

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff, and

THE STATE OF WEST VIRGINIA,

Plaintiff-Intervenor,

v.

AL SOLUTIONS, INC.,

Defendant.

Civ. No. _____

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant AL Solutions, Inc. (“Defendant”) violated Section 112(r) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r) (“U.S. Complaint”).

The U.S. Complaint alleges that Defendant violated the General Duty Clause (“GDC”) of the CAA, 42 U.S.C. § 7412(r)(1), at its titanium and zirconium recycling facilities in New Cumberland, West Virginia, and Washington, Missouri. On December 9, 2010, an explosion at the New Cumberland Facility killed three company employees. Based on EPA’s subsequent inspections at those facilities, EPA determined that AL Solutions failed to identify hazards that may result from accidental releases of extremely hazardous substances using appropriate hazard assessment techniques and failed to design and maintain a safe facility as required by Section 112(r)(1), 42 U.S.C. § 7412(r)(1). Defendant does not admit or deny any liability to the United States arising out of the allegations of the U.S. Complaint and denies any causal connection between the allegations of the U.S. Complaint and the December 9, 2010, event. Defendant denies that titanium and zirconium are “extremely hazardous substances” for purposes of the CAA, 42 U.S.C. § 7412(r)(1).

Plaintiff-Intervenor State of West Virginia (“West Virginia”) has concurrently filed a Complaint-in-Intervention related to this action, alleging that Defendant violated the West Virginia Hazardous Waste Management Act, W.V. Code §§ 22-18-1 to -25, and the rules promulgated thereto, namely, the “Hazardous Waste Management Rule,” 33 C.S.R. §§ 10.1. to 10.15.1., the West Virginia Solid Waste Management Act, W.V. Code §§ 22-15-1 to -22, and the Solid Waste Management Rule, 33 C.S.R. §§ 1.1 to 7.8(a), and principles of common law nuisance (“W.V. Complaint”).

EPA has reviewed the financial information submitted by Defendant in order to determine the extent to which Defendant is financially able to pay a civil penalty arising from the allegations set forth in the U.S. Complaint. Based upon this financial information, the United States has determined that Defendant has a limited financial ability to pay a civil penalty.

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113 of the CAA, 42 U.S.C. § 7413, and over the Parties. This Court has supplemental jurisdiction over the State law claims asserted by the State of West Virginia pursuant to 28 U.S.C. § 1367. Venue is proper in this District under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Defendant's principal place of business is in, and some of these claims arose within, this judicial district. For purposes of this Decree and the underlying Complaints, and for purposes of any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the U.S. Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42

U.S.C. § 7413 (b), and that the W.V. Complaint states claims upon which relief may be granted pursuant to *inter alia* W.V. Code §§ 22-18-17 and 22-15-15.

II. APPLICABILITY

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

4. No transfer of ownership or operation of any Facility, whether in compliance with the procedures of this Paragraph or otherwise, will relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to any such transfer, Defendant shall simultaneously: (i) provide a copy of this Consent Decree to the proposed transferee; and (ii) provide written notice of the prospective transfer and a copy of the proposed written transfer agreement to the United States and, if such Facility is located in the State of West Virginia, to the State of West Virginia, in accordance with Section XV of this Decree (Notices). Any attempt to transfer ownership or operation of any such Facility without complying with this Paragraph constitutes a violation of this Decree.

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

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

preceding, nothing in this Consent Decree is intended to preclude Defendant from bringing any action for indemnity or subrogation against those listed in the preceding sentence.

III. DEFINITIONS

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

- a. "Consent Decree" or "Decree" means this Decree;
- b. "Day" means a calendar day unless expressly stated to be a business day.

In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

- c. "Defendant" means AL Solutions, Inc.;
- d. "Deliverable" means a plan, report, or other item that Defendant submits

to the EPA pursuant to this Decree;

- e. "EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies;

- f. "Effective Date" is defined in Section XVI;

- g. "Existing Facilities" shall mean Defendant's facilities located at: (i) 1000 S. Chester Street, West Cumberland, WV ("New Cumberland Facility"); (ii) 2901 Birch Street, Weirton, WV at the Half Moon Industrial Park at ("Weirton Facility"); (iii) 1703 West Main Street, Washington, MO ("Missouri Facility"); and (iv) 541 Steubenville Pike, Burgettstown, PA ("Pennsylvania Facility");

h. “Extremely hazardous substance” or “EHS” means any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), as referenced by Section 112(r)(1), 42 U.S.C. § 7412(r)(1), or any other extremely hazardous substance within the meaning of Section 112(r)(1), 42 U.S.C. § 7412(r)(1). Extremely hazardous substances include any agent “which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity.” Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989). Titanium and Zirconium are combustible metals that can be extremely hazardous substances when they are in a “combustible form” such as dusts, powders, or other finely divided material such as fines, swarf or grindings, and when they are combustible pursuant to the test methods provided in Chapter 4 of NFPA 484, *Standard for Combustible Metals*. Neither Solid Titanium nor Solid Zirconium, each as defined herein, is an extremely hazardous substance.

