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

UNITED STATES OF AMERICA,	)	
and	)	
ALLEGHENY COUNTY HEALTH DEPARTMENT,	)	
Plaintiffs	)	
v.	)	Civil No.
ALLEGHENY LUDLUM CORPORATION,	)	
and	)	
HARSCO CORPORATION,	)	
Defendants.	)	

CONSENT DECREE

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and Co-Plaintiff, the Allegheny County Health Department ("ACHD") (collectively referred to as "Plaintiffs"), have filed concurrently a Complaint with this Consent Decree. The Complaint alleges that the Defendants, Allegheny Ludlum Corporation ("ALC") and Harsco Corporation ("Harsco") (collectively referred to as "Defendants"), violated the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7401 7671q., and the Allegheny County Opacity Regulations, Article XXI, Air Pollution Control (County Ordinance No. 16782) Section 2104.01, in the slag handling operations associated with ALC's steel manufacturing operations located in Natrona, Allegheny County, Pennsylvania ("Facility"). The Complaint, pursuant to 42 U.S.C.§ 7413(b), seeks injunctive relief and civil penalties for the alleged violations of the CAA, and the Pennsylvania State Implementation Plan ("PA SIP") adopted pursuant to Section 110 of the CAA, 42 U.S.C. §7410.

The ACHD is a local health agency organized under the Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. § 12001 et. seq. The Director of the ACHD has been delegated authority pursuant to the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 et. seq. to enforce the laws relating to public health within Allegheny County, including the Allegheny County Health Department's Rules and Regulations, Article XXI, Air Pollution Control (Article XXI) (the Allegheny County portion of the PA SIP at issue in the Complaint).

The United States, ACHD, and Defendants (the "Parties") have agreed on terms to settle this action. By entering into this Consent Decree, Defendants make no admission of liability

with respect to the alleged violations set forth in the Complaint or this Consent Decree. The Parties have agreed that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this action.

NOW THEREFORE, with the consent of the Parties, and without the admission of any fact or law, except as provided in Section I below, it is ADJUDGED, ORDERED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

2. Defendants do not contest the Court's jurisdiction over this action or over Defendants, and Defendants do not contest venue in this judicial district.

3. Notice of the commencement of this action has been given to the ACHD in accordance with § 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding on the Parties, their assigns and successors.

5. At least thirty days prior to transferring ownership or operation of a Defendant's Facility to any other person, Defendants must provide a copy of this Consent Decree to each prospective successor owner or operator. No transfer will relieve Defendant(s) of its (their) obligations to ensure that the terms of this Consent Decree are implemented, including but not limited to Section VIII ("Compliance Requirements").

6. Defendants must provide a copy of this Consent Decree to all officers,

employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained by Defendants to perform work required under this Consent Decree.

7. In any action to enforce this Consent Decree, Defendants may 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.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, this Consent Decree incorporates the definitions in the CAA and in the regulations promulgated pursuant to the CAA.

IV. DEFENDANTS

9. ALC was, at times relevant to this matter, the owner of the real estate at the Facility, as described above. Harsco was, at times relevant to this matter, the operator of the Facility, as described above.

10. Each Defendant is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

V. CIVIL PENALTY

11. Defendants shall pay to the United States and the ACHD a total civil penalty in the amount of $184,900 to be divided equally between the United States and the ACHD in settlement of the claims for civil penalties alleged in the Complaint filed herein. Payment will be made pursuant to the provisions of Paragraph 13 within thirty (30) calendar days after the Effective Date.

12. No portion of the civil penalty paid pursuant to this Consent Decree may

be used to reduce Defendants' federal or state tax obligations.

