UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

APR 11 2001

DE-9J

John L. Wittenborn
Collier Shannon Scott, PLLC
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007-5108

Re: Sheffield Steel - Joliet Facility
EPA I.D. No. ILD 151 759 258

Dear Mr. Wittenborn:

Thank you for your letter dated February 26, 2001 and accompanying site investigation and remedial action reports, in which you described the voluntary remediation efforts at Sheffield Steel. These efforts included removal of the large debris pile, clean-up of the oil drum accumulation area and adjacent soils, stained soils at the oil room/gearbox area, and the area south of the mill scale cooling tank.

The United States Environmental Protection Agency (U.S. EPA) has reviewed your letter and reports. Based on the factual representations on site remediation and test results expressed in the reports, U.S. EPA has not taken action related to the site. U.S. EPA does not comment on any legal positions or conclusions stated in the letter or reports. U.S. EPA encourages you to continue to work with the Illinois Environmental Protection Agency to obtain a No Further Remediation letter from the State under the Illinois site remediation program in order to definitively conclude any issues related to possible site contamination.

Thank you for your cooperation in both providing the requested information and remediating the afore-mentioned areas. Sheffield Steel has fully complied with its obligations under the August 3, 1999, RCRA Section 3007 request for information with the submission of information on January 27, 2000, April 11, 2000,

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and February 26, 2001. If you have any further questions related to this matter, please contact Patrick F. Kuefler, of my staff, at (312) 353-6268.

Sincerely,

Lorna M. Jereza, P.E., Chief
Compliance Section 1

cc: Todd Marvel, IEPA
Cliff Gould, IEPA

bcc: Deirdre Tanaka, ORC
Author's Copy (Patrick Kuefler), CS1
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ENFORCEMENT AND COMPLIANCE ASSURANCE BRANCH

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AUTHOR/ TYPIST	COMPLIANCE SECTION 1 SECTION CHIEF	COMPLIANCE SECTION 2 SECTION CHIEF	CA SECTION SECTION CHIEF
WJ for PK 4/11/01	WJ 4/11/01		

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Branch file

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ENFORCEMENT AND COMPLIANCE ASSURANCE BRANCH

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February 26, 2001

Deirdre Flannery-Tanaka, Esq.
U.S. Environmental Protection Agency
Region V
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Sheffield Steel – Joliet Facility
EPA I.D. No. ILD151759258

Dear Ms. Flannery-Tanaka:

This letter follows up on our responses of January 27, 2000 and April 11, 2000 to the United States Environmental Protection Agency ("EPA") requests for information, pursuant to Section 3007 of the Resource Conservation and Recovery Act ("RCRA"), regarding stained soil and the stained concrete pad at Sheffield Steel - Joliet ("Sheffield"). Last August, we had prepared a letter to you with documentation indicating that the clean-up of these areas was completed. We withdrew this letter before sending it, however, when representatives of EPA Region V arrived at Sheffield to take soil samples on August 23, 2000.

We have reviewed EPA's data from these samples, and we are pleased to conclude that Sheffield has fulfilled its obligations pursuant to EPA's RCRA Section 3007 information request and the voluntary agreement by Sheffield to remove and characterize material from designated areas at the site.

I. Remediation at Sheffield Steel

In our letter to you of April 11, 2000, we included a plan for cleaning up the debris pile and a revised remediation work plan prepared by Sheffield's environmental consultant for the cleanup of the stained soils and stained concrete pad areas at the site. Shortly after we submitted the work plans to you, Sheffield commenced cleanup activities.

A. Debris Pile Cleanup

The work began with the cleanup of the debris pile and adjacent area during the week of April 9 - 14. The attached Photographs 1 and 2 show the debris pile area before and after the cleanup. During the course of the cleanup, Sheffield verified that the debris pile was contained on a concrete slab that had been the floor of a large building previously existing on the site.

In cleaning up the debris pile, Sheffield characterized the material to ensure that none of it was a RCRA hazardous waste. Sheffield recycled a substantial amount of the material, including the metal drums, which were crushed, shipped back to Sheffield's steel minimill melt shop, and returned to the electric arc furnace to make new steel products. Photographs 3 and 4 show the scrap metal that was sorted and transported to the minimill and recycled. Photograph 5 shows the empty drums taken from the debris pile after they were emptied of mill scale and trash and before they were transferred to the minimill and recycled. As the photograph indicates, these drums contained no free liquids. Photograph 6 shows the mill scale that was emptied from the drums, and Photograph 7 shows the mill scale being screened to separate the waste material from the iron-rich mill scale, which also was recycled at the minimill. All remediated solid waste was sent to a solid waste landfill pursuant to Illinois state regulations.

