

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

FILED

2015 SEP -1 A 8:53

U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA, THE
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Plaintiffs,

v.

MCWANE, INC.

Defendant.

Civil Action No. []

CV-15-JHE-1504-S

NOTICE OF LODGING OF CONSENT DECREE

The United States, by and through its undersigned attorneys, and on behalf of the U.S. Environmental Protection Agency, hereby lodges the accompanying proposed Consent Decree with this Court. The United States and the Alabama Department of Environmental Management, an agency of the State of Alabama, have filed a Complaint against McWane, Inc. (hereafter "McWane") seeking civil penalties for violations of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, and the reporting requirements of the Emergency Planning and Community Right-to-Know Act, together with their implementing regulations and permits, at two of McWane's facilities, one in Birmingham, Alabama and one in Phillipsburg, New Jersey. McWane is a national company that operates iron foundries, brass foundries, and various valve and tank manufacturing facilities. The Alabama Department of Environmental Management is a co-plaintiff in this action.

Under the proposed Consent Decree, McWane will pay a total civil penalty of \$471,031, of which \$341,383 will go to the United States Treasury, \$2,782 to the Oil Spill Liability Trust Fund to resolve alleged violations relating to its spill prevention program, and \$126,866 to the State of Alabama. McWane will also implement a Supplemental Environmental Project, at an estimated cost of \$2,500,000. McWane has already undertaken corrective measures to resolve all historical violations alleged in the Complaint, at an estimated cost of over \$10 million. The proposed Consent Decree resolves only the specific violations alleged in the Complaint through the date of lodging of the Consent Decree.

Pursuant to U.S. Department of Justice policy, the United States will publish notice of the lodging of the proposed Consent Decree in the Federal Register to commence a thirty (30)-day public comment period. The Court should not sign the proposed Consent Decree until the public has had an opportunity to comment and the United States has addressed those comments, if any. The United States may withhold its consent to the proposed Consent Decree if the comments disclose facts or considerations which indicate that the proposed Consent Decree is improper, inappropriate, inadequate, or not in the public interest. At the conclusion of the public comment period, the United States will: (1) file with the Court any written comments received pertaining to the proposed Consent Decree; and (2) either notify the Court of its withdrawal of the proposed Consent Decree, or respond to comments received and request this Court to approve and enter the proposed Consent Decree.

Respectfully submitted,

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

s/Catherine Banerjee Rojko
CATHERINE BANERJEE ROJKO
Senior Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Tel: (202)514-5315
Fax: (202)616-6584
Cathy.Rojko@usdoj.gov

JOYCE WHITE VANCE
United States Attorney
Northern District of Alabama

s/Lane Himes Woodke
Lane Himes Woodke
Chief, Civil Division
United States Attorney's Office
Northern District of Alabama
801 4th Avenue North
Birmingham, AL 35203
Phone: (205)244-2107
Fax: (205)244-2184
Lane.Woodke@usdoj.gov

OF COUNSEL:

Peter Moore
Senior Attorney Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2015, a copy of the foregoing Notice of Lodging was filed electronically, and was sent by first class mail with postage prepaid to the following counsel for McWane, Inc. and counsel for the Alabama Department of Environmental Management:

Rebecca E. Patty
Associate General Counsel
Assistant Attorney General
Alabama Department of Environmental Management
1400 Coliseum Blvd
Montgomery, AL 36110-2400

W. Warren Hamel
Venable LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202

s/Catherine Banerjee Rojko
Catherine Banerjee Rojko

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,)
THE ALABAMA DEPARTMENT OF)
OF ENVIRONMENTAL MANAGEMENT)

Plaintiffs,)

v.)

MCWANE, INC.,)

Defendant.)

Civil Action No. []

CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), the State of Alabama on behalf of the Alabama Department of Environmental Management (“State”) (collectively “Plaintiffs”), have filed a Complaint alleging that Defendant, McWane, Inc. (“McWane”) has violated numerous provisions of the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq.; the Clean Water Act (“CWA”), 33 U.S.C. § 1311 et seq.; the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004(a); the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.; and Ala. Admin. Code R § 335 et seq.; and NJ Admin. Code § 7 et seq., at two manufacturing facilities located in Birmingham, Alabama and Phillipsburg, New Jersey;

WHEREAS, the United States filed a complaint on July 14, 2010 in Civil Action No. CV-10-JEO-1902-S (“2010 Complaint”), alleging civil environmental violations at various McWane facilities dating from the late 1990s through approximately 2004 and simultaneously lodged and this Court subsequently entered a consent decree following public comment (“2010 Consent Decree”) that resolved the claims alleged in the 2010 Complaint;

WHEREAS, various claims relating to McWane’s facilities at Birmingham, Alabama and Phillipsburg, New Jersey, dating from the same time period, were not included in the 2010 Complaint nor resolved by the 2010 Consent Decree, and this Consent Decree now resolves civil environmental claims alleged in the current complaint (“Complaint”) relating to these facilities that date from the same time period as the claims alleged in the 2010 Complaint;

WHEREAS, McWane has cooperated with the United States to investigate the violations addressed in the Complaint and has undertaken numerous corrective actions to promote future environmental compliance at its Birmingham, Alabama and Phillipsburg, New Jersey facilities;

WHEREAS, the objectives of the Parties in this Consent Decree are to document prior corrective action taken by McWane during the negotiation of this settlement, and to assess an appropriate penalty to resolve the allegations of the Complaint;

WHEREAS, by agreeing to entry of this Consent Decree, McWane makes no admission of law or fact with respect to any of the allegations set forth in the Complaint filed herewith and referenced in this Consent Decree, and denies any violation of any law or regulation identified therein;

WHEREAS, 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, below, 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 Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11045(c)(4) and 11045(b)(3); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 17(a)(1) of TSCA, 15 U.S.C. § 2616(a)(1); and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, because: 1) the action arises under the laws of the United States; 2) the United States is a plaintiff; and 3) the action is brought in part to recover penalties incurred under Acts of Congress. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11045(b)(3) and 11045(c)(4); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 17(a)(2) of TSCA, 15 U.S.C. § 2616(a)(2); and pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because some of the events giving rise to the claims alleged in this Complaint occurred in this district, McWane conducts business in a Facility located in this district, and McWane's corporate headquarters is in this District. For purposes of this Decree, or any action to enforce this Decree, EPA, the State and McWane consent to the Court's jurisdiction over this Decree and any such action and over McWane, and consent to venue in this judicial district.