13. The payment of ninety two thousand, four hundred and fifty dollars ($92,450) to the United States must be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing DOJ case number 90-5-2-1-09378. Payment shall be made in accordance with instructions provided by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the Western District of Pennsylvania. The costs of such EFT shall be paid by Defendants. Any funds received after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Defendants shall provide notice of payment, referencing the U.S.A.O. File Number (which number will be supplied as part of the EFT instructions given by the FLU contact), the DOJ Case Number 90-5-2-1-09378, and the civil action case name and number, to the United States and EPA in accordance with Section XVIII. Defendants shall also provide notice of the payment to the following:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-09378
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

13a. The payment of ninety two thousand, four hundred and fifty dollars ($92,450) to the ACHD shall be made by check payable to the "Allegheny County Health Clean Air Fund." Payment shall be sent to:

James E. Thompson
Manager, Air Quality Program
Allegheny County Health Department Clean Air Fund
301 39th Street
Pittsburgh, PA 15201-1891

VI. INTEREST

14. If Defendants fail to make timely payment to the United States as set forth in Section V, above, Defendants shall be jointly and severally liable for interest on the late payments, as provided at 28 U.S.C. § 1961. If Defendants fail to make timely payment to the ACHD of the civil penalty set forth in Section V, above, Defendants shall be jointly and severally liable to ACHD for interest on the late payment, as provided for at Article XXI of the Allegheny County regulations, particularly Sections 2109.07 and 2109.06.a.4.

VII. DEFAULT

15. If Defendants do not pay in full the civil penalty, as required by Section V, above, Defendants are jointly and severally liable for any reasonable attorney's fees, whether suit be brought or not, and all other costs and expenses actually and reasonably incurred by the United States and/or ACHD in connection with collecting the civil penalty.

16. This Consent Decree will be considered an enforceable judgment against Defendants for purposes of post judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of this Court.

VIII. COMPLIANCE REQUIREMENTS

17. Consistent with the terms of this Decree, Harsco shall control fugitive particulate emissions from the slag handling operations at the Facility by constructing and

operating a fan-driven fogger system, in accordance with the terms and conditions set forth in Appendix A (attached hereto).

18. This Consent Decree in no way relieves Defendants of their responsibility to comply with the requirements of all applicable federal, state and local laws, permits and regulations, including the relevant provisions of the Pennsylvania State Implementation Plan.

IX. REPORTING

19. Harsco must submit semi-annual reports ("Report" or "Reports") for three years beginning not later than 180 calendar days following the Effective Date to EPA Region III, as set forth below. The Report(s) shall be submitted to the persons identified in Paragraph 75 for the United States Environmental Protection Agency and ACHD. Thereafter, the Reports shall be due every June 15 and December 15 until 6 Reports have been filed accordingly. Each Report must contain the following:

a. a description of the activities undertaken to comply with the requirements of Section VIII ("Compliance Requirements") above since the Effective Date or the submission of the latest report;

b. a list of the items that have been completed pursuant to paragraph 17, above, and all documentation relating thereto, evidencing that the agreed upon milestones and deadlines in Appendix A have been met;

c. a performance evaluation of the effectiveness of the control measures implemented by the Defendants;

d. identification of specific problems encountered with the control equipment or Facility conditions;

e. description of any modifications proposed to improve the control of fugitive emissions at the Facility; and

f. EPA Test Method 9 opacity readings for the reporting period, which shall be conducted in accordance with 40 C.F.R. Part 60, Appendix A once during the reporting period during normal slag handling operations and for a period of 60 minutes.

20. Each Report and any other document required to be submitted pursuant to the terms of this Consent Decree must contain a certification signed by a responsible corporate officer of Harsco. The certification must read:

> "I, _____, certify under penalties of law that the information contained in or accompanying this (submission/document) is true, accurate, and complete. As to the identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official with supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate, and complete."

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

21. Not later than 60 days after entry of this Consent Decree, Harsco shall perform, as a Supplemental Environmental Project ("SEP"), a road paving project as described below.

22. Paving Project: Harsco will pave (using asphalt or concrete paving) approximately 27,500 square feet of roads at the Facility consistent with the areas identified in Appendix B to this Consent Decree, which is incorporated herein by reference. This area will be maintained for a period of at least five years from date paving is completed, in accordance with the "SEP Paved Road Control Plan" identified in Appendix C to this Consent Decree, which is incorporated herein by reference. Each piece of mobile equipment typically travels the area to be

paved between six (6) and sixteen (16) times per operating day, carrying steel-making byproducts. It is anticipated that this SEP will result in a reduction of fugitive particulate emissions from formerly unpaved roadway segments by 82% from 21.7 tons per year ("tpy") to 3.9 tpy.

