

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA, and the )  
PENNSYLVANIA DEPARTMENT OF )  
ENVIRONMENTAL PROTECTION )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
LIBERTAS COPPER, LLC, d/b/a )  
HUSSEY COPPER, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No.  
2:21-cv-01016-WSS

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**CONSENT DECREE**

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## I. INTRODUCTION

A. Plaintiffs the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania, Department of Environmental Protection (“PADEP”), have filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, Libertas Copper, LLC, d/b/a Hussey Copper (“Libertas Copper”), violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a); Sections 301 and 307 of the Pennsylvania Clean Streams Law (“PCSL”), 35 P.S. §§ 691.301 and 691.307; and the conditions and limitations of a National Pollutant Discharge Elimination System (“NPDES”) permit issued to Defendant pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and Section 307 of the PCSL, 35 P.S. § 691.307.

B. The Complaint against Defendant alleges that between 2011 and 2020, Libertas Copper discharged wastewater and storm water containing pollutants—including copper, chromium, nickel, oil and grease, lead, pH, total suspended solids, and zinc—to the Ohio River from its Leetsdale, Pennsylvania, copper smelting facility (the “Facility”) in violation of the CWA, the PCSL, and the terms of Defendant’s NPDES Permit (Permit No. PA0000566).

C. Following inspections by Plaintiffs and further investigation by Defendant, Defendant identified the need for and installed equipment and instituted procedures to improve its compliance with the CWA and PCSL. These measures include the following:

- Installation of a new controller for lime additions to improve the copper precipitation efficiency in the neutralization tank;
- Installation of copper-reclaim systems for the annealing line acid tanks, reducing the frequency that acid is transmitted to the Wastewater Treatment Plant;

- Revisions to standard operating procedures for annealing lines to segregate overflows from acid tanks, to prevent stressors on the Wastewater Treatment Plant;
- Updates to the lime feeder system to prevent control valves from freezing in the “open” position;
- Implementation of a system to pre-treat annealing line acid discharges; and
- Modifications to personnel, operations, monitoring, and recordkeeping processes.

Though these measures have reduced the frequency of violations at the Facility, additional violations have occurred since implementing these measures.

D. Defendant does not admit any liability to the United States or PADEP arising out of the transactions or occurrences alleged in the Complaint.

E. 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 II (Jurisdiction and Venue), with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## **II. 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 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims alleged in the Complaint pursuant to 28 U.S.C. § 1367(a). Venue lies in this District pursuant to Section 309(b)

of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because it is the judicial district in which Defendant is doing business and in which the violations alleged in the Complaint occurred. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and Sections 601 and 605 of the PCSL, 35 P.S. §§ 691.601 and 691.605.

### **III. APPLICABILITY**

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

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by Section VI (Compliance Requirements) and Section VII (Reporting Requirements) of this Decree and to be substituted for the Defendant as a Party under the Decree and thus be bound by the terms thereof, and (2) the United States, after consultation with PADEP, consents to relieve Defendant of its obligations. The United States' decision to refuse to approve the substitution of the transferee for the Defendant shall not be subject to judicial review. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the

prospective transfer, together with a copy of the proposed written agreement, to Plaintiffs in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

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

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

#### **IV. DEFINITIONS**

7. Terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated pursuant to the CWA, have the meanings assigned to them in the CWA 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. “Complaint” means the complaint filed by the United States and PADEP in this action.
- b. “Consent Decree” or “Decree” means this Decree and all appendices attached hereto (listed in Section XXIV).
- c. “Critical Operating Variables” means operating variables that are critical to effective collection, pretreatment, and treatment of wastewater to ensure permit compliance. Critical Operating Variables shall include, but not be

limited to, variables within the following categories: pretreatment and treatment system equipment and instrumentation (such as neutralization tank and lime delivery systems), chemical additives (such as flocculant), water quality parameters (such as pH, flow, and total solids), and maintenance indicators (such as instrumentation and concentration of lime solidification on pH probes).

- d. “Daily Violation” means: (i) any exceedance of a maximum daily discharge limitation, as identified by a DMR Sample, for any parameters set forth in an NPDES permit applicable to the Facility, (ii) any failure to attain a minimum daily discharge limitation for pH, as identified by a DMR Sample, set forth in an NPDES permit applicable to the Facility, or (iii) any discharge of oil and grease in an amount that causes a film or sheen upon or discoloration of the receiving waters.
- e. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.
- f. “Defendant” or “Libertas Copper” means Libertas Copper, LLC, d/b/a Hussey Copper.
- g. “Diagnostic Sampling” means sampling to determine necessary treatment measures and/or to evaluate the effectiveness of response actions taken. Such sampling of discharges need not occur at the location designated for required sampling pursuant to the respective permit or be taken in accordance with

- approved test procedures under 40 C.F.R. Part 136.
- h. “Discharge Monitoring Report Sample” or “DMR Sample” means a sample required to be taken under an NPDES permit or any sample that is taken in accordance with approved test procedures under 40 C.F.R. Part 136.
  - i. “DOJ” means the United States Department of Justice and any of its successor departments or agencies.
  - j. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.
  - k. “Effective Date” means the definition provided in Section XV.
  - l. “Effluent Limit Violation” means a Daily Violation or a Monthly Violation.
  - m. “EMS Audit” means the audit conducted by the EMS Auditor pursuant to Section VI.I (EMS Audit) of this Consent Decree.
  - n. “EMS Auditor” means the independent third-party environmental consultant approved pursuant to Section VI.B (Requirements for Third-Party Consultants), who is contracted by Defendant to conduct the EMS Audit pursuant to this Consent Decree.
  - o. “EMS Audit Report” means the report developed by the EMS Auditor after completion of the EMS Audit pursuant to Section VI.I (EMS Audit) of this Consent Decree.
  - p. “EMS Consultant” means the independent third-party environmental consultant approved pursuant to Section VI.B (Requirements for Third-Party Consultants), who is contracted by Defendant to perform the Initial EMS Review and Evaluation and assist the Defendant in developing and



implementing the EMS required by this Consent Decree.