2. Pursuant to CAA § 113(b), 42 U.S.C. § 7413(b), and CWA § 309(b), 33 U.S.C. § 1319(b), and RCRA § 3008(a)(2), 42 U.S.C. § 6928(a)(2), notice of the commencement of this action has been given to the states of Alabama and New Jersey.

3. For purposes of this Consent Decree, McWane agrees that the Complaint states claims upon which relief may be granted pursuant to the CAA, 42 U.S.C. § 7401 et seq.; the CWA, 33 U.S.C. § 1311 et seq.; EPCRA, 42 U.S.C. § 11004(a), RCRA, 42 U.S.C. §§ 6901 et seq., and TSCA, 15 U.S.C. § 2601 et seq.

II. APPLICABILITY

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

5. No transfer of ownership or operation of a Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve McWane of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake any unperformed obligations required under this Decree and to be substituted for the Defendant as a Party under the Decree and thus be bound by the terms thereof; and (2) the United States, after consultation with the State if the Facility at issue lies within the State, consents to relieve Defendant of its obligations. The United States' decision to refuse to approve the substitution of the transferee for the Defendant shall not be subject to judicial review. At least thirty (30) Days prior to such transfer, McWane 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 transfer agreement, to EPA (headquarters and appropriate region), and the United States Department of Justice, in accordance with Section XIV of this Decree (Notifications). Any attempt to transfer ownership or operation of a Facility without complying with this Paragraph constitutes a violation of this Decree.

6. McWane shall (1) provide a copy of this Consent Decree to a) its President/CEO, Executive Vice Presidents, and General Counsel, b) Corporate Environmental Group, and c) leadership employees of each Facility whose duties include environmental management or compliance responsibilities (the General Manager, Plant Manager, Environmental Manager, and Maintenance Manager of each Facility); (2) place an electronic version of the Consent Decree on its Environmental Management System ("EMS") website; (3) post notice of lodging of the Consent Decree and its availability in a location at each Facility where legal notices are posted; and (4) place a notice of lodging of the Consent Decree and its availability in the first two McWane corporate newsletters published after the Effective Date of the Consent Decree. McWane shall also provide a copy of this Consent Decree to the principal contact at any contractor or other agent retained to perform Work required under this Consent Decree, and shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, McWane 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, except as may be permitted under Section IX (Force Majeure) of this Consent Decree.

III. DEFINITIONS

8. Except as otherwise provided in this Consent Decree (including its Appendices), definitions for the terms presented herein shall be incorporated from the following statutes and their corresponding regulations: CAA, 42 U.S.C. § 7401 et seq.; CWA, 33 U.S.C. § 1362; SDWA, 42 U.S.C. § 6903; EPCRA, 42 U.S.C. § 11049; RCRA, as amended, 42 U.S.C. § 6903; TSCA, 15 U.S.C. § 2602; and Ala. Admin. Code R § 335 et seq.; and NJ Admin. Code § 7 et seq. In the case of a conflict between the federal and state definitions, federal definitions shall control. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "ADEM" shall mean the Alabama Department of Environmental Management and any of its successor departments or agencies;
- b. "Complaint" shall mean the complaint filed by the United States and the State in this action;
- c. "Consent Decree" or "Decree" shall mean this Decree and all Appendices attached hereto (listed in Section XXIII). In the event of any conflict between this Decree and any Appendix hereto, this Decree shall control;
- d. "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 or applicable state holiday, the period shall run until the close of business of the next business day;
- e. "Defendant" or "McWane" shall mean McWane, Inc. and its subsidiaries and operating divisions;

f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. "Effective Date" is defined in Section XV;

h. "Facility" shall refer to one or both of the following McWane Facilities:

EPA Region 2

McWane Ductile – New Jersey f/k/a/ Atlantic States Cast Iron Pipe, Phillipsburg, New Jersey; and

EPA Region 4

McWane Cast Iron Pipe Company, Birmingham, Alabama. McWane Cast Iron Pipe closed its operations on April 29, 2010.

i. "Interest" shall mean the interest specified in 28 U.S.C. § 1961. Interest shall be compounded annually on October 1st of each year;

j. "Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information shall mean to deliver in person, transmit by facsimile or electronically (if an email address is provided), deposit in the United States mail, or dispatch by express courier in accordance with Section XIV (Notifications) of this Consent Decree no later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federal holiday, the delivery, deposit, or dispatch shall be due on the next business day. Response deadlines shall be calculated from the date of actual receipt of the document(s) requiring a response;

k. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

l. "Parties" shall mean the United States, the State, and McWane;

m. "Section" shall mean a portion of this Decree identified by a roman numeral;

n. "State" shall mean the Alabama Department of Environmental Management, on behalf of the State of Alabama. Rights afforded to the State under this Consent Decree are limited to Facilities within the State;

o. "United States" shall mean the United States of America, acting on behalf of EPA;

p. "Work" shall mean any activity that McWane must perform to comply with the requirements of this Decree, including Appendices.

IV. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, McWane shall pay the United States and the State the sum of \$471,031.00 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, as set forth below:

A. McWane shall pay \$2,782.00 plus accrued Interest to the United States as a civil penalty related to the CWA Spill Prevention Control and Countermeasures ("SPCC") violations alleged in the Complaint. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North; Birmingham, AL 35203). At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane, Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-08282/5, to the United States in accordance with Section XIV of this Decree (Notifications); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

B. McWane shall pay \$341,383.00 plus accrued Interest to the United States as a civil penalty related to the balance of the claims alleged in the Complaint, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice, in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North; Birmingham, AL 35203) to McWane following entry of the Consent Decree. At the time of payment, McWane shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XIV of this Decree (Notifications); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

C. Within thirty (30) Days after the Effective Date of this Consent Decree, McWane shall pay the sum of \$126,866.00 plus accrued Interest as a civil penalty to the State as follows:

- i. A check in the amount of \$126,866.00 plus accrued Interest payable to the Alabama Department of Environmental Management at:

Office of General Counsel
Attention: Rebecca E. Patty
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059

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

V. COMPLIANCE REQUIREMENTS

11. Previously Completed Corrective Action. Prior to the lodging of this Consent Decree, McWane addressed all the violations alleged in the Complaint by performing the corrective actions identified in Appendix 1 (Corrective Action Summary) of this Consent Decree, which includes a certification in compliance with Paragraph 33 that all corrective actions identified in Appendix 1 have been fully completed as of the date of lodging of this Consent Decree. McWane shall maintain documentation existing as of the date of lodging of the Consent Decree of all such corrective actions, in accordance with Section XI (Information Collection and Retention) of this Decree.