23. The SEP identified in paragraph 22, above, shall be implemented in accordance with the specifications provided in Appendix D to this Consent Decree, which is incorporated herein by reference.

24. In accordance with paragraph 26, below, and in implementing this SEP, Harsco will spend no less than $180,000, which is the agreed upon cost of the paving project for penalty calculation purposes. This agreed upon cost includes a $7,000 annual allowance for annual operation and maintenance of the paved roads over a five (5) year period, consistent with Appendix C hereto.

25. The paving project set forth above shall be commenced no later than thirty (30) days after the Effective Date of this Consent Decree, and it shall be completed no later than ninety (90) days after the Effective Date of this Consent Decree.

26. Harsco is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Decree. "Satisfactory completion" means that Harsco shall implement the paving project in accordance with the requirements set forth above, including Appendices B, C and D . Defendants may use contractors or consultants in planning and implementing the SEP. In implementing the SEP, Defendants shall spend not less than $180,000 in eligible SEP costs. "Eligible SEP costs" include the costs of planning and implementing the SEP. Eligible SEP costs only include those costs attributed to the initial

paving project described herein, and shall expressly exclude all annual operation and maintenance costs attributable to watering or wetting the paved roadways identified in paragraph 22, above.

27. With regard to the SEP, Harsco shall certify the truth and accuracy of the following:

a. that, as of the date of executing this Consent Decree, all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair market estimate of the costs necessary to implement the SEP;

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

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

d. that Harsco has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

e. that Harsco will not receive any reimbursement for any portion of the SEP from any other person.

28. <u>SEP Completion Report</u>

a. Harsco shall submit to the United States and ACHD a final SEP completion

report no later than forty five (45) days from the date of final SEP completion, as provided for in paragraph 25 of this Decree. The SEP Completion Report shall contain the following information:

i. a detailed description of the SEP as implemented

ii. a description of any problems encountered in completing the SEP and the solution(s) thereto;

iii. an itemized list of all eligible SEP costs (including operation and maintenance costs), with copies of supporting documentation; and

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

b. The submissions required under this paragraph shall be signed by a corporate official with responsibility for completion of the SEP, and shall include the certification set forth in paragraph 20, above.

29. EPA and/or ACHD may require information in addition to that described in the preceding Paragraph, to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

30. Following receipt of the SEP Completion Report described in Paragraph 28 above, EPA will do one of the following:

a. Notify Harsco in writing of any deficiency in the SEP Completion Report itself ("Notice of Deficiency") and grant an additional thirty (30) days for Defendants to correct the deficiency;

b. Notify Harsco in writing of EPA's determination that the project has been

completed satisfactorily ("Notice of Approval"); or

c. Notify Harsco in writing tthat the project has not been completed satisfactorily ("Notice of Disapproval"), or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 24, above, EPA may seek stipulated penalties in accordance with Section XI of this Consent Decree.

31. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XIII of this Decree ("Dispute Resolution"). No other disputes arising under this Section shall be subject to Dispute Resolution.

32. Each submission required under this Section shall be signed by an official of Harsco with knowledge of the SEP and shall bear the certification language set forth in Paragraph 20, above.

33. Any public statement, oral or written, in print, film, or media, made by Harsco making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Allegheny Ludlum Corporation et.al., taken on behalf of the United States Environmental Protection Agency and the Allegheny County Health Department under the Clean Air Act."

34. Harsco shall not treat SEP costs as tax deductible for purposes of federal, state, or local law.

XI. STIPULATED PENALTIES

35. Subject to the Force Majeure and Dispute Resolution provisions of this Consent Decree, Harsco must pay Stipulated Penalties in the amounts set forth below for each failure to

comply with the requirements of this Consent Decree. "Compliance" includes payment of the civil penalty, together with any accrued interest, and completion of the requirements under this Consent Decree in the manner and within the specified time schedules established by and approved under this Consent Decree, as set forth in Section VIII ("Compliance Requirements") and Section X ("Supplemental Environmental Project"). "Compliance" also includes the timely reporting under Section "IX" of this Consent Decree.

36. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Sections V, VI, VII, VIII, `and Paragraph 28 (submittal of SEP Completion Report) of Section X of this Consent Decree.