B. Cleanup of Concrete Pad and Cleanup and Excavation of Stained Soils

The next tasks included excavation of soils in three areas where EPA indicated the presence of petroleum stained soils: (1) the former oil drum accumulation area; (2) the oil room/gearbox area; and (3) the area south of and adjacent to the mill scale cooling tank and containment basin. The work included a power wash cleanup of the stained portion of the concrete pad next to the former oil drum accumulation area. Enclosed are two (2) copies of the Site Investigation and Remedial Action Report, which documents the completion of this work. The photographs in Appendix "B," taken on April 27 and 28, 2000, show the cleanup of stained soils in all three areas.

In the course of the remediation, Sheffield's contractor sampled the excavated soils in accordance with the sampling plan that we submitted to you last April. Sheffield's sampling plan, which was revised according to the recommendations you and Patrick Keufler made in a conference call with us on March 23, 2000, was appropriate for the type of material being excavated and consistent with EPA Publication SW-846, ch. 9 at 5. Using the Toxicity Characteristic Leaching Procedure ("TCLP"), an independent laboratory tested composite samples for metals and volatile organics to determine whether the soils exhibited a hazardous waste characteristic. Each and every sample tested below the regulatory levels for the characteristic of toxicity in 40 C.F.R. § 261.24, Table 1. Sheffield did not find any material that we consider to be hazardous waste.

All of the waste soils and waters from the remediation were properly characterized and sent to a non-hazardous waste landfill in the State of Illinois. All of the work, including cleanup, excavation, sampling, characterization, recycling and disposal, was completed by July, 2000.

II. EPA Inspection

When EPA arrived at Sheffield on August 23, 2000, the remediation of the stained soil areas and the concrete pad were complete. EPA took 8 soil samples, none of them from the areas that had been excavated pursuant to the remedial work plan. Rather, EPA took samples of soil from areas several feet away from each of the soil excavation areas.

Sample	Nearest Cleanup Location Pursuant to the Remedial Action Work Plan
S-1	Mill scale cooling tank
S-2	Mill scale cooling tank
S-3	Mill scale cooling tank
S-4	Oil Room/Gear Box
S-5	Oil Room/Gear Box
S-6	Oil Room/Gear Box
S-7	Concrete Pad/Oil Drum Accumulation Area
S-8	Concrete Pad/Oil Drum Accumulation Area

These samples are not representative of the areas of concern that EPA originally had identified in our telephone conversation of March 23, 2000 or in the work plan we submitted to you in April, 2000. For example, EPA took the oil drum accumulation area samples approximately 20 feet from that area of concern. Additionally, the samples EPA collected contained visible pieces of metal and asphalt. As such, analyses of these samples could show disproportionately high levels of metals and other constituents of concern, even though the surrounding soil was clean. Thus, the possibility existed that these samples would not provide an accurate characterization of the soils.

III. EPA Analysis

In December, 2000, in response to a Freedom of Information Act request, EPA sent us raw data from its analyses of the soil samples. EPA analyzed samples for volatile organic compounds ("VOCs"), semi-volatile organic compounds (polynuclear aromatic compounds or "PAHs") and metals. EPA had stated that it would not perform TCLP on the samples unless analytical results indicated total metal concentrations at least 20 times greater than the TCLP levels. Because none of the soil samples showed concentrations of metals at 20 times greater than TCLP levels, EPA analyzed the samples only for VOCs, PAHs and total metals.

We reviewed the data from the samples and found that none are characteristically hazardous. We also compared the results of the samples tested with the Superfund Soil Screening Levels ("SSLs") for residential exposure, which often are used to identify and define areas, contaminants and conditions at a particular site that require further Federal attention. *See EPA Soil Screening Guidance: User's Guide*, EPA Office of Solid Waste and Emergency Response (July 1996). SSLs can be used at corrective action sites for developing action levels. None of the samples from Sheffield exceeds any of the SSLs. Thus, our initial concerns that the asphalt and visible metals in EPA's soil samples would produce distorted results were unfounded. The soils tested at the Joliet site are well within appropriate screening levels, based upon residential exposure scenarios.

