

FILED
COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS
JEFFERSON COUNTY, OHIO

2013 JAN 23 P 3:59

JOHN A. CORRIGAN
CLERK OF COURTS
JEFFERSON COUNTY, OH

STATE OF OHIO, ex rel.
MICHAEL DEWINE,
OHIO ATTORNEY GENERAL

CASE NO. 99-CV-238

Plaintiff,

JUDGE JOSEPH J. BRUZZESE, JR.

v.

WHEELING PITTSBURGH STEEL
CORPORATION, nka, RG STEEL
WHEELING, LLC

Defendant.

MODIFIED CONSENT ORDER AND FINAL JUDGMENT ENTRY

In 1999, the Plaintiff, State of Ohio, by and through its attorneys, filed a Complaint in the above-captioned action against Wheeling Pittsburgh Steel Corporation ("WPSC") alleging violations of Ohio's hazardous waste and water pollution laws. On March 15, 2002, this Court entered a Consent Order and Final Judgment ("2002 Consent Order") providing for certain management standards and otherwise resolving claims pertaining to the Steubenville North Plant located at South Third Street, Steubenville, Jefferson County, Ohio ("Steubenville North Plant") and the Yorkville Plant located at 219 Public Road, Yorkville, Jefferson County, Ohio ("Yorkville Plant") which are now owned by WPSC's successor-in-interest, RG Steel Wheeling, LLC (collectively, "Defendant").

Since the entry of the 2002 Consent Order, Plaintiff, through its attorney, Ohio Attorney General Michael DeWine ("Plaintiff"), has asserted certain additional claims against Defendant

Entity: OHIO COAL ROLLING, LLC
Doc Type: MODIFIED JUDICIAL ORDER
Doc Subtype: _____
Program: RCRA - C
County: JEFFERSON
Secondary ID: 0HD082964313

for alleged violations of Ohio's hazardous waste and water pollution laws at the Yorkville Plant. Plaintiff and Defendant have reached an agreement and have agreed to the terms of this Modified Consent Order and Final Judgment Entry ("Modified Consent Order"). Any and all terms in the 2002 Consent Order that apply to Defendant's Steubenville North Plant and Yorkville Plant remain in full force and effect.

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Modified Consent Order:
 - a. "Defendant" means RG Steel Wheeling, LLC and all predecessor companies of RG Steel Wheeling, LLC, including, but not limited to, Severstal Wheeling, LLC, Severstal Wheeling, Inc., Wheeling Pittsburgh Steel Corporation, and W-P Steel Corporation.
 - b. "New Effective Date" means the date the Jefferson County Court of Common Pleas enters this Modified Consent Order.

II. JURISDICTION AND VENUE

2. This Court retained jurisdiction and venue by virtue of the 2002 Consent Order.

III. PERSONS BOUND

3. The provisions of this Modified Consent Order shall apply to and be binding upon Plaintiff, Defendant, and Defendant's agents, officers, employees, assigns, successors in interest and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert or participation with them.

IV. RESOLUTION OF CLAIMS AND RESERVATION OF RIGHTS

4. Except as otherwise provided in this Modified Consent Order, compliance with the terms of this Modified Consent Order shall constitute full satisfaction of Defendant's civil liability to Plaintiff for any violation committed during Defendant's ownership and/or operation of the Yorkville Plant from August 1, 2003 through the present under Revised Code Chapters 3734 and 6111 and the rules adopted thereunder, and any violation of the terms of the March 15, 2002 Consent Order from the entry of that Order to the date of entry of this Modified Consent Order.

5. Nothing in this Modified Consent Order shall limit any authority of the State of Ohio to:

- a. Enforce this Modified Consent Order through a contempt action or otherwise for violations of this Modified Consent Order.
- b. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted by Defendant at the Yorkville Plant.
- c. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Yorkville Plant that may present an imminent threat to the public health or welfare, or the environment.
- d. Nothing in this Modified Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the violations satisfied by this Modified Consent Order, against any person,

firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Modified Consent Order.

6. The State also specifically reserves its right to sue against any person that is not a signatory to this Modified Consent Order.