- q. “EMS Criteria” means the required EMS elements set forth in Paragraph 42.
- r. “EMS Manual” means the document that describes and documents the integrated EMS developed for Defendant pursuant to Section VI.H (EMS) of this Consent Decree, and any revisions thereto.
- s. “Environmental Audit Report” or “EA Report” means the report developed by the Environmental Auditor after completion of the Environmental Audit pursuant to Section VI.D (Third-Party Environmental Audit) of this Consent Decree.
- t. “Environmental Auditor” means the independent third-party environmental consultant approved pursuant to Section VI.B (Requirements for Third-Party Consultants), who is contracted by Defendant to conduct the Third-Party Environmental Audit pursuant to this Consent Decree.
- u. “Environmental Management System” or “EMS” refers to the integrated environmental compliance system created by Defendant and its EMS Consultant and approved by EPA pursuant to this Decree to standardize and formalize practices and programs used to maintain, track, and improve environmental performance.
- v. “Facility” means Defendant’s copper melting and rolling facility located at 100 Washington Street, Leetsdale, Pennsylvania.
- w. “Monthly Violation” means any exceedance, as determined by a DMR Sample, of an average monthly discharge limitation for any parameters set forth in an NPDES permit applicable to the Facility.

- x. “NPDES” means the National Pollutant Discharge Elimination System defined in 40 C.F.R. § 122.2, applicable state regulations and any State-issued NPDES permit.
- y. “PADEP” means the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth of Pennsylvania.
- z. “Paragraph” means a portion of this Decree identified by an Arabic numeral.
- aa. “Parties” means the United States, PADEP, and Defendant.
- bb. “Plaintiffs” means the United States and PADEP.
- cc. “Section” means a portion of this Decree identified by a Roman numeral.
- dd. “Third-Party Consultant” means the Environmental Auditor, EMS Consultant, or the EMS Auditor.
- ee. “Third-Party Environmental Audit” or “Environmental Audit” or “EA” means the EA required by Section VI.D (Third-Party Environmental Audit) of this Consent Decree.
- ff. “United States” means the United States of America, acting on behalf of EPA.
- gg. “Wastewater Treatment Plant” or “WWTP” means the Facility’s onsite plant for treating wastewater generated at the Facility. The WWTP includes, but is not limited to, the Facility’s upstream pretreatment and containment systems, lime slurry tank, neutralization tank, coagulant system, polymer system, flocculation tank, clarifiers, filter press, oil skim tank, and Mycelx oil removal unit.

**V. CIVIL PENALTY**

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$861,500 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. \$430,750 of the civil penalty shall be paid to the United States, and \$430,750 of the civil penalty shall be paid to PADEP.

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

John M Harrington  
100 Washington St  
Leetsdale, Pa 15056-1000  
1-724-251-4251  
jharrington@husseycopper.com

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

At the time of payment, Defendant shall send notice that payment has been made to: (i) EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) DOJ via email or regular mail in accordance with Section XIV; and (iii) EPA via email to the U.S. EPA Regional Hearing

Clerk at R3\_Hearing\_Clerk@epa.gov. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*, and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-1-1-12068.

11. Defendant shall pay the civil penalty due to PADEP by corporate check or the like made payable to the Commonwealth of Pennsylvania, Clean Water Fund. All checks shall be sent to the Compliance Specialist, Clean Water Program, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

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

## **VI. COMPLIANCE REQUIREMENTS**

### **A. General Compliance Requirements**

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

14. If the submission is approved pursuant to Paragraph 13(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 13(b) or (c), Defendant shall, upon written direction from EPA, after consultation with PADEP, take all actions required

by the approved plan, report, or other item that EPA, after consultation with PADEP, determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

15. If the submission is disapproved in whole or in part pursuant to Paragraph 13(c) or (d), Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

16. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with PADEP, 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 and PADEP to seek stipulated penalties as provided in the preceding Paragraphs.

17. If Defendant elects to invoke Dispute Resolution as set forth in Paragraphs 14 or 16, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 77 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

18. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Consent Decree, accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach

of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

19. Permits. Where any compliance obligation under this Section 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. Defendant may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

20. No later than 10 Days from the Effective Date, Defendant shall submit to EPA and PADEP for review a list of deadlines included in this Consent Decree. The list shall be in substantially the same form as Appendix A, and shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the Parties). Within 30 Days of modification of any deadline under this Consent Decree, Defendant shall provide an updated list reflecting changes to the future schedule.

**B. Requirements for Third-Party Consultants**

21. Defendant shall pay all costs of and cooperate fully with Third-Party Consultants. Defendant shall provide each Third-Party Consultant access to all records, personnel, and parts of the Facility that the Third-Party Consultant deems reasonably necessary to effectively perform its duties under the Consent Decree.

22. Entities serving as Third-Party Consultants shall function independently of Defendant and shall exercise independent judgment to ensure that the objectives of the applicable Consent Decree requirements are met.

23. Third-Party Consultants may not have: (a) any financial stake in the outcome of the inspection, testing, or audit conducted under the terms of this Decree, (b) ownership interest in Defendant or in the Facility, or (c) any ongoing contractual or financial relationship with Defendant or any entity related to Defendant unless expressly disclosed to and approved by EPA, after consultation with PADEP. Defendant shall notify EPA and PADEP if any contractual relationships or proposed contractual relationships between Defendant or any entity related to Defendant and a Third-Party Consultant arise during the term of the Consent Decree. Unless expressly disclosed to and approved by EPA, after consultation with PADEP, Defendant shall not employ, retain, or otherwise be affiliated with the Third-Party Consultants or professionals retained by them during their engagement pursuant to this Decree, for a period of at least one year from the date of the termination of the engagement.

24. Qualifications. The Third-Party Consultants must have adequate staff to perform the relevant requirements. The knowledge, skills, and abilities of the Third-Party Consultants and their staff must align with the criteria of the applicable Consent Decree requirements. In addition, the following criteria shall apply:

- a. *Environmental Auditor*. Environmental auditors must be qualified to conduct an environmental audit and have experience in performing environmental audits. The team proposed to conduct the EA must, in composite, have a working process knowledge of Defendant's operations or similar operations, and expertise and competence in the applicable regulatory programs under

federal and state environmental laws.