i. “Facilities” shall mean Defendant’s Existing Facilities and any other facility in the United States that is owned or operated by Defendant or any subsidiary or affiliate after the Effective Date hereof. Each of the Facilities shall be referred to herein as a “Facility”;

j. “Hazard Assessment” shall mean an assessment to determine the intrinsic hazards of the materials utilized in the Processes at a facility, the risks of accidental releases from those Processes through possible release scenarios, and the potential effects of these releases on the public and the environment;

k. “High Quality Titanium Feedstock” shall mean each drum of titanium grinding and swarf at the Existing Facilities that meets all of the following parameters, on a per

drum basis: (1) titanium content is 85% or higher; (2) vanadium content is 3% or less; (3) iron content is 2% or less; and (4) undissolved grinding media and/or oil is on average 4% or less;

l. “Low Quality Titanium Feedstock” shall mean all drums of titanium grinding and swarf at the Existing Facilities that is not High Quality Titanium Feedstock;

m. “Month,” when computing any period of time under this Consent Decree, means the period between and including a date in the starting month (e.g., January 12) and the day before that date in the next calendar month (e.g., February 11);

n. “Paragraph” means a portion of this Decree identified by an Arabic numeral;

o. “Parties” means the United States on behalf of EPA, the State of West Virginia, and Defendant;

p. “Process” or “Processes” means any activity (or activities) involving titanium or zirconium, or blends or sludges containing titanium or zirconium, or any additional substance that is or contains an EHS including any use, storage, manufacturing, handling, or on-site movement of such substances or combination of these activities;

q. “Process Hazard Analysis” or “PHA” shall mean a hazard evaluation of Processes to identify, evaluate, and control hazards associated with the Processes conducted pursuant to relevant industry standards and using appropriate hazard assessment techniques;

r. “Process Hazard Analysis Facilitator” or “PHA Facilitator” shall mean a person with the requisite education, experience, and credentials to conduct a Process Hazard Analysis;

s. “Section” means a portion of this Decree identified by a Roman numeral;

t. "Solid Titanium" means titanium plates, bars, ingots, compacts and large pieces of scrap material that do not ignite, propagate combustion, or eject sparks when tested in accordance with the test methods provided in Chapter 4 of NFPA 484, *Standard for Combustible Metals*.

u. "Solid Zirconium" means zirconium plates, bars, ingots, compacts and large pieces of scrap material that do not ignite, propagate combustion, or eject sparks when tested in accordance with the test methods provided in Chapter 4 of NFPA 484, *Standard for Combustible Metals*.

v. "Storage Area" shall mean any area used for the storage of titanium or zirconium materials at any Facility;

w. "United States" means the United States of America, acting on behalf of EPA;

x. "U.S. Complaint" means the complaint filed by the United States in this action on behalf of EPA;

y. "W.V. Complaint" means the complaint filed by the State of West Virginia in this action by and through the West Virginia Department of Environmental Protection; and

z. "Year," when computing any period of time under this Consent Decree, means the period between and including a date in the starting month (e.g., January 2, 2000) and the day before that date in the next calendar year (e.g., January 1, 2001).

IV. CIVIL PENALTY

8. Based upon the Defendant's limited ability to pay, Defendant shall pay to the United States the sum of \$100,000 as a civil penalty. This payment shall be made in nine

installments, as follows: A first payment of \$5,000 shall be due to the United States within ninety (90) Days of entry of this Consent Decree. A second payment of \$5,000 shall be due to the United States within two (2) calendar months of the due date of the prior payment. A third payment of \$10,000 shall be due to the United States within three (3) calendar months of the due date of the immediately prior payment. A fourth payment of \$10,000 shall be due to the United States within three (3) calendar months of the due date of the immediately prior payment. A fifth payment of \$10,000 shall be due to the United States within three (3) calendar months of the due date of the immediately prior payment. A sixth payment of \$15,000 shall be due to the United States within one (1) calendar month of the due date of the immediately prior payment. A seventh payment of \$15,000 shall be due to the United States within two (2) calendar months of the due date of the immediately prior payment. An eighth payment of \$15,000 shall be due to the United States within three (3) calendar months of the due date of the immediately prior payment. A ninth and final payment of \$15,000 shall be due to the United States within three (3) calendar months of the due date of the immediately prior payment. Defendant may accelerate these payments. Any late payment shall include interest accruing from the date following the payment due date, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging of this Decree, and continuing to accrue until the late payment, with interest, is paid in full.

9. 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 upon Defendant’s request, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of West Virginia, U.S. Courthouse & Federal Building, Suite 3000, 1125 Chapline Street, Wheeling, WV, 26003, Phone No.: (304) 234-0100. At the time of each payment, Defendant shall send a copy of the EFT authorization form and the

EFT transaction record, together with a transmittal letter that states that the payment is for the civil penalty owed pursuant to the Consent Decree in U.S. v. AL Solutions, Inc. and references the civil action number and DOJ case number 90-5-2-1-10710, to the United States in accordance with Section XV of this Decree (Notices) by email to acctsreceivable.CINWD@epa.gov and by mail to:

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

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

V. COMPLIANCE REQUIREMENTS

11. Commencing on the Effective Date and continuing thereafter, Defendant shall comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), with respect to the Facilities by identifying hazards that may result from accidental releases of titanium, zirconium, other regulated substances, or any extremely hazardous substances; designing and maintaining safe facilities in order to prevent such releases; and minimizing the consequences of any such accidental releases that do occur.