Period of Failure to Comply	Violation Per Day
1st through 30th day	$500.00
31st through 60th day	$1000.00
61st day and beyond	$2000.00

37. For violations of Section IX of this Consent Decree, Stipulated Penalties will accrue at a rate of $500 per day for the first thirty days, and $1,000 per day thereafter.

38. SEP Compliance. The following stipulated penalties shall accrue for any noncompliance with the provisions of Section X (Supplemental Environmental Project) except for Paragraph 28, which is addressed by Paragraph 36:

a. for failure to comply with a deadline for completion of any SEP performance milestone or substantive requirement set forth in Section X of this Decree except for the cost expenditure provision in paragraph 24, above, Harsco shall pay stipulated penalties as follows:

Amount per Violation per Day	Period of Noncompliance
$1,000	1st through 14th day
$ 2,500	15th through 30th day
$5,000	31st day and beyond;

b. if Harsco halts or abandons work on the SEP, Harsco shall pay a stipulated penalty of $10,000 in addition to the foregoing per day penalties;

c. if Harsco spends less than the amount set forth in Paragraph 26, above, Harsco shall pay a stipulated penalty equal to the difference between the amount of total "eligible SEP costs" incurred by Harsco and the amount set forth in Paragraphs 24 and 26, above, which were relied upon by Plaintiffs for mitigation of the civil penalty in this case.

39. All Stipulated Penalties must be paid within thirty calendar days after the United States or ACHD makes a demand for payment. Stipulated Penalties are payable in accordance with the following Paragraphs.

40. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

41. Notwithstanding the date of any demand for Stipulated Penalties pursuant to Paragraph 39, all Stipulated Penalties will begin to accrue on the day after the performance is due or on the day the violation occurs, whichever is applicable. Stipulated Penalties will continue to accrue until performance is completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree.

42. Notwithstanding Paragraph 39 of this Consent Decree, Stipulated Penalties will

continue to accrue as provided in accordance with Paragraphs 36-38 during any Dispute Resolution, with interest in accordance with Paragraph 14, but need not be paid until the following:

a. if the dispute is resolved by agreement or by a decision by EPA that is not appealed to the Court, accrued Stipulated Penalties determined to be due, together with accrued interest, must be paid to the United States within thirty calendar days of the effective date of the agreement or the receipt of EPA's decision or order;

b. if the dispute is appealed to the Court and the United States prevails in whole or in part, Harsco must, within sixty calendar days after receipt of the Court's decision or order, pay all accrued Stipulated Penalties determined by the Court to be due, together with accrued interest, except as provided in Subparagraph c, below;

c. if the District Court's decision is appealed by any Party, Harsco must, within fifteen calendar days of receipt of the final appellate court decision, pay all accrued Stipulated Penalties determined to be owing to the United States, together with accrued interest.

43. Stipulated penalties under this Section shall be paid in the same manner set forth in Section V (Civil Penalty) of this Consent Decree. One half of the penalty shall be paid to the United States and the other half shall be paid to ACHD.

44. Harsco must pay interest on any balance of Stipulated Penalties not paid as of the time payment is due under the terms of this Consent Decree. Interest on Stipulated Penalties will be computed as provided for in 28 U.S.C. § 1961. If any Stipulated Penalty is not paid in full

when due, the United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalty or interest thereon.

45. Subject to the provisions of Section XVI ("Effect of Settlement/ Reservation of Rights"), the Stipulated Penalties provided for in this Consent Decree are in addition to any other rights, remedies, or sanctions available to the United States or the ACHD for Harsco's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of any applicable statute or regulation, Harsco shall be allowed a credit, dollar for dollar, for any stipulated penalties paid, against any statutory penalties imposed for such violations, including penalties resulting from enforcement pursuant to Paragraphs 69 and 73.

XII. FORCE MAJEURE

46. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential Force Majeure event and to address the effects of any such event: (a) as it is occurring; and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

47. Examples of events that are *not* Force Majeure include, but are not limited to, unanticipated or increased costs or expenses of work, financial difficulties encountered by Defendants in performing such work, and the failure of Defendants or their representatives

including contractors to make complete and timely application for any required approval or permit.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Defendants intend to assert a claim of Force Majeure, Defendants must provide notice in writing, as provided in Section XVIII ("Notices") of this Consent Decree, not later than ten business days after Defendants first knew of the event, or by the exercise of due diligence reasonably should have known of the event. Notification must include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of 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; and Defendants' rationale for attributing the delay to a Force Majeure event. Failure to comply with these requirements will preclude Defendants from asserting any claim for Force Majeure.