- b. *EMS Consultant.* The EMS Consultant shall have experience in developing and implementing an EMS. The proposed team must, in composite, have a working process knowledge of the Facility and expertise and competence in the applicable regulatory programs under federal and state environmental laws.
- c. *EMS Auditor.* The EMS Auditor must meet the EMS Consultant qualification requirements in Paragraph 24.b. In addition, the EMS Auditor must meet the EMS auditor qualification requirements in Table 1 in ISO 19011 (First Edition, 2002-10-01). The EMS Auditor cannot be the same person or entity as the EMS Consultant.

25. Selection of EMS Consultant. Defendant has retained and EPA, after consultation with PADEP, has approved an EMS Consultant to complete the applicable duties of Section VI.H (EMS) of this Decree.

26. Selection of Third-Party Consultants. The following requirements apply to the selection of the Environmental Auditor, the EMS Auditor, and, if at any time Defendant seeks to replace the EMS Consultant, the replacement EMS Consultant.

- a. Within 30 Days of the Effective Date, Defendant shall submit to EPA and PADEP a list of at least three qualified candidates for Environmental Auditor. Within 30 Days of the approval of the EMS Manual, Defendant shall submit to EPA and PADEP a list of at least three qualified candidates for EMS Auditor. If Defendant seeks to replace the EMS Consultant, then within 30 Days of the decision to replace the EMS Consultant, Defendant shall submit



to EPA and PADEP a list of at least three qualified candidates for the replacement EMS Consultant. The lists shall include: (i) name, affiliation, and address of the proposed Third-Party Consultant, (ii) information demonstrating how each proposed Third-Party Consultant satisfies the applicable requirements in Paragraphs 22-24, and (iii) any current or previous work, contractual, or financial relationships with Defendant or any entity related to Defendant.

- b. EPA, in consultation with PADEP, shall notify Defendant as to whether it approves any consultant(s) on the lists submitted by Defendant. If EPA, after consultation with PADEP, does not approve any of the proposed consultants on a list, then Defendant shall submit another list of proposed consultants to EPA and PADEP within 30 Days of receipt of EPA's written notice of disapproval.
- c. If, after Defendant has submitted a third list of consultants, which must be submitted within 30 Days of receipt of written notice that EPA has not approved any of the consultants on Defendant's second list, the Parties are unable to agree on a Third-Party Consultant, the Parties agree to resolve the selection of the Third-Party Consultant through the Dispute Resolution process in Section X (Dispute Resolution) of this Consent Decree.

### **C. Operations and Maintenance**

27. Critical Operating Variables Analysis. Within 60 Days of the Effective Date, Defendant shall conduct a comprehensive review of the WWTP and associated operations and maintenance practices to: (a) identify Critical Operating Variables; (b) determine acceptable

operating ranges for the Critical Operating Variables, taking into account trends in wastewater influent and effluent quality, treatment unit performance efficiencies, chemical additions, and overall permit compliance, among any other relevant data; and (c) develop recommendations for operations and maintenance practices to ensure performance within acceptable operating ranges. Defendant shall document the results of the analysis in a report, to be submitted with the next semi-annual report due after its completion.

28. Within 90 Days of the Effective Date, Defendant shall develop, or revise as appropriate, and implement the following operational documents based on the results of the Critical Operating Variables Analysis:

- a. *Process Control Plan*. The process control plan shall include a detailed action sequence for wastewater flow, management, and treatment; describe the acceptable operating ranges for Critical Operating Variables in each of the operational units; provide specific guidance on how to evaluate and adjust operations based on likely variations in operational conditions; and provide references to applicable standard operating procedures (“SOPs”) and operations logs for each operational unit.
- b. *Process Control Sheets*. The process control sheets shall document the impact of specific changes to Critical Operating Variables in one operational unit on downstream operational units.
- c. *SOPs*. The SOPs shall be updated to reflect current treatment technologies and instrumentation, shall include backup procedures for solids management in the event of a filter press failure or unplanned maintenance, and shall otherwise incorporate recommendations from the Critical Operating Variables Analysis.

- d. *Operational Logs.* The operational logs shall be modified to ensure collection of data relating to Critical Operating Variables so that the level and frequency of intervention can be modified as appropriate.

29. Defendant shall regularly review, and update as needed, the operational documents implemented pursuant to Paragraph 28 to support optimal operations of the WWTP. Defendant shall conduct formal process control plan reviews monthly for the first year following the revision of the EMS Manual and quarterly thereafter.

30. Maintenance Program. Within 90 Days of the Effective Date, Defendant shall create and implement a formal maintenance program to support all equipment and instrumentation identified as critical in the process control plan. As part of the maintenance program, Defendant shall require and maintain documentation of preventive maintenance protocols and schedules, the specific corrective or preventive maintenance action taken, root cause analysis of the need for corrective maintenance, and any associated recommendations for adjustments to operations and maintenance practices to ensure optimal performance.

31. Additional Operations Requirements. Within 5 Days of completion of the Critical Operating Variables Analysis, Defendant shall post, adjacent to meters, collection sumps, treatment units, and alarms, bullet summaries of the operational ranges of critical water quality parameters (e.g., pH, flow, total solids).

#### **D. Third-Party Environmental Audit**

32. Defendant shall contract with an Environmental Auditor to conduct a Third-Party Environmental Audit at the Facility to evaluate compliance with all applicable NPDES permits and environmental law. The Environmental Audit shall be completed within 270 Days of EPA's

approval of the selection of the Environmental Auditor pursuant to Paragraph 26, and shall be completed in accordance with acceptable environmental auditing standards.

33. The Environmental Auditor shall prepare an EA Report detailing the results of the Environmental Audit, including, at a minimum: (a) the environmental audit process and protocols followed; (b) the sites and locations audited; (c) the files reviewed; (d) any data or samples obtained; (e) individuals interviewed; (f) all areas of non-compliance and concern; (g) recommendations; and (h) a plan and schedule to correct any non-compliance or area of concern identified. The Environmental Auditor shall provide the report in draft form simultaneously to EPA, PADEP, and the Defendant no later than 60 Days after completion of the Environmental Audit. The Parties shall have an opportunity to review and comment on the draft EA Report within 60 Days of receipt from the Environmental Auditor. Within 30 Days of receiving comments from the Parties, the Environmental Auditor shall finalize the report and provide it simultaneously to EPA, PADEP, and the Defendant, for EPA's approval, after consultation with PADEP.