12. Specific Requirements

a. Process Hazard Analyses and Designs. No later than sixty (60) Days after the Effective Date, Defendant shall, for all Processes that are existing, or as of the Effective Date, planned, at the Weirton Facility, the Missouri Facility, and the Pennsylvania Facility, complete a Process Hazard Analysis to identify hazards that may result from release of titanium, zirconium, or a blend or sludge that contains titanium or zirconium, or any additional substance that is or contains an EHS, and design and maintain a safe facility, taking such steps as are

necessary pursuant to the PHA to prevent releases and minimize the consequences of releases, in accordance with Paragraphs 11, 13, and 14 of this Consent Decree.

b. Subsequent Processes. For any Process at any Existing Facility, or any other Facility, initiated or re-started after the Effective Date, Defendant shall, at least sixty (60) Days prior to the commencement of any such Process, complete a PHA and implement a safe design, in accordance with Paragraphs 11, 13, and 14, herein.

c. New Titanium and Zirconium. Defendant shall not acquire any additional zirconium or any additional materials that may contain zirconium, other than Solid Zirconium, without prior written approval from EPA. Defendant shall not acquire any additional titanium or any additional materials that may contain titanium, other than Solid Titanium, until Defendant has processed into a finished product, or lawfully disposed of, at least 75 percent, by weight, of its inventory of titanium stored at the Existing Facilities as of April 30, 2013, as specified in Appendix A. No additional titanium or material that may contain titanium, other than Solid Titanium, may be transported to, stored, or processed in the State of West Virginia by Defendant, except that Defendant may (i) acquire additional High Quality Titanium Feedstock after it has utilized 60 percent, by weight, of its existing High Quality Titanium Feedstock to facilitate processing of Defendant's existing inventory of Low Quality Titanium Feedstock, in accordance with the schedule attached as Appendix C; (ii) ship titanium pucks and briquettes ("shipped product") from the Pennsylvania Facility to the New Cumberland Facility for storage, drying, packing and shipping to customers; (iii) ship one sample per lot of shipped product, weighing less than three-quarters of a pound (0.75 lbs.), of the raw material used to manufacture such lot, so that the raw material may be analyzed in the laboratory at the New Cumberland Facility; and (iv) store or process additional titanium or material that may contain titanium at a

facility in the State of West Virginia after completing a PHA for that facility and obtaining written approval from the State of West Virginia.

d. New Cumberland Facility Safety Procedures and Inspections. As of the Effective Date, Defendant shall begin to implement the Safety Procedures set forth in Appendix B at the New Cumberland Facility, and shall also:

i. At least once every seven (7) days, Defendant shall undertake an inspection to measure and record hydrogen gas levels in and around all containers holding titanium or zirconium, or blends or sludges containing titanium or zirconium, or any additional substance that is or contains an EHS that is stored indoors, in accordance with Appendix B and the manufacturer's instructions provided with the hydrogen gas detector. Defendant's weekly inspections shall also include observations of the containers and storage conditions to ensure that the containers and structures remain in good condition to adequately contain the materials stored therein.

ii. Contemporaneously with each inspection, Defendant shall complete the Inventory Safety Inspection Check Sheet, included in Appendix B. Defendant shall retain each completed check sheet in accordance with Paragraph 57 of this Consent Decree.

iii. If any hydrogen gas measurement exceeds 1,600 parts per million (ppm), or Defendant observes any condition indicating that any drum or drums may have become unstable, Defendant shall immediately undertake all necessary actions to eliminate any such instability. In addition, within twenty-four (24) hours of observing any such conditions or a hydrogen gas measurement exceeding 1,600 ppm, Defendant shall notify EPA, in accordance with Section XV, of the observation or measurement and shall provide a copy to EPA of the relevant weekly check sheet.

iv. The New Cumberland Safety Procedures and Inspections set forth in this subsection d shall remain in effect until Defendant complies with subsections e and f of this Paragraph.

e. Processing or Disposal of Existing Zirconium. Within ninety (90) Days of the Effective Date, Defendant shall transport all zirconium and materials containing zirconium located at the New Cumberland Facility to a reprocessing or disposal facility that is not owned, operated or controlled by Defendant or any affiliated entity, provided, however, that Defendant may retain at the New Cumberland Facility nine (9) drums of zirconium or materials containing zirconium that Defendant has been ordered to retain by other courts or administrative agencies as of the Effective Date. Within thirty (30) Days of the expiration of Defendant's retention obligation, Defendant shall transport the retained zirconium-containing materials for reprocessing or disposal at a facility that is not owned, operated or controlled by Defendant or any affiliated entity.

f. Processing or Disposal of Existing Titanium. New Cumberland and Weirton Facilities. Defendant shall transport titanium located at the New Cumberland and Weirton Facilities to either the Pennsylvania Facility or the Missouri Facility, for processing into a finished product to be distributed in commerce, or to another facility for reprocessing or disposal by the deadlines provided in Appendix C (the "Drawdown Schedule"). All shipments of titanium must be shipped and manifested as hazardous waste in accordance with 40 C.F.R. Part 262 Subpart B and the federally authorized hazardous waste management programs of the State of West Virginia, the State of Missouri, the Commonwealth of Pennsylvania, and/or any other receiving state, if applicable.

13. Process Hazard Analyses. For all Process Hazard Analyses conducted under this Consent Decree, Defendant shall utilize a PHA Facilitator sufficiently knowledgeable about the Processes at the Facilities to conduct adequate PHAs to identify, evaluate, and control hazards from Processes, including storage, at each Facility, especially Processes related to titanium and zirconium. The PHAs conducted pursuant to this Consent Decree shall include the following:

a. Sampling

i. Defendant shall collect or have collected previously a representative number of samples of titanium and zirconium, or blends or sludges containing either titanium or zirconium, and any additional substances that are or contain EHSs that are in a Process at each Facility. Samples shall include titanium and zirconium at representative stages of processing, including but not limited to titanium and zirconium received from suppliers, in varying forms including swarf, titanium and zirconium dust, titanium and zirconium after milling but prior to blending, titanium and zirconium after blending, and whole and broken finished pucks. The sampling required herein shall adequately account for variability in moisture content in such materials.

ii. Prior to beginning any sampling as required by this Paragraph, Defendant shall ensure that sampling events will be conducted pursuant to an adequate health and safety plan. The health and safety plan shall, among other things, provide for heat-tracing and detection of any vapors from all drums at the Facility with a forward-looking infrared camera to identify any potentially volatile material in the drums before such drums are handled for sampling.