7. Nothing herein shall restrict the right of Defendant, and/or any other person or party bound hereunder, to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Defendant, and/or any other person or party bound hereunder, shall not assert and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

V. HAZARDOUS WASTE CLOSURE PAYMENT

8. Defendant is ordered and enjoined to pay to the State of Ohio One Hundred, Ninety Thousand Dollars (\$190,000.00). This amount shall be paid from the proceeds of the sale of the Yorkville Plant.

9. The \$190,000.00 shall be used for conducting closure of the "Former Pickling Line Scrubber Ductwork Hazardous Waste Unit" at the Yorkville Plant and shall be deposited and used in accordance with the "Escrow Agreement" set forth in Attachment A and incorporated herein.

10. The \$190,000.00 required to be paid under this Consent Order and deposited in accordance with the Escrow Agreement shall be paid by delivering to Plaintiff, c/o Martha Sexton, or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check in the amount of \$190,000.00 payable to the order of "Treasurer, State of Ohio" within thirty (30)

days of the Effective Date. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 252085."

VI. RETENTION OF JURISDICTION

11. This Court shall retain jurisdiction of this action for the purpose of enforcing this Modified Consent Order

VII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

12. The parties agree and acknowledge that final approval by the State and Defendant and entry of this Modified Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of this Modified Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State and Defendant reserve the right to withdraw this Modified Consent Order based on comments received during the public comment period. In addition, the parties agree and acknowledge that Defendant's entry of this Modified Consent Order requires prior authorization of the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over Defendant's Chapter 11 case. Defendant agrees to promptly apply for such authorization.

13. After the public comment period and, if necessary, after the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over Defendant's Chapter 11 bankruptcy case has made a ruling whether to authorize the entry of this Modified Consent Order, the parties will file a joint motion with the Court either requesting entry or withdrawal of this Modified Consent Order.

14. Notwithstanding the foregoing, if Defendant does not make the payment as required by Section V. of this Modified Consent Order, then Defendant shall not receive the

Resolution of Claims set forth in Paragraph 4 of this Modified Consent Order, and the State reserves all of its enforcement rights against Defendant.

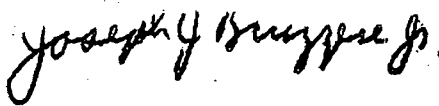
15. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Modified Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

VIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

16. Subject in the Defendant's case to receiving Bankruptcy Court approval, each signatory for a party represents and warrants that he or she has been duly authorized to sign this Modified Consent Order and so bind the party to all terms and conditions thereof.

IT IS SO ORDERED:

1-23-13
DATE



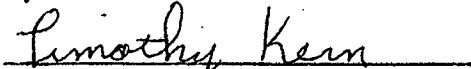
JUDGE JOSEPH J. BRUZZESE, JR.
JEFFERSON COUNTY
COURT OF COMMON PLEAS

APPROVED:

Respectfully submitted,

MICHAEL DeWINE
OHIO ATTORNEY GENERAL

By:

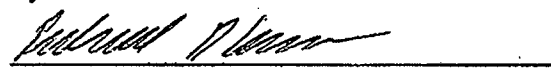


Brian A. Ball (0078285)
Timothy J. Kern (0034629)
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Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
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Attorneys for Plaintiff State of Ohio

RG STEEL WHEELING, LLC

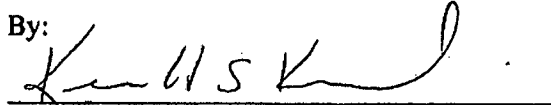
By:



Print Signatory name: RICHARD D CHARVO

Signatory title: CFD

By:



Kenneth Komoroski (0072231)
FULBRIGHT & JAWORSKI LLP
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370 Southpointe Boulevard, Suite 100
Canonsburg, Pennsylvania 15317
Telephone: (724) 416-0420
Facsimile: (724) 416-0404
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Attorney for Defendant RG Steel Wheeling, LLC

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (as the same may be amended or modified from time to time pursuant hereto, this "Escrow Agreement") is made and entered into as of _____, 2012 by and among the State of Ohio ("Party A"), and RG Steel Wheeling, LLC, a Delaware limited liability company ("Party B", and together with Party A, sometimes referred to individually as "Party" or collectively as the "Parties"), and the State of Ohio, in its capacity as escrow agent hereunder (the "Escrow Agent").