IV. Illinois Tiered Approach to Corrective Action Objectives

During our conference call on March 23, 2000, you indicated that the Tier 1 standards in the Illinois Tiered Approach to Corrective Action Objectives("TACO") would be appropriate objectives for the remediation of the stained soil and stained concrete pad areas at Sheffield. The TACO standards apply to sites that voluntarily participate in the Illinois site remediation program. Sites can choose from three tiers of standards, with Tier 1 being the most stringent, to meet for obtaining a No Further Remediation letter from the State of Illinois.

Under the Illinois site remediation program, sites can participate voluntarily unless they are required to undertake remediation. Illinois can require a facility to undertake remediation if it meets any one or more of the following conditions: (1) the site is on the NPL; (2) the site is a permitted TSD facility or is subject to federal or state closure requirements; (3) the site is subject to federal or state underground storage tank ("UST") requirements; or (4) investigation or remedial action is required by federal court order or by EPA. Illinois Environmental Protection Act (hereinafter "the Act") § 58.1(a) & (b), 415 ILCS 5/58.1(a) & (b). Otherwise, participation in the site remediation program is strictly voluntary. *Id. See also* 35 Ill. Admin. Code § 740.105. Sheffield Steel is not on the NPL, and it is not a TSD facility. It does not have any USTs, and neither EPA nor the State of Illinois have required any investigation or remedial action. Accordingly, Sheffield is not required to conduct any remediation under the Illinois program but is eligible for the voluntary site remediation program.

Under a memorandum of understanding between Illinois and EPA Region V, EPA recognizes the Illinois site remediation program and states that EPA "does not anticipate" taking any action against sites that have obtained a No Further Remediation letter. The memorandum does not establish any additional authority for Illinois or EPA to require remediation. *See* Memorandum of Understanding between the Illinois Environmental Protection Agency and the United States Environmental Protection Agency, Region 5, on the Illinois Site Remediation Program, the Illinois TACO, and the Environmental Remediation Programs administered by Region 5 Waste, Pesticides, and Toxics Division (January 31, 1986). Although Sheffield is under no obligation to do so, it is

exploring the possibility of participating in the site remediation program and obtaining a No Further Remediation letter. If Sheffield does decide to participate, however, it would not necessarily be required to meet the TACO Tier 1 standards to obtain the No Further Remediation letter.

V. RCRA

Given the results of EPA's sampling and analysis, we believe that any exercise of RCRA corrective action jurisdiction would be inappropriate. EPA's authority to require corrective action would have to come from one of two mechanisms in RCRA: (1) corrective action authority under RCRA Sections 3004(u) or 3008(h); or (2) imminent and substantial endangerment authority under RCRA Section 7003. None of these provisions applies here.

A. Corrective Action

RCRA Section 3005 requires facilities that engage in treatment, storage or disposal of hazardous waste ("TSD facilities") to obtain RCRA permits. Permits must require corrective action for all releases of hazardous waste or constituents. EPA can require corrective action is when a facility is a permitted TSD facility, under RCRA Section 3004(u), or if the Administrator determines that there has been a release of a hazardous waste into the environment from an interim status facility under, Section 3008(h).

Sheffield Steel does not have a TSD permit because it does not "treat," "store" or "dispose" of any hazardous waste as defined by RCRA Section 1004. Except for a self-contained metal parts cleaning system, Sheffield does not use any products that would result in generation of hazardous waste. The spent solvent from this process is recycled by Safety Kleen under an Illinois exemption that exempts this process from hazardous waste regulation. Because Sheffield generates little or no hazardous waste and does not treat, store or dispose of hazardous waste onsite, Sheffield has never been an interim status facility and does not need a RCRA Part B permit. As such, RCRA's corrective action authority under 3004(u) or 3008(h) does not apply.

B. Imminent and Substantial Endangerment

The only other source of authority under RCRA that EPA conceivably could use to require further remediation is the "imminent and substantial endangerment" provision in Section 7003(a). This provision authorizes the Administrator or delegated state authority, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an *imminent and substantial endangerment to health or the environment,* to bring suit against any person who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal, or to order such person to take such other action as may be necessary . . ."[emphasis added]. RCRA § 7003(a).

To show the existence of "substantial" endangerment: (1) there must be a population at risk; (2) the contamination must be listed as hazardous under RCRA; (3) the level of contamination must be above levels that are considered acceptable by the state; *and* (4) there must be a pathway of exposure. *Price v. Navy*, 818 F.Supp. 1323, 1325 (S.D. Cal. 1992). At Sheffield, there is no contamination of significance that could put, even remotely, any segment of the population at risk. When Sheffield excavated the stained soils last April, it tested the excavated materials and found none could be considered RCRA hazardous wastes. When EPA visited Sheffield and took samples of the remaining soil last August, it too found no material that could be considered RCRA hazardous waste, and none of the material exceeded the SSLs.