34. Defendant shall fully address and correct any non-compliance or areas of concern identified by the final EA Report as expeditiously as possible and in no event later than 270 Days after EPA approves the final EA Report, unless an extension of time is granted by EPA in writing, after consultation with PADEP.

#### **E. Internal Environmental Inspections**

35. Defendant shall implement an Internal Environmental Inspection Process ("IEIP") at the Facility. Beginning with the first full calendar month after lodging of this Consent Decree, the IEIP shall require a monthly inspection (the "IE Inspection") that includes, at a minimum, NPDES permitted treatment systems, outfalls and associated collection and conveyance systems,

and associated documents. IE Inspections required by this Section may be conducted by Defendant.

36. IE Inspections shall be conducted pursuant to a checklist created by the Defendant, which shall include, at a minimum, entries for whether:

- a. treatment systems are in good repair;
- b. treatment systems are being properly maintained;
- c. paperwork and reports are being maintained;
- d. required monitoring under applicable environmental law has been conducted;
- e. required notifications have been made as required under applicable environmental law;
- f. any limitation under any applicable NPDES permit, the CWA, or the PCSL has been exceeded during the prior month; and
- g. facilities are being operated by properly trained operators.

The IE Inspection Checklist shall be completed at the time of each inspection and signed by the individual(s) completing the inspection.

37. Defendant shall submit an IEIP Report with the semi-annual reports required by Paragraph 52. Each IEIP Report shall:

- a. summarize the results of the IE Inspections for the previous reporting period, including any noncompliances with any environmental law or other areas of concern identified;
- b. summarize actions taken in response to any noncompliances or areas of concern identified by the IE Inspections, including dates completed or deadlines for completion of any ongoing actions; and

- c. include copies of all completed IE Inspection Checklists for the previous reporting period.

#### **F. Violation Response**

38. Upon the Effective Date, Defendant shall implement a response plan for Effluent Limit Violations, which shall provide for investigation of Effluent Limit Violations and implementation of actions necessary to achieve compliance with the applicable NPDES permit limits. This response plan shall include, at a minimum, the following for all outfalls:

- a. Daily Violation Response

- i. Upon notification of a Daily Violation at the Facility, Defendant shall immediately investigate and correct the cause of the violation using such tools as enhanced monitoring of the conditions at the outfall, Diagnostic Sampling, and supplemental treatment of wastewater as needed. Defendant shall continue its investigative and corrective actions until one compliant DMR Sample result for that parameter is achieved at the outfall, or for a discharge of oil and grease in an amount that causes a film or sheen upon or discoloration of the receiving waters, until there are 7 consecutive Days of no observed film, sheen, or discoloration.

- ii. Upon notification of the second and any subsequent Daily Violation of the same parameter at the same outfall within three months of a previous violation, Defendant shall consult with an individual with substantial expertise in Clean Water Act compliance and in treatment systems for and control of the relevant parameter and implement

measures recommended by that individual. In addition, Defendant shall continue enhanced monitoring and Diagnostic Sampling until two consecutive daily compliant DMR Sample results for that parameter are achieved at the outfall, or for a discharge of oil and grease in an amount that causes a film or sheen upon or discoloration of the receiving waters, until there are 10 consecutive Days of no observed film, sheen, or discoloration.

b. Monthly Violation Response

- i. Upon notification of a Monthly Violation, Defendant shall immediately investigate and correct the cause of the violation using such tools as enhanced monitoring of the conditions at the outfall, Diagnostic Sampling, and supplemental treatment of wastewater as needed. Defendant shall continue its investigative and corrective actions until the outfall meets the monthly average effluent limit.
- ii. Upon notification of the second and any subsequent consecutive Monthly Violation of the same parameter at the same outfall, Defendant shall consult with an individual with substantial expertise in Clean Water Act compliance and in treatment systems for and control of the relevant parameter and implement measures recommended by that individual. In addition, Defendant shall continue enhanced monitoring and Diagnostic Sampling until the outfall meets the monthly average effluent limit for two consecutive months.

### **G. Training**

39. Defendant shall conduct annual formal training of all employees with environmental responsibilities at the Facility on: (a) CWA and PCSL compliance, (b) requirements in the EMS Manual, and (c) obligations in this Consent Decree. Defendant shall conduct annual formal training for all independent contractors and onsite laboratory personnel on applicable requirements under this Consent Decree and/or any applicable requirements in the EMS Manual.

40. All training under Paragraph 39 shall be documented with the date of training, signatures of attendees, a summary of training topics, and copies of training materials. Such documentation shall be submitted to EPA and PADEP upon request.

### **H. EMS**

41. Defendant has developed a Facility-wide EMS, embodied in an EMS Manual. Defendant shall review, revise, implement, and maintain the EMS at the Facility in accordance with the requirements of this Consent Decree.

42. EMS Criteria. The EMS must contain each of the elements set forth in Appendix B, “Compliance Focused Environmental Management System Elements” and include:

- a. A plan for achieving and maintaining compliance with the CWA, PCSL, and other applicable environmental regulations;
- b. Procedures for root-cause analysis of any non-compliance;
- c. Procedures for implementation of Consent Decree requirements;
- d. An environmental record keeping procedure for the Facility, which at a minimum will include:
  - i. An organization chart by job title identifying all personnel, whether



employed directly or as a contractor, with any responsibility or role related to environmental compliance, including a statement of such role and responsibility;

- ii. All maintenance records;
  - iii. All records of corrective actions taken to ensure compliance;
  - iv. Process control plan, process control sheets, operations logs, SOPs, and operating maintenance manuals;
  - v. All reports and records required by this Consent Decree; and
  - vi. Any other records required to be maintained pursuant to the CWA, PCSL, and other applicable environmental laws; and
- e. A procedure for amending and updating the EMS, as necessary.

43. Within 90 Days of the Effective Date, Defendant shall ensure that the EMS Consultant: (a) conducts an initial review and evaluation of Defendant's EMS to identify where systems or subsystems have not been adequately developed or implemented, or need to be enhanced, or new management systems or subsystems need to be developed to adequately address the EMS Criteria, and (b) provides a report of the results to Defendant. This report, and all drafts, data, and analysis created in preparation of the report shall also be provided to EPA and PADEP, upon request.