12. EPA Approval. After review of any work plan, report, or other item that is required to be submitted, or revised and resubmitted to EPA for approval pursuant to Section VI (Supplemental Environmental Projects) of 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.

13. If a submission submitted pursuant to Paragraph 12 is approved, McWane 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 12(b) or (c), McWane shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to McWane's right to dispute only the specified conditions, or the disapproved portions and the severability of the approved portions, under Section X of this Decree (Dispute Resolution).

14. If the submission is disapproved in whole or in part pursuant to Paragraph 12(c) or 12(d), McWane shall, within forty-five (45) Days or such other period as the Parties agree to in writing, correct all deficiencies in the content of the submission 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, McWane shall proceed in accordance with the preceding Paragraph.

15. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the forty-five (45) Day period or other agreed period, but shall not be payable unless the resubmission is untimely or is again disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of McWane's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

16. 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 McWane to correct any deficiencies in the content of the submission in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to McWane's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs. If the resubmission is approved or corrected in whole or in part, McWane shall proceed in accordance with Paragraphs 14 and 15.

17. Permits. Where any compliance obligation under this Section requires McWane to obtain a federal, state, or local permit or approval, McWane shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. McWane may seek relief under the provisions of Section IX of this Consent Decree (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 McWane has submitted timely and complete applications and has taken all other actions necessary to timely obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

18. McWane shall implement and complete the paint booth conversion Supplemental Environmental Project ("SEP") in accordance with the terms and schedules set forth in Appendix 2 of this Consent Decree. McWane may use contractors or consultants in planning and implementing the SEP.

19. With regard to the SEP described in Appendix 2, McWane certifies the truth and accuracy of each of the following:

A. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate; that the estimated cost of the SEP has been calculated in good faith according to protocols consistent with those used by McWane to evaluate projects for corporate review and approval; that McWane in good faith believes that it comports with EPA's SEP policy regarding eligible SEP costs; and that McWane in good faith estimates the cost to implement the SEP to be \$2,500,000;

B. that, as of the date of executing this Decree, McWane is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

C. that the SEP is not a project that McWane was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

D. that McWane has not received and will not receive credit for the SEP in any other enforcement action; and

E. that McWane will not receive any reimbursement for any portion of the SEP from any other entity.

20. McWane may be subject to stipulated penalties relating to the SEP, as set forth in Section VIII of this Consent Decree.

21. SEP Completion Report. Within thirty (30) Days of the date of completion of the SEP described in Appendix 2, McWane shall submit a SEP Completion Report to EPA, in accordance with Section XIV of this Consent Decree (Notifications). The SEP Completion Report shall contain the following information:

A. a narrative description of the development and/or implementation of the SEP, including a discussion of the process involved and the technology utilized;

B. a description of any problems encountered in completing the SEP and the solutions thereto;

C. final cost documentation for the SEP, as compared to the expected cost projected for the SEP as set forth in Paragraph 19.A;

D. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

E. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

22. Pursuant to Section XI (Information Collection and Retention) of this Consent Decree, EPA may require information in addition to that described in the preceding Paragraph, in order to evaluate McWane's completion report.

23. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 33.

24. After receiving the SEP Completion Report, and following consultation with the State, EPA shall determine and notify McWane whether or not McWane has satisfactorily completed the SEP in accordance with this Consent Decree.

25. McWane shall maintain complete documentation of the final cost estimates and actual costs of design, construction, and operation for five years after completion of the SEP.

26. Any public statement, oral or written, in print, film, or other media, made by McWane making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. McWane, Inc., taken on behalf of the U.S. Environmental Protection Agency to enforce federal environmental laws."

27. For federal income tax purposes, McWane agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

28. McWane certifies that (1) it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Appendix 2; and (2) if applicable, McWane has inquired of the SEP recipient and SEP implementer whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and/or the implementer that neither is a party to such a transaction.

VII. REPORTING REQUIREMENTS

29. Within thirty (30) Days after the end of each calendar-quarter after the Effective Date of this Consent Decree and until completion of the obligations set forth in Sections IV (Civil Penalty), VI (SEPs) (through completion of construction), and VIII (Stipulated Penalties), McWane shall submit to EPA a report for the preceding calendar quarter (quarters shall end on January 31, April 30, July 31, and October 31 of the first year) and thereafter semi-annually with respect to the requirements of Sections V and VI. This report shall include: (a) the status of any measures required under this Decree; (b) completion of milestones; (c) problems encountered or anticipated in complying with the terms of this Consent Decree, together with implemented and/or proposed solutions; (d) status of any permit applications relating to the Work under this Consent Decree; (e) a list of categories of reports submitted to State environmental agencies related to Work under this Consent Decree; and (g) a discussion of McWane's progress in satisfying its SEP obligations under Section VI of this Decree, including, at a minimum, a narrative description of activities undertaken, the status of any construction or compliance measures, the completion of any milestones set forth in the SEP Work Plan attached as Appendix 2 to this Decree, and a summary of SEP costs incurred since the previous report.