b. Analysis. Defendant shall analyze such samples to determine the following:

- i. Ignitibility, pursuant to EPA Method 1030 and 40 C.F.R. § 261.21;
 - ii. Particle size;
 - iii. Particle surface area, by conducting Brunauer, Emmett and Teller testing (which calculates the surface area of a solid by physical absorption of gas molecules), as applicable;
 - iv. Loss on drying, by testing for moisture in solids with a Loss on Drying Analyzer;
 - v. Rate of pressure increase, pursuant to American Society for Testing and Materials (ASTM) E 1226;
 - vi. Deflagration index (Kst), pursuant to ASTM E 1226;
 - vii. Combustibility or explosivity of a metal, metal powder, or metal dust, pursuant to National Fire Protection Association (NFPA) Standard 484, as appropriate; and
 - viii. Limiting oxygen concentration, pursuant to ASTM E 2079 and ASTM WK1680.
- c. With the exception of subparagraphs (b)(i) through (b)(iv) of this Paragraph, all sampling and analysis must be consistent with NFPA Standard 484, Chapter 4, as applicable.
 - d. For all PHAs conducted after the Effective Date hereof, Defendant shall employ an International Organization for Standardization and the International Electrotechnical Commission (ISO/IEC) 17025 accredited laboratory certified by the state within which the samples are taken or approved by EPA to conduct analyses consistent with the standards set forth in subparagraphs b and c of this Paragraph.

e. The PHAs conducted by Defendant pursuant to this Paragraph shall be undertaken consistently with NFPA 484 Section 12.2.5, including periodic reviews pursuant to NFPA 484 Section 12.2.5.3. All such PHAs shall take into account the results of the sampling and analysis conducted pursuant to this Paragraph.

14. Design and Maintenance of Safe Facilities

a. Processes in Operation. Defendant shall redesign the Process for which a PHA has been completed in a manner to prevent accidental releases of titanium or zirconium or any additional substance that is or contains an EHS, and to minimize the consequences of any such accidental release that may occur, in accordance with the outcome of the PHA and applicable design standards. In addition to the standards set forth in subparagraph b below, the design shall incorporate safety measures to prevent combustion or explosion of wet combustible metals at least as protective as those measures required by NFPA Standard 484, Chapters 12 and 16. To the extent that dry combustible metals are present in a Process in operation, Defendant shall redesign the Process to incorporate measures that are at least as protective as those measures required by NFPA Chapter 484, Section 16.3. Within thirty (30) Days after the completion of a PHA for any Process in operation as of the Effective Date, Defendant shall implement the redesign required by this Paragraph.

b. All designs required by this Paragraph shall comply with the following:

i. The design of Processes and Facilities in which combustible metals are processed, stored, handled, or produced shall account for the physical and chemical properties that establish the hazardous characteristics of the materials, consistent with NFPA Standard 484, Section 4;

ii. The design shall account for the combustibility and explosivity characteristics of any intermediate or final material generated as a result of on-site processing, consistent with NFPA Standard 484, Section 16.4;

iii. The design must be in accordance with the prescriptive provisions set forth in NFPA Standard 484, Sections 12 and 16, which pertain to titanium and recycling facilities.

iv. The design must include adequate fire prevention, fire protection and emergency response measures consistent with and at least as protective as NFPA Standard 484, Chapter 15.

v. The design must be prepared by a qualified individual pursuant to NFPA Standard 484, Section 12.2.2.1.

vi. The design shall be documented along with all calculations, references, assumptions, and sources from which material characteristics and other data have been obtained or on which the designer has relied for some material aspect of the design.

vii. In the event that the design of any Process requires intrinsically safe equipment as determined by Defendant in consultation with a qualified expert, the design shall provide for intrinsically safe equipment in a manner at least as protective as NFPA Standard 70, Section 500.7(E).

c. Standard Operating Procedures. Defendant shall update and adequately implement Standard Operating Procedures (“SOPs”) to account for changes in any Facility design that occurs as a result of this Paragraph. All SOPs required by this Paragraph must be maintained in writing at the Facility where the Process is located and completed thirty (30) Days prior to commencement of a Process.

d. Except as provided in Paragraph 12.d, which applies to the existing storage at the New Cumberland Facility, all PHAs and designs that include Storage Areas shall consider, and incorporate if applicable, the following standards:

i. Adequate venting and/or roofing coverage for any drums containing titanium or zirconium.

ii. Adequate row spacing between drums to provide adequate access to inspect the drums to determine whether any drums pose a risk of fire or explosion.

iii. Limitations on the stacking of drums on top of any other drums in order to reduce the likelihood of a catastrophic release, pursuant to NFPA Standard 484, Section 16.3.7.2.2.

iv. Maintenance of a written inventory of all stored material including a unique identifier for all material in storage, as well as the source, content, specifications and acquisition date of all material in storage, and maintenance of the same documentation for all material disposed of or processed in each calendar year.

e. Training. Upon completion of any PHA under this Consent Decree, Defendant shall develop and implement a training program for employees operating such Process to provide protection consistent with NFPA Standard 484, Section 12.9.6. Such training shall be implemented at least thirty (30) Days prior to commencement of Processing.

f. Management of Change. After completion of any PHA under this Consent Decree, Defendant shall develop and implement an adequate system to manage changes in materials, technology, equipment, and procedures to provide protection equivalent to or exceeding NFPA Standard 484, Section 12.1.5. Such system shall be implemented at least thirty (30) Days prior to commencement of Processing.

g. Inspection and Maintenance. Within 120 Days of the Effective Date, or 120 Days of initiating a new Process at any Facility, Defendant shall implement a program of inspection and maintenance in accordance with NFPA Standard 484, Section 15.2.1.

h. Cleaning. Defendant shall maintain clean Facilities in at least as protective a manner as set forth in NFPA Standard 484, Sections 12.1.2 and 15.2.2.

i. Defendant shall only use spark-resistant tools, as set forth in NFPA Standard 484, Section 15.2.3.3.