44. Based on the initial review and evaluation results, the requirements of this Consent Decree, and any other relevant information, Defendant, assisted by the EMS Consultant, shall modify the existing EMS or develop a new EMS. Within 90 Days of completion of the initial review and evaluation, Defendant shall submit to EPA and PADEP for review and approval by EPA, after consultation with PADEP, an EMS Manual that describes and documents

the integrated EMS developed pursuant to this Paragraph. The EMS Manual shall describe or contain, as appropriate, overarching policies, procedures, and programs that comprise the EMS framework, and respective management systems, subsystems, and tasks for the elements listed in Appendix B. The EMS Manual shall contain a schedule for each of the described systems and subsystems not already fully implemented and a final deadline to fully implement the EMS.

45. Upon Defendant's receipt of EPA's approval of the EMS Manual, Defendant, assisted by the EMS Consultant, shall commence implementation of the EMS in accordance with the schedule contained in the EMS Manual and shall ensure that a copy of the EMS Manual is made available to anyone with responsibilities at the Facility.

46. On an annual basis beginning one year after the approval of the EMS Manual until termination of this Consent Decree, managers responsible for environmental compliance at the Facility shall certify compliance with the approved EMS Manual or, for any noncompliance, shall submit in the annual certification an explanation of the cause of the noncompliance, remedial steps to be taken, and a date for achieving compliance.

47. Revisions of the EMS Manual. Any material revisions to the EMS Manual subsequent to its initial approval must be submitted to EPA and PADEP for review and approval by EPA, after consultation with PADEP.

#### **I. EMS Audit**

48. EMS Audit. Defendant shall ensure that the EMS Auditor conducts an EMS Audit for Defendant's Facility no sooner than 270 Days and no later than 545 Days after the approval of the EMS Manual. The EMS Audit shall evaluate the adequacy of EMS implementation relative to the EMS Manual and the EMS Criteria, and identify areas of concern, from top management down, throughout each major organizational unit with responsibilities under the

EMS Manual. The EMS Audit shall be conducted in accordance with ISO 19011 (First Edition, 2002-10-01), and shall determine the following:

- a. Whether there is a defined system, subsystem, program, or planned task for each respective EMS element in Appendix B;
- b. To what extent the system, subsystem, program, or task has been implemented, and is being maintained;
- c. The adequacy of internal self-assessment procedures for programs and tasks;
- d. The adequacy of reporting methods to report environmental concerns to Defendant's management and to appropriate state and federal authorities;
- e. Whether Defendant is effectively communicating environmental requirements, including the requirements of the Consent Decree, to affected parts of the organization, or those working on behalf of the organization;
- f. Whether Defendant is ensuring that contractors and consultants are fully trained to comply with and are complying with any environmental obligations associated with their work for Defendant;
- g. Whether further improvements should be made to Defendant's written requirements or procedures to better achieve compliance with the EMS Criteria; and
- h. Whether there are deviations from Defendant's written requirements or procedures in practice.

49. EMS Audit Report. Defendant shall ensure that the EMS Auditor prepares an EMS Audit Report within 90 Days of completion of the EMS Audit. The EMS Audit Report shall contain:

- a. a summary of the audit process, including any obstacles encountered;
- b. detailed findings, including the basis for each finding and each area of concern identified;
- c. identification of any areas of concern addressed during the audit;
- d. recommendations for resolving any area of concern or steps necessary to ensure that Defendant's environmental policies and practices achieve the EMS Criteria; and
- e. certification that the EMS Audit was conducted in accordance with the provisions of this Consent Decree.

50. The EMS Auditor shall provide the EMS Audit Report in draft form simultaneously to EPA, PADEP, and the Defendant immediately upon completion. The Parties shall have an opportunity to review and comment on the draft EMS Audit Report within 60 Days of receipt from the EMS Auditor. Within 30 Days of receiving comments from the Parties, the EMS Auditor shall finalize the report and provide it simultaneously to EPA, PADEP, and the Defendant for EPA's approval, after consultation with PADEP.

51. EMS Audit Report Implementation. Within 270 Days of EPA's approval of the final EMS Audit Report, Defendant shall complete full implementation of the recommendations of the final EMS Audit Report and provide a certification in the form identified in Paragraph 54 to EPA and PADEP confirming completion of the EMS Audit Report implementation.

## **VII. REPORTING REQUIREMENTS**

52. Starting with the first full semi-annual period after the Effective Date and continuing until termination of this Decree pursuant to Section XVIII (Termination), Defendant shall submit a semi-annual report to DOJ, EPA, and PADEP. The semi-annual reports may be

submitted in electronic format and shall be due at the end of the month following the end of each semi-annual period (i.e., by July 31 and January 31). The semi-annual reports shall contain, at a minimum, the following:

- a. A summary of Effluent Limit Violations, including total number of Effluent Limit Violations, a summary of all associated actions taken under Section VI.F (Violation Response), and, if applicable, proof of payment of stipulated penalty under this Consent Decree;
- b. Information regarding any other violation of environmental law at the Facility that occurred within the reporting period, including: (i) notices of violation or non-compliance notices; (ii) unauthorized discharges; (iii) a summary of steps taken or planned steps to remedy the violations identified in (i) and (ii); and (iv) if applicable, proof of payment of penalty under any applicable state consent decree or consent order;
- c. For any training required under this Decree, certification that the applicable training occurred and rosters of attendees at that training;
- d. On an annual basis, certification of compliance with the EMS Manual, or, for any noncompliance, an explanation of the cause of the noncompliance, remedial steps taken or to be taken, and a date for achieving compliance;
- e. The status of Consent Decree implementation, including the status of any problems encountered or anticipated, together with implemented or proposed solutions;
- f. A description of any noncompliance with the requirements of this Consent Decree and an explanation of the noncompliance's likely cause and the

remedial steps taken, or to be taken, to prevent or minimize such noncompliance;

- g. The IEIP Report required by Paragraph 37; and
- h. A description of each Consent Decree violation for which Defendant has submitted to EPA an unresolved Force Majeure claim or intends to submit a Force Majeure claim pursuant to Section IX of this Consent Decree.