30. The report shall also include a description of any noncompliance with the requirements of this Consent Decree and an explanation of the likely cause of the violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If McWane violates, or has reason to believe that it may violate, any requirement of this Consent Decree, McWane shall notify EPA and the State of such violation and its likely duration, in writing, within ten (10) business days of the day McWane first becomes aware of the violation, with an explanation of the likely cause of the violation 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, McWane shall so state in the report. McWane 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 thirty (30) Days of the day McWane becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves McWane of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

31. Whenever any event affecting McWane's performance under this Decree, or the performance of its Facilities, may pose an imminent and substantial endangerment to the public health or welfare or the environment, McWane shall notify EPA Headquarters, as per Section XIV (Notifications), as well as the appropriate EPA Emergency Response, orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after McWane first knew of, or should have known of, the violation or event posing the threat. This notice requirement is in addition to the requirement to provide notice of a violation of this Consent Decree set forth in the preceding Paragraph.

32. All reports and reporting obligations shall be submitted to the persons designated in Section XIV of this Consent Decree (Notifications) for EPA Headquarters, the U.S. Department of Justice, and any EPA Regional and/or State representatives identified for the Region and State in which the applicable Facility is located.

33. Each report submitted by McWane under this Section shall be signed by a responsible corporate official of McWane (as defined in 40 C.F.R. § 270.11(a)) and shall 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 am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

34. The reporting requirements of this Consent Decree do not relieve McWane of any reporting obligations required by any federal, state, or local law, regulation, permit, or other requirement.

35. 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.

VIII. STIPULATED PENALTIES

36. McWane shall be liable for stipulated penalties to the United States for violations of this Consent Decree specified in Paragraphs 37, 39 and 40, below, unless excused under Section IX (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.

37. If McWane fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, McWane shall pay a stipulated penalty of \$1,000 per day for each Day that the payment is late for the first ten (10) Days, together with Interest. Thereafter, McWane shall pay \$5,000 per day for each Day that the payment is late, with

Interest. These stipulated penalties shall also apply to any late payment of the civil penalty owed to the State. Any stipulated penalties due and owing to the United States or the State under this Paragraph shall be paid together with payment of the civil penalty, without demand by the United States or the State.

38. Payment Methods. Late payment of the civil penalty shall be made in accordance with Paragraph 9. Stipulated penalties shall be paid in accordance with Paragraphs 39 through 50 below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9 above.

39. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree (Reporting Requirements):

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th Day	\$1,000.00
15th through 30th Day	\$1,250.00
31st Day and beyond	\$2,000.00

40. Failure to meet SEP Requirements.

A. If McWane fails to satisfactorily complete the SEP in accordance with the terms and within the final deadlines set forth in Appendix 2, McWane shall pay stipulated penalties, upon written demand from the United States, in the following amounts for each Day the SEP remains incomplete:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 7th Day	\$100.00
8th through 21st Day	\$250.00
22nd through 30th Day	\$500.00
31 st Day and beyond	\$1,000.00

B. Should stipulated penalties accrue under the foregoing sub-paragraph exceed half the estimated cost of the SEP as set forth in Paragraph 19.A, or if the United States otherwise determines that McWane has abandoned the SEP and/or is no longer making a good faith effort to satisfactorily complete the project, then McWane shall pay, upon written demand from the United States, a stipulated penalty equivalent to 125% of the estimated SEP cost as identified in Paragraph 19.A, less any stipulated penalties paid pursuant to the foregoing sub-paragraph. This payment will substitute for the SEP completion requirements for that SEP.

41. 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.

42. If McWane fails to pay stipulated penalties according to the terms of this Consent Decree, McWane 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.

43. Stipulated penalties shall accrue regardless of whether the United States has notified McWane of a violation or made a stipulated penalty demand.

44. McWane shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

45. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

46. Stipulated penalties shall continue to accrue as provided in this Section for any failures of performance or violations that continue during any Dispute Resolution, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, McWane shall pay accrued penalties determined to be owing by such agreement or decision, together with Interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision or order.

B. If the dispute is appealed to the Court and the United States prevails in whole or in part, McWane shall pay all accrued penalties determined by the Court to be owed, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in sub-paragraph C below re: final appellate court decision.

C. If any Party appeals the District Court's decision and the United States prevails in whole or in part, McWane shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

47. McWane 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.

48. McWane shall not deduct stipulated penalties paid under this Section in calculating its state and federal income tax.

49. Nothing in this Section shall be construed to limit the United States from seeking any remedy otherwise provided by law for McWane's failure to pay any stipulated penalties.

50. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for McWane's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, McWane shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

51. A force majeure event is defined as any event arising from causes beyond the control of McWane, of any entity controlled by McWane, or of McWane's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite McWane's best efforts to fulfill the obligation. The requirement that McWane 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 such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure does not include McWane's financial inability to perform any obligation under this Consent Decree.

52. 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, McWane shall provide notice orally or by electronic or facsimile transmission as soon as possible, as provided in Section XIV of this Consent Decree (Notifications), but not later than ten (10)

business days after the time when McWane first knew that the event might cause a delay. Within thirty (30) Days thereafter, McWane shall provide to EPA Headquarters, DOJ, and any EPA Regional and State representatives identified in Section XIV for the EPA Region and the State where the Facility is located, a written 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; McWane'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 McWane, such event may cause or contribute to an endangerment to public health, welfare or the environment. McWane 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 McWane 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. McWane shall be deemed to know of any circumstance of which McWane, or any entity controlled by McWane, knew or should have known. This shall also apply to circumstances of which McWane's contractors knew or should have known and communicated to the McWane project manager.

53. If the United States, after consultation with 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 the United States, 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. The United States

will notify McWane in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

54. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the United States will notify McWane in writing of its decision.

55. If McWane elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of the United States' notice. In any such proceeding, McWane 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 McWane complied with the requirements of Paragraphs 51 and 52, above. If McWane carries this burden, the delay at issue shall be deemed not to be a violation by McWane of the affected obligation of this Consent Decree identified to the United States and the Court.

X. DISPUTE RESOLUTION

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

57. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations, which may include any

third-party assisted, non-binding alternative dispute resolution process agreeable to the United States and McWane. The dispute shall be considered to have arisen on the date that the United States has received a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date that the United States receives the Notice of Dispute, unless that period is modified by written agreement. If McWane and the United States, following consultation with the State, cannot resolve a dispute by informal negotiations, then the position of the United States shall be considered binding, unless, within thirty (30) Days after the conclusion of the informal negotiation period, McWane invokes the formal dispute resolution procedures as set forth below.