15. Incident Investigation.

a. Within thirty (30) Days of the Effective Date for all existing Processes, Defendant shall develop and implement an incident prevention program under which Defendant will investigate immediately the cause of any accidental release or a threat of such accidental release. The investigation shall be documented in an incident investigation report to be kept at the Facility, and such report shall include mitigation steps necessary to prevent future similar occurrences. Defendant shall review the incident investigation reports on a quarterly basis to ensure that any new information is adequately considered and incorporated into periodic PHA reviews, changes in SOPs, and changes in operation and maintenance programs.

b. An incident investigation program as set forth in Subsection a of this Paragraph shall be implemented at least thirty (30) Days prior to commencement of new Processes.

16. Self Audit.

a. Within 100 Days of the Effective Date, Defendant shall develop and implement a self-auditing procedure of its accidental release prevention SOPs for all Processes. In developing and conducting these self audits, Defendant shall consult with an independent

third-party auditor to ensure that each self audit thoroughly and accurately evaluates the effectiveness of Defendant's accidental release prevention and mitigation procedures.

b. A self-auditing procedure as set forth in Subsection a of this Paragraph shall be implemented at least thirty (30) Days prior to commencement of any new Process not previously analyzed in connection with a PHA and design pursuant to Paragraph 12.

17. Preventive Maintenance. After completion of any PHA under this Consent Decree, Defendant shall develop a preventive maintenance program for the Process to ensure prevention of accidental releases by maintaining the mechanical integrity of the Process equipment and safety mechanisms. This program shall maintain equipment and safety mechanisms consistent with NFPA Standard 15.2.1.1 and any other industry preventive maintenance standard applicable to the Process. At a minimum, the maintenance program shall include schedules for replacement, repairs or regular maintenance of equipment, quality requirements for spare parts, installation and repair procedures, equipment testing, quality controls, replacement-in-kind controls, and maintenance enforcement procedures. Such preventive maintenance program shall be implemented at least thirty (30) Days prior to commencement of the Process.

18. Emergency Response Plans. Within thirty (30) Days of the completion of any PHA required by this Consent Decree, Defendant shall develop and implement an emergency response plan to address accidental release scenarios. The scenarios shall incorporate the circumstances of past fires and explosions at Facilities owned or operated by the Defendant.

VI. DELIVERABLES

19. Defendant shall submit to EPA for its review and approval, pursuant to Paragraph 20, the following deliverables:

- a. PHAs, pursuant to Paragraph 12;
- b. Emergency response plans, pursuant to Paragraph 18;
- c. Management-of-change procedures, pursuant to Paragraph 14.f.

VII. REVIEW OF DELIVERABLES

20. After reviewing any Deliverable, EPA shall respond in writing and:

- a. approve the Deliverable;
- b. approve the Deliverable upon specified conditions;
- c. approve part of the Deliverable and disapprove the remainder; or
- d. disapprove the Deliverable.

21. If the EPA approves a Deliverable pursuant to Paragraph 20.a, Defendant shall take all actions required by the Deliverable in accordance with its approved terms.

22. If EPA conditionally approves a Deliverable or approves a Deliverable only in part pursuant to Paragraph 20.b or .c, Defendant shall, upon written direction from EPA, take all actions required by the approved Deliverable or portions of the Deliverable, subject to Defendant's right to dispute only the conditions or the decision to disapprove portions, under Section XI of this Decree (Dispute Resolution).

23. Resubmission of Deliverables

a. If EPA disapproves a Deliverable in whole or in part pursuant to Paragraph 20.c or .d, Defendant shall, within 45 Days or such other time period to which the Parties agree in writing, correct all deficiencies and resubmit the Deliverable, or disapproved portion thereof, for approval in accordance with this Section.

b. Any stipulated penalties applicable to the original Deliverable, as provided in Section IX of this Decree, will accrue during the 45-Day period specified in the preceding

subparagraph, but will not be payable unless: (i) Defendant fails to resubmit the Deliverable within the 45-Day time period; or (ii) the original Deliverable was so deficient as to constitute a material breach of Defendant's obligations under this Decree.

c. If EPA disapproves a resubmitted Deliverable or portion thereof in whole or in part, the EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

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

VIII. REPORTING REQUIREMENTS

25. Defendant shall submit the following reports:

a. Not later than thirty (30) Days prior to the commencement of any reclamation, recycling, handling, storing or processing activity of any material containing titanium, zirconium or any other EHS at any Facility that was not occurring as of the date of lodging of this Consent Decree, Defendant shall notify EPA and the state within which such activity will occur.

b. Beginning ninety (90) Days after the Effective Date of this Consent Decree, until 360 Days after the Effective Date, Defendant shall submit electronically a quarterly report for the preceding ninety (90)-Day period that includes a summary of all actions taken pursuant to this Consent Decree for any Facility owned or operated by Defendant. Beginning after 360 Days after the Effective Date, Defendant shall submit electronically a biannual report for the preceding 180-Day period that includes a summary of all actions taken pursuant to this Consent Decree for any Facility owned or operated by Defendant. Every report submitted pursuant to this subparagraph shall also include, if completed during the reporting period, the following attachments:

- i. Designs, including design drawings, pursuant to Paragraph 14;
- ii. Safety Plans, pursuant to subparagraphs 12.d and e;
- iii. Drum inventory checklist(s), pursuant to Paragraph 12.d.ii and 14.d.iv;
- iv. Inspection records, pursuant to Paragraph 12;
- v. Standard Operating Procedures, pursuant to Paragraph 14.c;
- vi. Sampling plans, pursuant to Paragraph 13.a;
- vii. Sampling analysis, pursuant to Paragraph 13.b;
- viii. Training programs, pursuant to Paragraph 14.e;
- ix. Inspection and maintenance programs, pursuant to Paragraph 14.g;
- x. Self audits, pursuant to Paragraph 16;

c. Defendant shall continue to submit biannual reports until termination of this Consent Decree. The reports required by this subparagraph shall include an updated inventory of titanium remaining at the New Cumberland Facility as of the report date, including

specific quantities of High Quality Titanium Feedstock and Low Quality Titanium Feedstock remaining at the New Cumberland Facility as of the report date.

d. Each report must also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the reason for such failure to comply and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance in the future. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section X of this Consent Decree (Force Majeure).

26. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and the state(s) impacted by the violation or event, orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first becomes aware of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

27. Defendant shall submit all reports to the persons designated in Section XV of this Consent Decree (Notices).

28. Each report submitted under this Section and each deliverable submitted under Sections VI (Deliverables) and VII (Review of Deliverables) shall be signed by an official of the submitting party and includes 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 pursuant to Paragraph 26, above.

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

30. 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.

IX. STIPULATED PENALTIES

31. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including making any submission required by this Decree and complying with 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.

32. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

33. Compliance Milestones.

a. The following stipulated penalties will accrue per violation per Day for each violation of each requirement identified in Paragraphs 11 through 19:

| <u>Period of Noncompliance</u> | <u>Penalty per Day per Violation</u> |
|--|--------------------------------------|
| 1 st through 14 th Days | \$500 |
| 15 th through 30 th Days | \$1,000 |
| 31 st Day and beyond | \$1,500 |

34. Reporting Requirements. The following stipulated penalties will accrue per violation per Day for each violation of the reporting requirements of Section VIII of this Consent Decree:

| <u>Period of Noncompliance</u> | <u>Penalty per Day per Violation</u> |
|--|--------------------------------------|
| 1 st through 14 th Days | \$500 |
| 15 th through 30 th Days | \$1,000 |
| 31 st Day and beyond | \$1,500 |

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

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

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

38. Stipulated penalties continue to accrue, as provided in Paragraph 40, 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 EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together

with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties that the Court determines that Defendant owes, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties that the courts determine that Defendant owes, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

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

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

41. Subject to the provisions of XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree are in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Defendant

will be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

X. FORCE MAJEURE

42. “Force majeure,” for purposes of this Consent Decree, means any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any 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: (i) Defendant’s financial inability to perform any obligation under this Consent Decree, or (ii) Defendant’s failure to achieve and maintain complete compliance with all applicable federal, state, and local laws, regulations, and permits, including any permit required by any state in order to store materials at any Facility.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to Mary Hunt (email: hunt.mary@epa.gov, Fax: (215) 814-3254) within 72 hours of when Defendant first knows that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force

majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements will preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

44. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA 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 will not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

45. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

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

effects of the delay, and that Defendant complied with the requirements of Paragraphs 42 and 43, above. If Defendant carries this burden, the delay at issue will be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

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

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree must first be the subject of informal negotiations. The dispute will be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute must state clearly the matter in dispute. The period of informal negotiations may not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

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

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

51. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion must contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and must set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

53. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 51 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are

accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of 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. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 51, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

54. The invocation of dispute resolution procedures under this Section will not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter continue to accrue from the first Day of noncompliance, but payment will be stayed pending resolution of the dispute as provided in Paragraph 38. If Defendant does not prevail on the disputed issue, stipulated penalties will be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

55. The United States and its representatives, including attorneys, contractors, and consultants, are entitled to enter into any Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States maintained by the Defendant in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

56. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

57. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement applies regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

58. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States 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, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (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 Defendant. However, Defendant shall not withhold, on grounds of privilege, any documents, records, or other information created or generated pursuant to the requirements of this Consent Decree.

59. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

60. 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 of West Virginia pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

61. This Consent Decree resolves the civil claims of the United States for the violations alleged in the U.S. Complaint filed in this action, and the civil claims of the State of West Virginia alleged in the W.V. Complaint filed in this action, both through the date of lodging. Defendant provided the United States with unaudited financial statements for 2010 and 2011 and audited financial statements for 2012 (the “historical financial information”). Based on the historical financial information, the United States has determined that Defendant has a limited financial ability to pay a civil penalty. The resolution of the United States’ claims provided in this Paragraph is conditioned upon the veracity and completeness of the historical

financial information provided to the United States by Defendant. Defendant also provided future financial projections to the United States, and the United States recognizes the future projections are uncertain in nature and subject to change based on various factors that are not within Defendant's control, including market conditions, and therefore the United States is not relying on the future projections. If the historical financial information provided by Defendant is subsequently determined, in any material respect, to be false or inaccurate, Defendant shall forfeit all payments made pursuant to this Consent Decree and the resolution of claims provided in this Paragraph shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Defendant's false or materially inaccurate information. The resolution of claims provided in this Paragraph extends only to Defendant and does not extend to any other person.