53. Whenever any violation of this Consent Decree or of any applicable permits, or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and PADEP orally or by email as soon as possible. This procedure is in addition to the requirements set forth in the preceding Paragraph.

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

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

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

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

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

**VIII. STIPULATED PENALTIES**

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

59. Non-Compliance with Consent Decree. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of Section V (Civil Penalty) and Section VI (Compliance Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$1,500	15th through 30th Day
\$3,000	31st Day and beyond

60. Non-Compliance with Reporting and Information Collection and Retention Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of Section VII (Reporting Requirements) and Section XI (Information Collection and Retention) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$350	1st through 14th Day
\$650	15th through 30th Day
\$1,200	31st Day and beyond

61. Non-Compliance with NPDES Permit Limits. The following stipulated penalties shall accrue for each Effluent Limit Violation that occurs at the Facility after the Effective Date of this Consent Decree:

<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
\$1,500	Daily Violation
\$4,000	Monthly Violation

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

63. Defendant shall pay stipulated penalties to the United States and PADEP within 30 Days of a written demand by either Plaintiff. Defendant shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to PADEP. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. Copies to EPA shall be sent via email to: (i) the U.S. EPA Cincinnati Finance Office at [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov) and (ii) the U.S. EPA Regional Hearing Clerk at [R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov).

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

65. Stipulated penalties shall continue to accrue as provided in Paragraph 62, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or PADEP that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States



and PADEP within 30 Days of the effective date of the agreement or the receipt of EPA's or PADEP's decision or order.

- b. If the dispute is appealed to the Court and the United States or PADEP prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.
- c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

66. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Section VI.E (Internal Environmental Inspections) that have occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

67. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Defendant shall pay stipulated penalties owing to PADEP by in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

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

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

70. Non-Exclusivity of Remedy. Stipulated penalties are not the Plaintiffs' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), each Plaintiff expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### **IX. FORCE MAJEURE**

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

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

72. 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 email to EPA and PADEP as provided in Section XIV (Notices), within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA and PADEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant’s contractors knew or should have known.

73. If EPA, after a reasonable opportunity for review and comment by PADEP, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by

PADEP, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

74. If EPA, after a reasonable opportunity for review and comment by PADEP, 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.

75. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 71 and 72. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **X. DISPUTE RESOLUTION**

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

States, in its sole discretion, may withdraw from the dispute resolution process at any time and allow PADEP to take the place of the United States in the dispute resolution process, by giving written notice to the other parties; in such case, the term United States in this Dispute Resolution section shall mean the United States or PADEP, as applicable.

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

78. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA, with a copy to PADEP, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

79. The United States, after consultation with PADEP, will send Defendant its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by

the United States. The United States' Statement of Position is binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

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

81. The United States, after consultation with PADEP, 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 or by the Court.

82. Standard of Review

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 78 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 78, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Decree.

83. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 65. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### **XI. INFORMATION COLLECTION AND RETENTION**

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

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or PADEP 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.

85. Upon request, Defendant shall provide EPA and PADEP or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and PADEP shall provide Defendant splits of any samples taken by EPA or PADEP.

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

87. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and PADEP at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or PADEP, Defendant shall deliver any such documents, records, or other information to EPA or PADEP. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the



subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

88. 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.

89. 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 PADEP 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.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

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

91. The United States and PADEP reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or PADEP to obtain penalties or injunctive relief under the CWA, PCSL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 90.

92. In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the

principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or PADEP 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 90.

93. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and PADEP 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 CWA, 33 U.S.C. §1251, *et seq.*, the PCSL, or with any other provisions of federal, state, or local laws, regulations, or permits.

94. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate facility planning or plans and specifications on the part of Defendant shall not be cause for extension of any required compliance date in this Consent Decree.

95. This Consent Decree does not limit or affect the rights of Defendant or of the United States or PADEP 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.

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

### XIII. COSTS

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

### XIV. NOTICES

98. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing addressed as follows. All submittals should be transmitted electronically unless the United States or PADEP agrees otherwise in writing.

As to DOJ by email:

[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)  
Re: DJ # 90-5-1-1-12068

As to DOJ by mail:

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-12068

As to EPA:

**[R3\\_ORC\\_Mailbox@epa.gov](mailto:R3_ORC_Mailbox@epa.gov)**  
Re: 3RC40, United States, et al., v Libertas Copper,  
LLC (d/b/a Hussey Copper)

and

[Maslowski.steven@epa.gov](mailto:Maslowski.steven@epa.gov)

As to PADEP:

[https://www.dep.pa.gov/DataandTools/Pages/  
Application-Form-Upload.aspx](https://www.dep.pa.gov/DataandTools/Pages/Application-Form-Upload.aspx)

As to Defendant:

John Harrington, CEO  
Hussey Copper  
100 Washington Street  
Leetsdale, PA 15056  
724-251-4251  
[Jharrington@husseycopper.com](mailto:Jharrington@husseycopper.com)

Stephen Robuck, VP Environmental Health &  
Safety  
(or other person in the same or similar position)  
Hussey Copper  
100 Washington Street  
724-251-4227  
[srobuck@husseycopper.com](mailto:srobuck@husseycopper.com)

with a copy to:

Elizabeth E. Mack  
Locke Lord LLP  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201  
214-740-8598  
[emack@lockelord.com](mailto:emack@lockelord.com)

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

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

#### **XV. EFFECTIVE DATE**

101. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree

before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

#### **XVI. RETENTION OF JURISDICTION**

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

#### **XVII. MODIFICATION**

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

104. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 82, 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).

#### **XVIII. TERMINATION**

105. After Defendant has completed the requirements of Paragraphs 41–45 (EMS), 48–51(EMS Audit), and 32–34 (Third-Party Environmental Audit) of this Decree and has thereafter maintained continuous satisfactory compliance with this Decree and Defendant’s NPDES permit for a period of three 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 PADEP a

Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

106. Following receipt by the United States and PADEP 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 and PADEP agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

107. If the United States and PADEP do not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

#### **XIX. PUBLIC PARTICIPATION**

108. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and PADEP reserve 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.