58. Formal Dispute Resolution. McWane shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include any factual data, analysis, or opinion supporting McWane's position and any supporting documentation relied upon by McWane.

59. The United States, following consultation with the State, shall serve its Statement of Position within forty-five (45) Days of receipt of McWane's Statement of Position. The United States' Statement of Position shall include or clearly reference any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. The United States' Statement of Position shall be binding on McWane, unless McWane files a motion for judicial review of the dispute in accordance with the following Paragraph.

60. McWane may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notifications), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) business days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of McWane'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.

61. The United States shall respond to McWane's motion within the time period allowed by the Local Rules of this Court. McWane may file a reply memorandum, to the extent permitted by the Local Rules.

62. Standard of Review

A. Disputes Concerning Matters Accorded Record Review. In any dispute accorded review on the administrative record under applicable principles of administrative law, EPA shall compile an administrative record of the dispute containing all Statements of Position, including supporting documentation and referenced data or information, and McWane shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

B. Other Disputes. In any other dispute, McWane shall bear the burden of demonstrating that its position complies with and furthers the objectives of this Consent Decree.

63. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of McWane under this Consent Decree, unless and until final resolution of the dispute so provides or unless ordered by the

Court. 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 46. If McWane does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

64. The United States, and the State, and their representatives, including attorneys, contractors, and consultants, from the date of lodging of this Consent Decree shall have the right of entry into McWane's Facilities at all reasonable times, upon presentation of appropriate identification, to:

- A. monitor the progress of activities required under this Consent Decree;
- B. verify corrective action identified in Appendix 1 and any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- C. obtain documentary evidence, including photographs and similar data related to activities required under this Consent Decree; and
- D. assess McWane's compliance with this Consent Decree.

Upon arrival, if the United States has not previously given notice to McWane of the entry authorized by this Paragraph, the United States shall notify McWane, by e-mail or phone, of the entry. Notice under this Paragraph shall be given to Jeet Radia (at JRadia@mcwane.com or (205) 323-8284) or to any successor designated by McWane in writing.

65. Unless otherwise provided in this Consent Decree, until five years after completion of the obligations set forth in Sections V (Compliance Requirements), VI (SEPs) (through completion of construction) and VIII (Stipulated Penalties), McWane shall retain, and shall contractually require 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 McWane'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, McWane shall provide, within thirty (30) Days or such other period as the Parties agree to in writing, copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, McWane shall notify EPA at least ninety (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, McWane shall deliver any such documents, records, or other information to EPA. McWane may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If McWane asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by McWane. However, no documents, records, or other information required to be generated or received pursuant to this Consent Decree shall be withheld on grounds of privilege.

67. McWane may also assert, pursuant to the procedures and standards set forth in 40 C.F.R. Part 2 and any applicable State law, that information required to be provided under this Section is protected as Confidential Business Information ("CBI").

68. 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 McWane to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

69. Subject to the conditions provided in Paragraph 70, this Consent Decree resolves the civil claims of the United States and the State for the violations specifically alleged in the Complaint filed in this action through the date of the lodging of the Consent Decree. No other violations, if any, are resolved by this Consent Decree.

70. This covenant not to sue is expressly conditioned upon complete and satisfactory performance of the requirements set forth herein. 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 federal environmental statutes or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 69. The United States and the State further retain all authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment, including 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, McWane's Facilities, whether related to the violations addressed in this Consent Decree or otherwise. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. McWane is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and McWane's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as specifically set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that McWane's compliance with any aspect of this Consent Decree will result in compliance with any provisions of federal, state, or local laws, regulations, or permits.

71. This Consent Decree does not limit or affect the rights of McWane or of the United States 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 McWane, except as otherwise provided by law.

72. 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.

XIII. COSTS

73. 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 or costs due under this Consent Decree but not paid by McWane.

XIV. NOTIFICATIONS

74. Unless otherwise specified herein, whenever notifications, submissions, or communications as defined in Paragraph 8.j are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Benjamin Fisherow
Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
RE: DOJ # 90-5-1-1-08282/5

Catherine Banerjee Rojko
(if by regular mail)
Box 7611 Ben Franklin Station
Washington D.C. 20044-7611
(if by overnight service)
601 D Street NW, 2d Floor
Washington D.C. 20004
Cathy.Rojko@usdoj.gov

Joyce White Vance
United States Attorney
Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203

To EPA:

Andrew M. Stewart, Acting Director
Special Litigation and Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20004

To the State of Alabama:

Rebecca E. Patty
Associate General Counsel
Assistant Attorney General

Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36110-2059

Robert Tambling
Assistant State's Attorney
Assistant Attorney General
Office of the Attorney General
P.O. Box 300152
Montgomery, AL 36130

To McWane:

Jeet Radia
McWane, Inc.
2900 Hwy 280S
Suite 250
Birmingham, AL 35223

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

76. The Parties may modify point of contact information for this Section XIV (Notifications) and Paragraph 8.j. of this Consent Decree by written agreement.

XV. EFFECTIVE DATE

77. 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.

XVI. RETENTION OF JURISDICTION

78. 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 X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

79. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without the written agreement of the Parties to this Consent Decree. Changes to provisions of this Consent Decree that expressly allow for change upon written agreement, and changes to the provisions of Appendix 2 hereto, may be made without approval by the Court upon written agreement between the Parties, and upon execution shall become enforceable under this Consent Decree and shall be filed with the Court. Any other modifications agreed to by the Parties shall be effective only upon approval by the Court. A Party's refusal to agree to a modification of this Consent Decree shall not be subject to dispute resolution or judicial review.

80. In the event that a transferee within the meaning of Section II (Applicability) of this Consent Decree should desire to become a party to this Consent Decree and subject to all its terms and provisions, it may do so upon written approval of the United States pursuant to Section II (Applicability) of this Consent Decree, in which event a supplemental signature page will be affixed to this Consent Decree and filed with the Court.