62. The United States and the State of West Virginia reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 61. This Consent Decree does not limit the rights of the United States or the State of West Virginia to obtain penalties or injunctive relief under the CAA or implementing regulations; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or implementing regulations; the West Virginia Hazardous Waste Management Act, W.V. Code §§ 22-18-1 to -25 and the rules promulgated thereto, namely, the "Hazardous Waste Management Rule," 33 C.S.R. §§ 10.1. to 10.15.1.; the West Virginia Solid Waste Management Act, W.V. Code §§ 22-15-1 to -22; the Solid Waste Management Rule, 33 C.S.R. §§ 1.1 to 7.8(a).; and principles of common law nuisance, or under any other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 61. The United States and the State of West Virginia further reserve all legal and equitable remedies to address any imminent and

substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

63. In any subsequent administrative or judicial proceeding initiated by the United States or the State of West Virginia for injunctive relief, civil penalties, other appropriate relief relating to a Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State of West Virginia in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 61 of this Section.

64. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree is not a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State of West Virginia do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, or with any other provisions of federal, state, or local laws, regulations, or permits.

65. This Consent Decree does not limit or affect the rights of Defendant or of the United States or of the State of West Virginia against any third parties, not party to this Consent

Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

66. This Consent Decree does not create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. COSTS

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

XV. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-10710

To the EPA:

Mary Hunt
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Mail Code 3HS61
Philadelphia, PA 19103
Hunt.Mary@epa.gov

To the State of West Virginia:

Chief Inspector
Environmental Enforcement – Mail Code #031328
W.V. Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Mark J. Rudolph
Senior Counsel
Office of Legal Services
W.V. Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

To the Defendant:

Bill Mattes
Dinsmore & Shohl LLP
191 West Nationwide Blvd
Suite 300
Columbus, OH 43215
bill.mattes@dinsmore.com

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

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

XVI. EFFECTIVE DATE

71. The Effective Date of this Consent Decree is 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.

XVII. RETENTION OF JURISDICTION

72. The Court retains 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 XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

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

74. Any disputes concerning modification of this Decree will be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 53, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

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

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

77. If the United States, after consultation with the State of West Virginia, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 49 of Section XI, until ninety (90) Days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

78. This Consent Decree will 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. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

79. Each undersigned representative of each Party 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.

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

XXII. INTEGRATION

81. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor may it be used in construing the terms of this Decree.

XXIII. FINAL JUDGMENT

82. Upon approval and entry of this Consent Decree by the Court, this Consent Decree constitutes a final judgment of the Court as to the United States, the State of West Virginia, and Defendant. 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.

XXIV. APPENDICES

- Appendix A: Existing Titanium Inventory as of April 30, 2013
- Appendix B: Safety Procedures
- Appendix C: Existing Titanium Drawdown Schedule

SO ORDERED THIS _____ DAY OF _____, 20__

UNITED STATES DISTRICT JUDGE
Northern District of West Virginia

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

MARCELLO MOLLO
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Phone: (202) 514-2757
Facsimile: (202) 514-0097
marcello.mollo@usdoj.gov

FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF
ENFORCEMENT AND COMPLIANCE ASSURANCE:

Date:

ROSEMARIE A. KELLEY
Director, Waste and Chemical Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Date:

DEAN B. ZIEGEL
Attorney-Advisor
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III:

Date:

SHAWN M. GARVIN
Regional Administrator
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date:

MARCIA E. MULKEY
Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date:

JAMES F. VAN ORDEN
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FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII:

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FOR PLAINTIFF STATE OF WEST VIRGINIA:

Date: _____

FOR DEFENDANT AL SOLUTIONS, INC.:

Date:



FRANK T. ROBERTS JR.
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Agent for service of process:

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Appendix A Existing Titanium Inventory as of April 30, 2013

| In New Cumberland WV Type | Drums | Pounds |
|------------------------------|--------------|------------------|
| High Titanium Feedstock | 6,784 | 1,224,192 |
| Low Titanium Feedstock | 2,665 | 525,367 |
| Total | 9,449 | 1,749,559 |

| In Hanover Township, PA Type | Drums | Pounds |
|---------------------------------|------------|---------------|
| High Titanium Feedstock | 136 | 42,583 |
| Low Titanium Feedstock | - | - |
| Total | 136 | 42,583 |

| Total Inventory Type | Drums | Pounds |
|-------------------------|--------------|------------------|
| High Titanium Feedstock | 6,920 | 1,266,775 |
| Low Titanium Feedstock | 2,665 | 525,367 |
| Total | 9,585 | 1,792,142 |

Appendix B: Inventory Safety Procedures

1.0 Purpose

The purpose of this procedure is to outline the inspection of inventory stored at the New Cumberland, West Virginia facility.

2.0 Applicable Documents

Inventory Safety Inspection Check Sheet
Inventory Inspection Map

3.0 Precautions

- 3.1** Titanium and zirconium are flammable solids, especially when dry and in powder form.
- 3.2** The Lower Explosive Limit (LEL) of hydrogen gas in air is 4.1% (41,000 ppm).
- 3.3** The Drager fixed/mounted hydrogen gas detector level 1 alarm is set at 4% LEL (0.164%) hydrogen.
- 3.4** The Drager fixed/mounted hydrogen gas detector level 2 alarm is set at 20 % LEL (0.82%) hydrogen.
- 3.5** The hydrogen gas detectors shall be maintained and operated in accordance with a plan that ensures calibration