WHEREAS, on May 31, 2012, Party B commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") by filing a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, concurrently with the execution of this Escrow Agreement, Party A and Party B have entered into a Modified Consent Order that provides, among other things, that Party B shall pay to Party A an amount to be used for preparing a closure plan and conducting closure of the Former Pickling Line Scrubber Ductwork Hazardous Waste Unit at the Yorkville Plant in satisfaction of any civil liability to Party A for certain asserted violations of applicable law (the "Modified Consent Order");

WHEREAS, in accordance with and subject to the provisions of the Modified Consent Order, Party B is required to pay one hundred, ninety thousand dollars (\$190,000.00) in full settlement of any violation of R.C. Chapters 3734 and 6111 and the rules adopted thereunder (the "Settlement Amount"); and

WHEREAS, the Parties desire to have Party B deposit the Settlement Amount referenced above into an escrow account.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Appointment.** The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.
2. **Fund.** Pursuant to the Modified Consent Order (but in all events subject to the terms thereof and the occurrence of the Effective Date) and simultaneously with the execution and delivery of this Escrow Agreement, Party B is depositing in escrow with the Escrow Agent cash in the amount of \$190,000.00 (the "Escrow Deposit") into the General Holding Account under the Office of the Ohio Attorney General, to be held in escrow pursuant to the terms of this Escrow Agreement (the "Fund").
3. **Interest.** Notwithstanding any provisions in Paragraph 4 below, interest accrued on the Escrow Deposit shall be retained by the Escrow Agent.

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4. **Disposition and Termination.** As between the Parties, except as provided herein, the rights of, in and to the Fund shall be governed by and determined pursuant to the Modified Consent Order (but in all events subject to the terms thereof). The Escrow Agent shall deliver or distribute all or any portion of the Fund an owner or operator of the Yorkville Plant complying with all of the following:

- (a) Any owner and/or operator of the Yorkville Plant that is conducting closure pursuant to a closure plan approved by Ohio EPA of the Former Pickling Line Scrubber Ductwork Hazardous Waste Unit, in accordance with the hazardous waste closure requirements set forth in Ohio Adm. Code 3745-55-10 through Ohio Adm. Code 3745-55-20, may request distributions from the escrow account.
- (b) Requests for distributions shall be made by submitting invoices to John Rochette, Division of Materials and Waste Management, or his successor, at Ohio EPA Southeast District Office, 2195 Front Street, Logan Ohio 43138. If John Rochette, or his successor, determines that the work, or a portion of the work, described in an invoice was conducted for closure of the Former Pickling Line Scrubber Ductwork Hazardous Waste Unit, in accordance with the approved closure plan and the hazardous waste closure requirements set forth in Ohio Adm. Code 3745-55-10 through Ohio Adm. Code 3745-55-20, he will approve payment of the approved work set forth in the invoice.
- (c) The approved invoice costs will be forwarded through Brian Ball, Assistant Attorney General, or his successor, to the Escrow Agent with instruction to pay the approved invoice costs by mailing a check to the address set forth on the invoice.
- (d) If the Fund is not sufficient for the completion of closure of the Former Pickling Line Scrubber Ductwork Hazardous Waste Unit, in accordance with the hazardous waste closure requirements set forth in Ohio Adm. Code 3745-55-10 through Ohio Adm. Code 3745-55-20, the State of Ohio may require any current owner or operator of the Yorkville Plant to complete closure.
- (e) If closure is completed in accordance with the requirements of Ohio Adm. Code 3745-55-10 through Ohio Adm. Code 3745-55-20 and the approved closure plan and money is left in the Fund, the Escrow Agent will deliver the excess money to Ohio EPA for deposit into the Hazardous Waste Clean-up Fund created by Ohio Revised Code 3734.28.
- (f) Upon the utilization of the Fund in accordance with the terms hereof and/or delivery of the remaining moneys to the Hazardous Waste Clean-up Fund by the Escrow Agent, this Escrow Agreement shall terminate.