XVIII. TERMINATION

81. This Consent Decree may be terminated when the United States determines, after consultation with the State, that McWane has satisfactorily completed performance of its compliance, SEP, and reporting obligations under Sections V, VI and VII of this Decree, provided that McWane has fulfilled all other obligations of this Decree, including payment of the civil penalty under Section IV of this Decree and any outstanding stipulated penalties under Section VIII. The Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

82. If the United States, after consultation with the State, does not agree that the Decree may be terminated, McWane may invoke Dispute Resolution under Section X of this Decree. In such case, all time periods and deadlines established under Section X may be extended by sixty (60) Days, or more, by the agreement of the Parties.

XIX. PUBLIC PARTICIPATION

83. This Consent Decree shall be lodged with the Court for a period of not less than thirty (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. McWane 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 McWane in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

84. Each undersigned representative of McWane, the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or his designee, and the State 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.

85. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. McWane 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.

XXI. INTEGRATION

86. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

87. 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 McWane. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

The following Appendices are attached to and part of this Consent Decree:

Appendix 1 is McWane's Corrective Action Cost Synopsis; and

Appendix 2 is the description of the Supplemental Environmental Project.

Dated and entered this ____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ALABAMA

*Consent Decree in United States and the Alabama
Department of Environmental Management v. McWane, Inc.*

FOR MCWANE, INC.:

Date: July 21, 2015

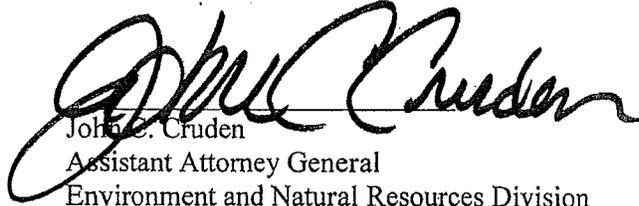
A handwritten signature in black ink, appearing to read "A. Ruffner Page", written over a horizontal line.

Ruffner Page
President and CEO

*Consent Decree in United States and the Alabama
Department of Environmental Management v. McWane, Inc.*

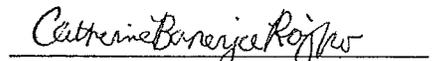
FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: _____



John E. Cruden
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, NW
Washington, D.C. 20530

Date: 8/26/15



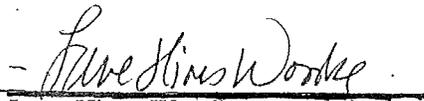
Catherine Banerjee Rojko
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-5315

*Consent Decree in United States and the Alabama
Department of Environmental Management v. McWane, Inc.*

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 8/31/15

Joyce White Vance
United States Attorney
For the Northern District of Alabama



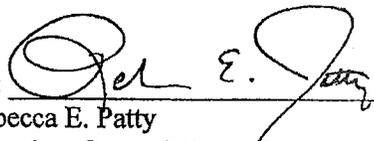
Lane Hines Woodke
Chief, Civil Division
United States Attorney's Office
Northern District of Alabama
1801 4th Avenue North
Birmingham, AL 35203

*Consent Decree in United States and the Alabama
Department of Environmental Management v. McWane, Inc.*

FOR PLAINTIFF STATE OF ALABAMA:

Date: 7/16/15

Lance R. LeFleur
Director
Alabama Department of Environmental Management

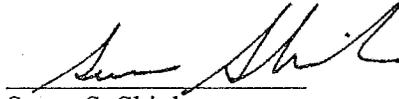
By: 
Rebecca E. Patty
Associate General Counsel
Assistant Attorney General
Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36110-2059

Robert G. Tambling
Assistant Attorney General
Alabama Department of Environmental Management
1400 Coliseum Blvd
Montgomery, AL 36110-2059

*Consent Decree in United States and the Alabama
Department of Environmental Protection v. McWane, Inc.*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 8/3/15



Susan S. Shinkman
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Building
1200 Pennsylvania Ave., NW
Washington, D.C.

Date: 7-16-18



Peter W. Mogre
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Building
1200 Pennsylvania Ave., NW
Washington, D.C.

Appendix 1

McWane has represented that the following costs reflect the best reasonably available estimates McWane has of the costs it expended on corrective action relating to the claims alleged in the Complaint.

McWane Corrective Action Cost Synopsis

Birmingham, AL:	\$5,565,380.43	Air, Water, Solid and Hazardous Waste, PCB (TSCA), EPCRA, Spill Prevention
Phillipsburg, NJ:	\$5,271,008	Air, Water, EPCRA, Solid and Hazardous Waste, Spills (CWA § 311)
TOTAL	\$10,836,388.43	

McWane Cast Iron Pipe Company, Birmingham, Alabama

i. Air

The McWane Pipe facility: put in place an air pollution episode plan to comply with permit; instituted recordkeeping procedures; conducted training regarding compliance with notification requirements; implemented a program of quarterly reporting in accordance with initial Title V permit; converted coatings system to the use of water-based paint; corrected deficiencies in calculating air emissions by delivering a report to the Jefferson County Department of Health ("JCDH") that set forth the evaluation and refinement of emission factors; commenced management of all records pertaining to parameters, compliance monitoring, and stack testing; corrected deficiencies with stack testing report; completed new emissions inventory; corrected recordkeeping deficiencies with respect to identification of emission units and actual, potential and allowable emissions; developed and completed fugitive dust control, trouble shooting, and corrective action plans; installed sprinklers on the solid waste bunker, swept roads on a daily basis, and added an additional sweeper; constructed a building to house ductile treating baghouse dust roll-off box; constructed a building to house cupola baghouse dust roll-off box; created a plan to prevent migration of visible fugitive dust emissions off property; received permit renewal that corrected issues with construction permits; created a spreadsheet to demonstrate compliance with all applicable rule limits; installed new pressure sensors on ductile baghouse; established a calendar in the facility's task management and tracking system for all Title V reporting requirements, with records reviewed weekly and compliance certifications resubmitted, including semiannual compliance certifications; submitted differential pressure ranges from data collected over a year, along with changes to the Title V permit to JCDH; developed a plan to address and manage asbestos activities to ensure that notification and documentation is completed.