4.0 Equipment

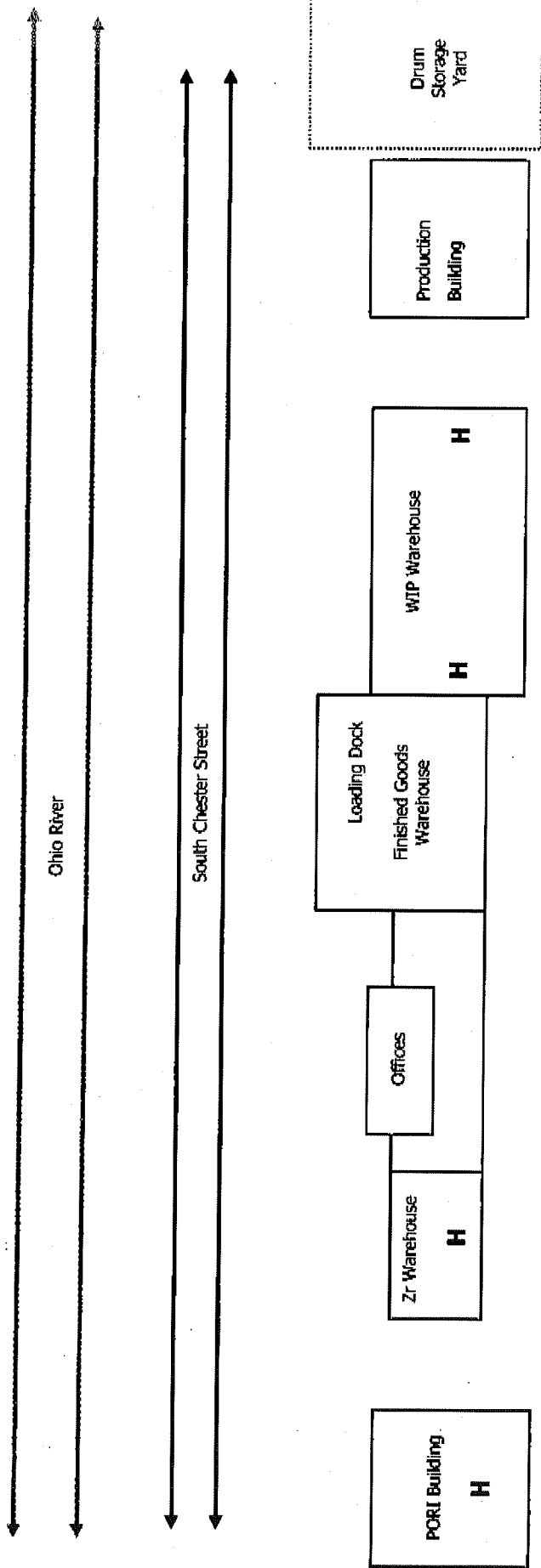
Inventory Safety Inspection Check Sheet
Inventory Inspection Map
Drager fixed/mounted Hydrogen Gas Detector

5.0 Inspection Procedure

- A.** Beginning with the PORI building, inspect all rows for drum integrity and leaks. If unsatisfactory drums or leaks are found, make note of the row and stack location and severity on the Inventory Safety Inspection Check Sheet.
- B.** In each indoor storage area, record the hydrogen level indicated on the Drager hydrogen detector display
- C.** Proceed to the Main Warehouse and begin checking drums and hydrogen levels according to the designated areas on the Inventory Inspection Map. The order of areas inspected should be as follows:
 - i. Pori Building
 - ii. Zr Warehouse
 - iii. Finished Goods Warehouse
 - iv. WIP Warehouse
- D.** Once all of the designated warehouse areas have been inspected, proceed to the Drum Storage Yard and check the condition of the drums.
- E.** Once the Inventory Safety Inspection Check sheet has been completed, it must be given to management to review and determine if any corrective actions are necessary.

AI Solutions, Inc.
New Cumberland, WV

Inventory Inspection Map



H - Designates elevated Hydrogen readings

| Date of Inspection | Inspected By | | | |
|---|--------------|-------|--|--|
| PORI Building | | | | |
| Drum Condition Satisfactory (Y/N) | | | | |
| Leaking Drums (Y/N) | | | | |
| Location of Unsatisfactory/Leaking Drums | | | | |
| H ₂ Reading | | % LEL | | |
| Zr Warehouse | | | | |
| Drum Condition Satisfactory (Y/N) | | | | |
| Leaking Drums (Y/N) | | | | |
| Location of Unsatisfactory/Leaking Drums | | | | |
| H ₂ Reading | | % LEL | | |
| Office Area Warehouse (NO DRUM STORAGE) | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Finished Goods Warehouse (NO DRUM STORAGE) | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| WIP Warehouse | | | | |
| Drum Condition Satisfactory (Y/N) | | | | |
| Leaking Drums (Y/N) | | | | |
| Location of Unsatisfactory/Leaking Drums | | | | |
| H ₂ Reading (South) | | % LEL | | |
| H ₂ Reading (North) | | % LEL | | |
| Drum Storage Yard | | | | |
| Drum Condition Satisfactory (Y/N) | | | | |
| Leaking Drums (Y/N) | | | | |
| Location of Unsatisfactory/Leaking Drums | | | | |

Reviewed By: _____

Date: _____

Appendix C Existing Titanium in New Cumberland WV Drawdown Schedule

| | DRUMS High Titanium | POUNDS High Titanium | DRUMS Low Titanium | POUNDS Low Titanium | TOTAL DRUMS Titanium | TOTAL POUNDS Titanium |
|--------------------|------------------------|-------------------------|-----------------------|------------------------|----------------------------|-----------------------------|
| June 30, 2013 | 5,876 | 994,447 | 2,583 | 500,208 | 8,459 | 1,494,655 |
| September 30, 2013 | 4,616 | 669,369 | 2,437 | 462,232 | 7,053 | 1,131,601 |
| December 31, 2013 | 1,275 | 345,525 | 2,255 | 433,003 | 3,530 | 778,528 |
| March 31, 2014 | 65 | 26,815 | 2,079 | 401,068 | 2,144 | 427,883 |
| June 30, 2014 | - | - | 1,802 | 337,949 | 1,802 | 337,949 |
| September 30, 2014 | - | - | 1,683 | 327,921 | 1,683 | 327,921 |
| December 31, 2014 | - | - | - | - | - | - |