**XX. SIGNATORIES/SERVICE**

109. Each undersigned representative of Defendant, PADEP, and the Deputy Section Chief for the Environmental Enforcement Section identified on the DOJ signature page below, 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.

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

**XXI. INTEGRATION**

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

**XXII. FINAL JUDGMENT**

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

**XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

113. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section III (Applicability), Paragraph 5; Section VI (Compliance Requirements), Paragraphs 14 and 19–51 and related Appendix B; Section VII (Reporting Requirements), Paragraphs 52 and 54; and Section XI (Information Collection and Retention), Paragraphs 84–87, is restitution, remediation, or required to come into compliance with the law.

**XXIV. APPENDICES**

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

“Appendix A” is the Gantt Chart summarizing the deadlines set forth in this Consent Decree; and

“Appendix B” is EPA’s “Compliance Focused Environmental Management System Elements.”

Dated and entered this day of \_\_\_\_\_, 2021

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UNITED STATES DISTRICT JUDGE



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR THE UNITED STATES OF AMERICA:

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

July 26, 2021  
Date

/s/ Vanessa M. Moore  
VANESSA M. MOORE  
DC Bar No. 1617837  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 514-3900  
Email: [vanessa.moore@usdoj.gov](mailto:vanessa.moore@usdoj.gov)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR THE UNITED STATES OF AMERICA:

STEPHEN R. KAUFMAN  
Acting United States Attorney  
Western District of Pennsylvania

July 26, 2021  
Date

/s/ Paul E. Skirtich  
PAUL E. SKIRTICH  
Assistant U.S. Attorney  
Western District of Pennsylvania  
Joseph F. Weis, Jr. U.S. Courthouse  
700 Grant Street, Suite 4000  
Pittsburgh, PA 15219  
(412) 894-7418  
PA ID No. 30440

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/20/21

\_\_\_\_\_  
Date

**Esher, Diana** Digitally signed by Esher, Diana  
Date: 2021.07.20 07:58:02  
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DIANA ESHER  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region III  
Philadelphia, PA 19103-2029

7/1/21

\_\_\_\_\_  
Date

**DONNA MASTRO** Digitally signed by DONNA  
MASTRO  
Date: 2021.07.01 08:41:06 -04'00'

\_\_\_\_\_  
CECIL RODRIGUES  
Regional Counsel  
U.S. Environmental Protection Agency, Region III  
Philadelphia, PA 19103-2029

6/30/21

\_\_\_\_\_  
Date

**DOUGLAS  
FRANKENTHALER** Digitally signed by DOUGLAS  
FRANKENTHALER  
Date: 2021.06.30 09:32:11 -04'00'

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DOUGLAS FRANKENTHALER  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
Philadelphia, PA 19103  
Telephone: 215.814.2472  
Email: frankenthaler.douglas@epa.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/22/21

\_\_\_\_\_  
Date

**Rosemarie  
Kelley**

Digitally signed by  
Rosemarie Kelley  
Date: 2021.07.22 17:01:30  
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\_\_\_\_\_  
ROSEMARIE A. KELLEY  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

7/14/21

\_\_\_\_\_  
Date

**Nathan  
Mark Pollins**


Digitally signed by  
Nathan Mark Pollins  
Date: 2021.07.14  
11:35:41 -04'00'

\_\_\_\_\_  
MARK POLLINS  
Director, Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

7/26/21  
Date

  
CHRISTOPHER J. KRILEY, P.E.  
Regional Manager  
Clean Water Program, Southwest Regional Office  
Pennsylvania Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222

7/26/21  
Date

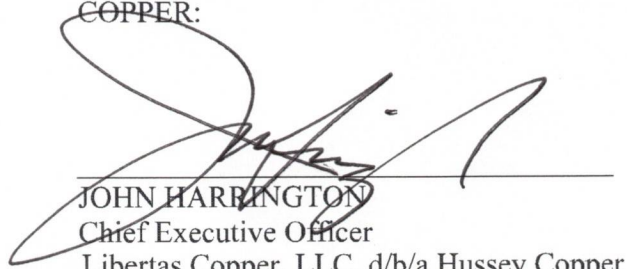
  
MELANIE B. SEIGEL  
Assistant Counsel  
Department of Environmental Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222  
Phone: 412.442.4262  
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PA ID No. 315847

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR LIBERTAS COPPER, LLC, d/b/a HUSSEY  
COPPER:

June 12, 2021

Date

  
\_\_\_\_\_  
JOHN HARRINGTON  
Chief Executive Officer  
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100 Washington Street  
Leetsdale, PA 15056  
724-251-4251  
jharrington@husseycopper.com

\_\_\_\_\_  
Date

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(Tel) 215-665-5366  
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James.Becker@bipc.com

*Attorney for Defendant Libertas Copper LLC*

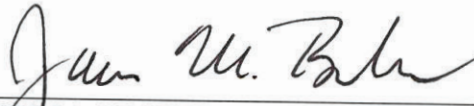
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the Pennsylvania Department of Environmental Protection v. Libertas Copper, LLC, d/b/a Hussey Copper*.

FOR LIBERTAS COPPER, LLC, d/b/a HUSSEY  
COPPER:

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOHN HARRINGTON  
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100 Washington Street  
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6/14/2021  
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*Attorney for Defendant Libertas Copper LLC*

**APPENDIX A****CONSENT DECREE DEADLINES***United States, et al. v. Libertas Copper, LLC d/b/a Hussey Copper*

<b>CD Paragraph</b>	<b>Deliverable</b>	<b>Deadline</b>	<b>Due Date [To Be Completed by Defendant upon Triggering Event]</b>
<u><i>Deadlines for EMS Consultant</i></u>			
25	Defendant to choose and secure approval of EMS Consultant.	Pre-entry	Completed 1/6/2021
27	Defendant to complete Critical Operating Variables Analysis.	60 Days of Effective Date	
28	Defendant to revise and implement revisions to Process Control Plan, Process Control Sheets, SOPs, and Operational Logs.	90 Days of Effective Date	
30	Defendant to create and implement maintenance program to support all critical equipment and instrumentation identified in Process Control Plan.	90 Days of Effective Date	
43	EMS Consultant to conduct an initial review and evaluation of the EMS and provide report to Defendant.	90 Days of Effective Date	
44	Defendant to submit updated EMS Manual.	90 Days of Initial Evaluation	
<u><i>Deadlines for Environmental Auditor</i></u>			
26.a	Defendant to submit the names of three candidates for Environmental Auditor.	30 Days of Effective Date	
32	Environmental Auditor to complete EA.	270 Days from selection of Environmental Auditor	
33	Environmental Auditor to submit draft EA Report.	60 Days from Completing EA	
33	Environmental Auditor to submit final EA Report.	30 Days from Plaintiffs' Comments	
34	Defendant to correct any non-compliance or areas of concern.	270 Days from EA Report Approval	
<u><i>Deadlines for EMS Auditor</i></u>			
26.a	Defendant to submit candidates for EMS Auditor.	Within 30 Days of EMS Manual Approval	