5. **Notices.** All communications hereunder shall be in writing and shall be deemed to be duly given and received:

- (a) upon delivery, if delivered personally, or upon confirmed transmittal, if by facsimile;
- (b) on the next Business Day (as hereinafter defined) if sent by overnight courier; or

(c) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address set forth below or at such other address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

If to Party A/
Escrow Agent

State of Ohio

Ms. Joselynn Burnett (or her successor)
Office of the Attorney General
Finance Section
30 E. Broad Street; 15th Floor
Columbus, OH 43215

with a copy (which shall not constitute notice) given in like manner to:

Brian Ball (or his successor)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street; 25th Floor
Columbus, OH 43215

If to Party B

RG Steel Wheeling, LLC
1430 Sparrows Point Boulevard
Sparrows Point, MD 21219
Attention: Richard Caruso
Email: rich.caruso@rg-steel.com

with a copy (which shall not constitute notice) given in like manner to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attention: Shaunna D. Jones, Esq.
Facsimile: (212) 728-8111

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

6. **Miscellaneous.**

(a) Assignability. Neither this Escrow Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties (whether by operation of law or otherwise) without the prior written consent of the other Parties, except that Party B may assign any or all of its rights and interest hereunder to any of its affiliates or an any successor in interest under any plan confirmed under chapter 11 of the Bankruptcy Code (it being understood that Party B nonetheless shall remain liable for the performance of all of Party B's obligations hereunder to the extent not performed by such assignee). Any assignment or other transfer not permitted under this Escrow Agreement shall be void *ab initio*.

(b) Governing Law. This Escrow Agreement shall be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and, where state law is implicated, the internal laws of the State of Delaware, without giving effect to any principles of conflicts of law. Without limiting any party's right to appeal any order of the Bankruptcy Court, the parties agree that if any dispute arises out of or in connection with this Escrow Agreement or any of the documents executed hereunder or in connection herewith, the Bankruptcy Court shall have exclusive personal and subject matter jurisdiction and shall be the exclusive venue to resolve any and all disputes relating to the matters described herein or contemplated hereby. Such court shall have sole jurisdiction over such matters and the parties affected thereby and the Parties and the Escrow Agent each hereby consent and submit to such jurisdiction; provided, however, that if the bankruptcy proceedings have closed and cannot be reopened, the Parties and the Escrow Agent agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court thereof, for the resolution of any such claim or dispute. The Parties and the Escrow Agent hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties and the Escrow Agent hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. In the event any such action, suit or proceeding is commenced, the Parties and the Escrow Agent hereby agree and consent that service of process may be made, and personal jurisdiction over any party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the party at the address of such party set forth herein. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Escrow Agreement.

(c) No Third-Party Beneficiaries. Nothing in this Escrow Agreement is intended to, or shall, confer any third party beneficiary or other rights or remedies upon any Person other than the parties hereto.

(d) Amendment; Waiver. This Escrow Agreement may not be supplemented, modified or amended except by a written agreement executed by each party hereto. No waiver of any of the provisions of this Escrow Agreement shall be deemed or shall constitute a waiver of any other

provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided. All waivers hereunder must be in writing to be effective.

(e) Section Headings. The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Escrow Agreement.

(f) Severability. Any provision of this Escrow Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Escrow Agreement or affecting the validity or enforceability of any of the provisions of this Escrow Agreement in any other jurisdiction, and if any provision of this Escrow Agreement is determined to be so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable, provided in all cases that neither the economic nor legal substance of this Escrow Agreement is affected by the operation of this sentence in any manner materially adverse to any party. Upon any such determination that any provision of this Agreement is invalid or unenforceable, the Parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the Parties.

(g) Counterparts. This Escrow Agreement may be executed in multiple counterparts, each of which shall be deemed an original hereof, and all of which shall constitute a single agreement effective as of the date hereof. Any delivery of an executed counterpart of this Escrow Agreement by facsimile, PDF or electronic mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth above.

PARTY A:

STATE OF OHIO

By: Timothy Kern
Name: TIMOTHY KERN
Title: PRINCIPAL ASSISTANT
OHIO ATTORNEY GENERAL

PARTY B:

RG STEEL WHEELING, LLC

By: Richard D. Wilson
Name: RICHARD D WILSON
Title: CFO

ESCROW AGENT:

STATE OF OHIO

By: Christina Frass
Name: CHRISTINA FRASS
Title: Chief Financial Officer