Days of receipt

of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

69. The United States, after a reasonable opportunity for review and comment by the State, shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

70. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 66 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of proof, based on the administrative record, that the position of the United States or the State is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 66, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

71. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 54. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

72. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

73. Upon request, Defendant shall provide EPA and the State or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and the State shall provide Defendant splits of any samples taken by EPA or the State.

74. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

75. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to EPA or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information required to be created or submitted pursuant to this Consent Decree shall be withheld on grounds of privilege.

76. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to

any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

77. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

78. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

79. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as provided in Paragraph 78. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

80. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 78.

81. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

82. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

83. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

84. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

85. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11451

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-11451

As to EPA: R5ardreporting@epa.gov,
prentice.dakota@epa.gov,
letuchy.alexandra@epa.gov, and
tennenbaum.susan@epa.gov

As to the State: Indiana Department of Environmental Management
Chief, Air Compliance and Enforcement Branch
100 North Senate Avenue
MC-61-53, IGCN 1003
Indianapolis, IN 46204-2251

As to Defendant: Jordan Breiner
Steel Dynamics, Inc.
4500 County Road 59
Butler, IN 46721

and

David Hatchett
Hatchett & Hauck LLP
150 West Market St., Suite 200
Indianapolis, IN 46204

86. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

87. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

88. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

89. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

90. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

91. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 70, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

92. After Defendant has completed the requirements of Section V (Compliance Requirements), has thereafter maintained satisfactory compliance with this Consent Decree for a period of one year, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

93. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

94. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

95. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

96. Each undersigned representative of Defendant, the State, and the Assistant Attorney General or his/her designee certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

97. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

98. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

99. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendant.

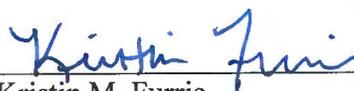
Dated and entered this ___ day of _____, 2021

UNITED STATES DISTRICT JUDGE

Consent Decree between the United States, the State of Indiana, and Steel Dynamics, Inc.

FOR THE UNITED STATES OF AMERICA:

JEAN E. WILLIAMS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



Kristin M. Furrie
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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(202) 616-6515
kristin.furrie@usdoj.gov

GARY T. BELL
Acting United States Attorney
Northern District of Indiana

Wayne T. Ault
Assistant United States Attorney
Northern District of Indiana

Consent Decree between the United States, the State of Indiana, and Steel Dynamics, Inc.

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

**T. Leverett
Nelson** Digitally signed by T.
Leverett Nelson
Date: 2020.12.10
08:34:23 -06'00'

T. Leverett Nelson
Regional Counsel
U.S. Environmental Protection Agency, Region 5

**Tennenbaum
, Susan** Digitally signed by
Tennenbaum, Susan
Date: 2020.12.01
13:49:27 -06'00'

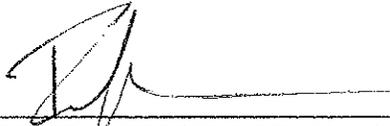
Susan Tennenbaum
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel

Consent Decree between the United States, the State of Indiana, and Steel Dynamics, Inc.

FOR PLAINTIFF STATE OF INDIANA:

Date:

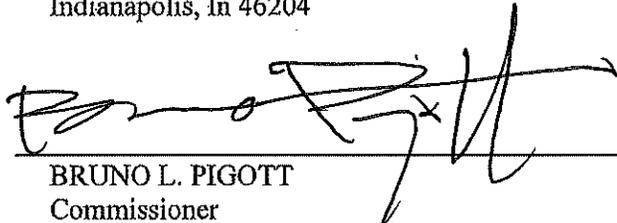
November 23, 2020



PATRICIA ORLOFF ERDMANN
Chief Counsel of Litigation
Office of the Indiana Attorney General
Indiana Government Center South, Fifth Floor
302 W. Washington Street
Indianapolis, In 46204

Date:

November 30, 2020



BRUNO L. PIGOTT
Commissioner
Indiana Department of Environmental Management

Consent Decree between the United States, the State of Indiana, and Steel Dynamics, Inc.

FOR STEEL DYNAMICS, INC.:

09/28/2020

Date



Jordan Breiner
General Manager
Flat Roll Group - Butler Division
4500 County Road 59
Butler, IN 46721