48	EMS Auditor to complete EMS Audit.	Between 270 Days and 545 Days after EMS Approval
50	EMS Auditor to submit draft EMS Audit Report.	90 Days After EMS Audit Completion
50	Parties to comment on draft EMS Audit Report.	60 Days After Receipt of Draft EMS Audit Report
50	EMS Auditor to submit final EMS Audit Report.	30 Days After Receipt of Comments
51	Defendant to fully implement the recommendations of the EMS Audit Report.	270 Days from EPA's Approval of Final EMS Audit

## APPENDIX B

### COMPLIANCE-FOCUSED ENVIRONMENTAL MANAGEMENT SYSTEM ELEMENTS

*United States, et al. v. Libertas Copper, LLC d/b/a Hussey Copper*

#### 1. Environmental Policy

- a. This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, “environmental requirements”), minimizing risks to the environment from unplanned or unauthorized releases of hazardous or harmful contaminants, and continual improvement in environmental performance. The policy should also state management’s intent to provide adequate personnel and other resources for the EMS.

#### 2. Organization, Personnel, and Oversight of EMS

- a. Identifies and defines specific duties, roles, responsibilities, and authorities of key environmental staff in implementing and sustaining the EMS (e.g., could include position descriptions and/or performance standards for all environmental department personnel, and excerpts from others having specific environmental duties, and regulatory compliance responsibilities).
- b. Includes organization charts that identify units, line management, and other individuals having environmental duties and regulatory compliance responsibilities.
- c. Includes ongoing means of communicating environmental issues and information among the various levels and functions of the organization, to include all persons working for or on behalf of the organization (e.g., on-site service providers and contractors who function as *de facto* employees), and for receiving and addressing their concerns.

#### 3. Accountability and Responsibility

- a. Specifies accountability and environmental responsibilities of organization’s managers, and managers of other organizations acting on its behalf for environmental protection and risk reduction measures, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.
- b. Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards, and procedures.

- c. Describes potential consequences for departure from specified operating procedures, including liability for civil/administrative penalties imposed as a result of noncompliance.

#### **4. Environmental Requirements**

- a. Describes process for identifying potentially applicable environmental requirements; interpreting their applicability to specific operations, emissions, and waste streams; and effectively communicating those applicable environmental requirements to affected persons working for or on behalf of the organization.
- b. Describes a process for developing, implementing and maintaining ongoing internal compliance monitoring to ensure that facility activities conform to applicable environmental requirements. Compliance monitoring shall include inspections and measurements, as appropriate.
- c. Describes procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS (i.e., regulatory “change management”).
- d. Describes a procedure for communicating with regulatory agencies regarding environmental requirements and regulatory compliance.

#### **5. Assessment, Prevention, and Control**

- a. Identifies an ongoing process for assessing operations, for the purposes of preventing, controlling, or minimizing reasonably foreseeable releases, environmental process hazards, and risks of noncompliance with environmental requirements. This process shall include identifying operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with environmental requirements.
- b. Describes process for identifying operations and activities where documented operating criteria, such as standard operating procedures (SOPs), are needed to prevent noncompliance or unplanned/unauthorized releases of hazardous or harmful contaminants, and defines a uniform process for developing, approving and implementing the documented operating criteria.
- c. Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in (a) above, to check for malfunctions, deterioration, worker adherence to operating criteria, unusual situations, and unauthorized or unplanned releases.

- d. Describes a “management of change” process to ensure identification and consideration of environmental requirements, the environmental aspects/impacts, and potential operator errors or deliberate malfeasance during planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, maintenance activities, and products.

**6. Environmental Incident and Non-compliance Investigations**

- a. Describes standard procedures and requirements for internal and external reporting of environmental incidents and noncompliance with environmental requirements.
- b. Establishes procedures for investigation, and prompt and appropriate correction of noncompliance. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.
- c. Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions.

**7. Environmental Training, Awareness, and Competence**

- a. Identifies specific education and training required for organization personnel or those acting on its behalf, as well as process for documenting training provided
- b. Describes program to ensure that organization employees or those acting on its behalf are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.
- c. Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience.
- d. Identifies training on how to recognize operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with environmental requirements.

**8. Environmental Planning and Organizational Decision-Making**

- a. Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.
- b. Requires establishing, on an annual basis, written targets, objectives, and action plans for improving environmental performance, by at least each operating

organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions that reduce the risk of noncompliance with environmental requirements and minimize the potential for unplanned or unauthorized releases of hazardous or harmful contaminants.

**9. Maintenance of Records and Documentation**

- a. Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and, where appropriate, security measures to prevent their unauthorized disclosure, and protocols for responding to inquiries and requests for release of information.
- b. Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.
- c. Specifies document control procedures.

**10. Pollution Prevention**

- a. Describes an internal process or procedure for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including incentives to encourage material substitutions. Also includes mechanisms for identifying candidate materials to be addressed by the pollution prevention program and tracking progress.

**11. Continuing Program Evaluation and Improvement**

- a. Describes program for periodic (at least annually) evaluation of the EMS, which specifies a process for translating assessment results into EMS improvements. The program shall include communicating findings and action plans to affected organization employees or those acting on its behalf.
- b. Describes a program for periodic audits (at least annually) of facility compliance with environmental requirements by an independent auditor(s). Audit results are reported to upper management and instances of noncompliance are addressed through the process described in element 6 above.

**12. Public Involvement/Community Outreach**

- a. Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.