Nor is there any threat from Sheffield that could be considered even remotely imminent. An imminent and substantial endangerment exists if there is reasonable cause for concern that 'someone or something may be exposed to risk of harm. . . if remedial action is not taken.' To show imminence, EPA must show that the risk of threatened harm is currently present at the site and the potential for harm is great. *Foster v. United States* 922 F.Supp. 642, 661 (D.D.C. 1996)(citing *United States v. Aceto Agricultural Chemicals Corporation*, 872 F.2d 1373, 1383 (8th Cir. 1989), *Price v. United States Navy*, 39 F.3d 1011, 1019 (9th Cir. 1994)). Any alleged endangerment must be substantial or serious and there must be some necessity or the action. *Price* 39 F.3d at 1019. Given that the soils at Sheffield are not considered hazardous and meet the SSLs, there is hardly any risk of harm present at Sheffield posed by the soils, currently or in the conceivable future.

VI. CERCLA

Sheffield clearly falls outside the scope of the remediation and removal requirements in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). CERCLA authorizes EPA to respond to releases or substantial threats of releases of hazardous substances. EPA is authorized to act, consistent with the National Contingency Plan ("NCP"), to remove and provide for remedial actions when: (1) a hazardous substance is released or there is a substantial threat of such release; or (2) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to public health or welfare. CERCLA § 104(a)(1).

The NCP establishes procedures for placing sites on the National Priorities List ("NPL"), for hazardous waste remedial actions. 42 U.S.C. § 9605(a)(8)(B), 40 C.F.R. §§ 300.5, 300.425(b). Only those releases included on the NPL are to be considered eligible for remedial action financed by the Hazardous Substance Superfund. 40 C.F.R. § 300.425(b)(1). Sheffield is not on the NPL, so it is not subject to EPA's authority under CERCLA Section 104. In fact EPA never even proposed Sheffield for inclusion on the NPL.

Like RCRA, CERCLA grants EPA"imminent and substantial endangerment"authority, to undertake emergency removal actions at sites not on the NPL. CERCLA Section 106 (a) authorizes EPA to "secure such relief as may be necessary to abate an imminent and substantial endangerment to the public health or welfare or the environment." As there have been no recent spills at Sheffield, and the level of contamination is so minimal, there is virtually no possibility of "imminent and substantial endangerment."

The United States Congress enacted CERCLA "to establish a comprehensive response and financing mechanism to abate and control the vast problems associated with abandoned and inactive hazardous waste disposal sites." H.R.Rep. No. 96-1016, pt. In, at 1 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6119, 6125. Clearly, as a fully operational steel mill, Sheffield is not among the types of sites CERCLA was designed to remedy.

VII. State Authority

Section 3006 of RCRA authorizes states to assume responsibility for carrying out certain provisions of RCRA in lieu of the federal government. Illinois is authorized to administer and enforce certain components of its hazardous waste management program, including permitting, establishing standards applicable to TSD facilities, and setting land disposal restrictions, in lieu of the Federal RCRA program. *See* 40 C.F.R. § 272.701. Illinois is not authorized to carry out its program in lieu of the federal RCRA corrective action program.

Finally, the Act does authorize the Illinois Environmental Protection Agency to take necessary and appropriate preventive or corrective action whenever any hazardous substance is released or there is a substantial threat of release into the environment. 415 ILCS 5/4(q). There is no release or threat of a release from Sheffield, however, so this state statutory provision does not apply here.

VIII. CONCLUSION

Sheffield has fully complied with its obligations under the RCRA Section 3007 request for information and has completed the cleanup pursuant to the work plan it voluntarily agreed to carry out last April. We believe that Sheffield is under no obligation to conduct further remediation at the site, but is exploring the possibility of obtaining a No Further Remediation letter from the State of Illinois, pursuant to the Illinois site remediation program.

Please contact us if you have any questions.

Sincerely,

JOHN L. WITTENBORN
CHRISTINA B. PARASCANDOLA

Counsel to Sheffield Steel Corporation

cc : Patrick Keufler (w/o Site Investigation and Remedial Action Report)
Douglas K. Strickland (w/o Site Investigation and Remedial Action Report)

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