Costs associated with subsection (i) above: \$1,809,946.47.

ii. Water

The McWane Pipe facility: reviewed and revised as needed the SPCC and best management practices ("BMP") plans and provided employee training; installed a 400,000 gallon storage tank and piping to provide storage for process water; constructed a new fueling station, canopies/shelters over all containment areas, a new spill control containment area with a roof for 20' finishing line paint and thinner containers as well as for temporary storage of waste paint materials from 20' and 18' lines, and a new hydraulic/lubricants storage building and a containment area to prevent accidental spills or leaks from discharging along with stormwater; engaged in cleanup activities for spilled or leaked material; performed an inventory of any liquid or solid materials (other than those covered by the SPCC plan) that could be discharged and developed a BMP for materials identified; sent ADEM a new permit application that corrected discrepancies with process wastewater; cleaned up area around creek clarifier, repaired leaks and instituted policy to inspect creek clarifier weekly; constructed containment wall on the creek side of the clarifier to control spills; installed new treatment works for process water and new clarifier; created task in the task management and tracking system's task management module to report pounds per year annually for certain parameters in the process water discharge; installed an additional 400,000 gallon tank to provide a storage and routing alternative for the creek clarifier; put in place a procedure for all reportable spills and exceedances to be reported to ADEM verbally

and in writing; revised and implemented a solvent management plan; conducted annual compliance review and a compliance assurance BMP program was implemented to include inspector signatures on the daily inspection logs; assigned additional personnel to clean up areas where the street sweeper was not able to reach and performed routine cleanups as needed; completed a storm water study and upgrades were implemented as a result; and cleaned, filtered, and maintained all hydraulic units.

Costs associated with subsection (ii) above: \$2,404,579.96.

iii. Solid and Hazardous Waste

The McWane Pipe facility: sent a letter to ADEM for recertification of exempt foundry waste stream; demonstrated quarterly analysis of foundry waste streams, with analysis provided to waste disposal vendor that subsequently received approval for disposal via quarterly certifications from ADEM; instituted a waste minimization plan; submitted proper LQG designation; revised the waste minimization plan to include all required components; developed annual RCRA training and conducted training classes (including testing) for all required personnel; conducted universal waste training and developed BMPs for the management and individual training of universal waste; confirmed that copies of the hazardous waste contingency plan were sent to local emergency response teams; took steps to ensure that all hazardous wastes were stored and disposed of in accordance with all regulations, secured the back wall of the hazardous waste storage cage, and increased the height of the containment wall of the exempt waste bunker; installed enclosed roll-off box dust collection room; conducted daily inspections to ensure dust from the roll-off container was being cleaned up as necessary and that the integrity of the baghouse was maintained; installed a new baghouse, which includes a room for housing a roll-off box to collect the baghouse dust; conducted universal waste training with personnel that manage the store room; prepared a written medical waste management plan; notified ADEM of used oil activities; managed all containers equal to or greater than 55 gallons of oil and oily waste in an area equipped with appropriate secondary containment.

Costs associated with subsection (iii) above: \$1,350,854.

iv. Polychlorinated biphenyls ("PCBs")

The McWane Pipe facility: reviewed plant records and determined that annual reports had logged the PCB content of plant transformers; performed plant-wide testing for PCB content; removed all PCB transformers from the facility and maintained records on the status for each item.

Costs associated with the subsection (iv) above: no reasonably available estimate of associated costs.

v. EPCRA

The McWane Pipe facility: began using Access database to manage material safety data sheets ("MSDSs"); implemented Safetec MSDS management system; determined status of initial EPCRA Section 311 notice to local emergency planning authorities; and documented required information in the facility's BMP procedure for reporting spills and releases.

Costs associated with subsection (v) above: no reasonably available estimate of associated costs.

vi. *Spill Prevention*

The McWane Pipe facility: revised SPCC plan to list each spill source, including a prediction of flow during release for each source, and including other required information; continuously checked signing of all SPCC forms; ensured that all SPCC forms were signed as required before being filed; developed new SPCC training to cover all required topics; implemented a new BMP to remove the requirement for containment at the offloading areas in the plant by having individuals monitor all transfers.

Costs associated with subsection (vi) above: no reasonably available estimate of associated costs.

Atlantic States Cast Iron Pipe Company, Phillipsburg, New Jersey

i. Air

The Atlantic States facility: improved recordkeeping deficiencies; improved and tested baghouse system; purchased and installed an injection system for the melt center baghouse inlet emission gas stream; applied for a permit to upgrade the pollution control efficiency of the existing cupola wet scrubber and top gas combustion systems; installed new cupola afterburners orifice ring for carbon monoxide compliance; installed new emissions control system, which involved installation of a state-of-the-art mercury emission control baghouse; obtained operating permit modification with air paint dryer and core machine added; obtained modified permit with accurate NOx emission limits; obtained operating permit modification relating to Item U1 Cupola Scrubber, Reference 3 and 48, Item U2 Eight Core Machines, Reference 3, and Item U6 Finishing Baghouse, Reference 6; installed a new CEMS DAS system; conducted a successful stack retest; prepared a more detailed and comprehensive assessment of potential hazardous air pollutant ("HAP") emissions, which demonstrated that the facility was not a major source of HAPs; determined, after requesting files from the New Jersey Department of Environmental Protection ("NJDEP") and reviewing in-house records, that there was no significant net increase in production when the cupola and melt center were installed; contacted the health department regarding a noise complaint and added sliding doors on fan enclosure to alleviate the problem.

Costs associated with subsection (i) above: \$1,146,000.

ii. Water

The Atlantic States facility: installed six storage tanks to store water and prevent inadvertent discharges to storm drains; repaved high traffic areas around the plant resulting in improved control of stormwater flow; installed a 2.25 million gallon stormwater collection and reuse system that collects stormwater from drains; tied a catch basin near the cooling tower into the new stormwater collection and reuse system; instituted daily inspections under the facility's stormwater pollution prevention best management practices plan; completed stormwater pollution prevention plan revisions and training; addressed deficiencies regarding inspections and recordkeeping; initiated a monitoring program, including a six-month sampling program required for "serious violations," and provided results of sampling to NJDEP; installed a curb around the Outfall 005A discharge grate.

Costs associated with subsection (ii) above: \$4,005,000.

iii. EPCRA

The Atlantic States facility: put in place measures to improve recordkeeping; conducted a detailed review of the compounds that must be reported on Form R; instituted a management system designed to assure that any new information is reviewed to determine whether the product contains a compound for which a Form R is required.

Costs associated with subsection (iii) above: no reasonably available estimate of associated costs.

iv. *Solid and Hazardous Waste*

The Atlantic States facility: conducted comprehensive solid waste characterization; properly stored and labeled all used oil containers; built a secure area for the collection and storage of universal wastes and reported full compliance with the regulations; instituted inspection of hazardous waste storage area; submitted an updated EPA Form 8700-12 to EPA confirming large quantity generator ("LQG") status; developed a preparedness, prevention and contingency plan for hazardous waste; put in place a program to facilitate beneficial reuse of wastes by off-site companies; verified that no hazardous waste was generated in 2003, filed a Biennial Report in 2006 for hazardous waste generated in 2005, and developed, implemented and strengthened a program to evaluate, identify and document all waste streams; implemented training program and records maintenance program as required under LQG regulations; established a program for hazardous waste handling activities; mailed letters of invitation, along with the preparedness, prevention and contingency plan, to local authorities to familiarize them with the facility's hazardous waste operations; established an inspection program for hazardous waste storage areas; refurbished the entire waste storage area; included proper labeling, handling and storage of hazardous and nonhazardous wastes in the preparedness, prevention and contingency plan and designated product signs and specific areas for product materials; established a universal waste program; began using red bags for medical waste and disposing of them at an approved facility with proper documentation; verified that the facility has one used oil transporter that has an EPA identification number; replaced used oil tank with several new labeled totes and performed tests and made necessary repairs of bulk storage tanks; relabeled containers and tanks "used oil."

Costs associated with subsection (iv) above: \$19,008.

v. *Spills*

The Atlantic States facility: revised SPCC plan to address tank integrity testing requirement; provided requisite training; completed ultrasonic testing of wall thickness of all seventeen above-ground storage tanks; permanently plugged compressor blowdown drain; collected and appropriately disposed of blowdown; installed engineering controls and conducted field sampling; installed a 72-foot deep monitoring well and completed sampling session; addressed potential soil and groundwater contamination with NJDEP.

Costs associated with subsection (v) above: \$101,000.

Appendix 2

Elimination of Volatile Organic Compound Emissions and Reduction of Paint Wastes from Paint Process – Replacement of Wet Paint Booth with Powder Coating Process

Project Summary

McWane, as the controlling shareholder in Amerex Corporation (“Amerex”), will cause Amerex to replace the existing wet spray coating system at the Amerex facility in Trussville, Alabama, with a powder coating system. McWane remains the responsible party to assure completion of the project.

Project Detail

The Amerex plant produces fire extinguishers of various sizes, most of which are painted using a wet spray coating system. The existing wet spray coating system will be removed and a powder coat system will be installed in its place. The powder coat system will virtually eliminate volatile organic compound (“VOC”) emissions and reduce paint waste resulting from the production process. Some important considerations related to this project include:

- The plant has a permit allowing it to emit 3.5 pounds of VOCs per gallon of paint used. First, fifty pound and greater fire extinguisher cylinders and frames are shot-blasted, manually hung on the conveyor line and primed by manual spray application. The second stage involves manual sanding of the primed coat that is conveyed back through the spray coating booth where a solvent containing coating is manually spray applied. The exhausted air from the spray booth passes through a particulate filter prior to being discharged into the atmosphere.

The plant emitted 2.69 tons of VOCs in 2011, 2.58 tons of VOCs in 2012 and 3.49 tons of VOCs in 2013 from its wet paint operations, based on an average of 10 hours of typical operations per day 4 days per week. Because the Amerex air permit allows up to 4,000 hours of operation, the plant could emit up to 7 tons of VOCs per year at maximum operations. The powder coating operation that will replace the wet paint booth would emit negligible amounts of VOCs, and, after substitution of the painting equipment, Amerex would not have the ability to use wet paint on the powder coating line. As a result, VOC emissions associated with this line would be virtually eliminated.

- Additionally, powder can be reclaimed/recycled, thereby reducing waste disposal. It has higher transfer efficiency, thereby reducing material use and waste disposal. As a point of reference, the wet paint booth resulted in 3.51 tons of paint waste produced in 2011, 2.23 tons in 2012 and 4.21 tons in 2013. These wastes would be eliminated with the new powder coat system.

Appendix 2

Project Timeline

The project shall be completed no later than 24 months following Effective Date of the Consent Decree, according to the following schedule:

Activity Description	Completion Date
Select vendor	(Within 4 months following Effective Date)
Equipment engineering, selection, design, approval and order equipment	(Within 6 months following Effective Date)
Begin installation of system	(Within 8 months following Effective Date)
Complete Installation	(Within 15 months following Effective Date)
Start Up/ Debugging	(Within 18 months following Effective Date)
Line in Production	(Within 24 months following Effective Date)

Project Costs

Project costs are estimated to be as follows:

Equipment/Structure	Cost
Inline Shotblaster w/ Dust Collector	\$ 550,000
Prime Booth (Auto w/ Manual Touch-Up)	\$ 220,000
Prime Oven	\$ 80,000
Prime Cool Down	\$ 40,000
Color Change Booth	\$ 350,000
EV Rooms for Application Booths	\$ 230,000

Appendix 2

Final Cure Oven	\$ 220,000
Cool Downs with Supplemental A/C	\$ 150,000
Conveyor 800 Feet (458 Type Conveyor @ \$150/ft.)	\$ 120,000
Building Modifications	\$ 50,000
Electrical, Gas, Air Services	\$ 125,000
Installation Services	\$ 80,000
Taxes, Permits, Misc.	\$ 175,000
Contingency	\$ 110,000
Total Cost	\$ 2,500,000

Project Completion Criteria

This project will be deemed to be complete for the purposes of Paragraphs 24, 40 and 81 of the Consent Decree, when the replacement of the wet spray paint system with a powder coating system has been completed in accordance with this Appendix 2.