49. EPA will notify Defendants in writing of its agreement or disagreement with Defendants' claim of Force Majeure. If EPA agrees that a Force Majeure event has occurred, EPA will notify Defendants in writing of its agreement to extend the time for Defendants to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the time to perform any other obligation.

50. If EPA does not agree that a Force Majeure event has occurred, or does not agree to the extension of time sought by Defendants, EPA's position shall be binding, unless Defendants invoke Dispute Resolution under Section XIII of this Consent Decree. In any such

dispute, Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed Force Majeure event is a Force Majeure event, that Defendants gave the notice required by Paragraph 48, that the Force Majeure event caused any delay Defendants claim was attributable to that event, and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

51. Stipulated Penalties will not be due for the number of days of noncompliance determined to be caused by a Force Majeure event as defined in this Section.

XIII. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedure of this Section is the exclusive mechanism to resolve all disputes arising under this Consent Decree. The procedures set forth in this Section do not apply to actions by the United States to enforce obligations of Defendants that have not been disputed in accordance with this Section.

53. Any dispute which arises under or with respect to this Consent Decree will in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations may not exceed thirty days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute will be considered to have arisen when one Party sends the other Parties a written Notice of Dispute.

54. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA will be considered binding unless, within fourteen calendar days after the conclusion of the informal negotiations period, Defendants invoke the formal Dispute Resolution procedures by serving on the United States, in

accordance with Section XVIII ("Notices") of this Consent Decree a written Statement of Position on the matter in dispute, including, but not limited to, any supporting factual data, analysis, opinion, or documentation.

55. Within fourteen calendar days after receipt of Defendants' Statement of Position, the United States will serve on Defendants its Statement of Position, including any supporting factual data, analysis, opinion or documentation. Within fourteen days after receipt of the United States' Statement of Position, Defendants may submit a reply.

56. An administrative record of the dispute must be maintained by EPA and must contain all statements of position, including any supporting factual data, analysis, opinion or documentation, submitted pursuant to this Section.

57. The EPA Director of the Air Enforcement Division, ("AED Director"), or a properly designated representative, will issue a final decision resolving the dispute. The final decision shall be based on the administrative record. The decision of the Director will be binding on Defendants, subject only to the right to seek judicial review, in accordance with Paragraph 58, below.

58. The decision issued by EPA under Paragraph 57 may be reviewed by this Court upon a motion filed by Defendants and served upon the United States within fourteen days of receipt of EPA's decision.

59. The United States shall respond to Defendants' motion within the time period allowed by the local rules of this Court. Defendants may file a reply memorandum to the extent permitted by the local rules.

60. In any dispute brought under Paragraph 58, Defendants shall bear the burden of

demonstrating that its position clearly complies with this Consent Decree. The United States reserves the right to argue that its position is only reviewable on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

61. The invocation of formal Dispute Resolution procedures under this Section will not extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter will continue to accrue from the first day of noncompliance, but payment will be stayed pending resolution of the dispute as provided in Paragraph 42. In the event that Defendants do not succeed on the disputed issue, Stipulated Penalties will be assessed and paid as provided in Section XI ("Stipulated Penalties").

XIV. INFORMATION COLLECTION AND RETENTION

62. The United States and the ACHD and their representatives, including attorneys, contractors, and consultants, will have the right of entry to any Facility covered by this Consent Decree, at all reasonable times during normal hours of operation and consistent with Facility safety requirements, upon presentation of credentials to:

a. monitor the progress of all requirements under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. assess Defendants' compliance with this Consent Decree.

63. Until the termination of this Consent Decree, Defendants must preserve, and must instruct its contractors and agents to preserve, all nonidentical copies of all records and documents (including documents in electronic form) now in its or its contractors' or agents'

possession or control that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This record retention requirement will apply regardless of any corporate document-retention policy to the contrary.

64. Upon request by the United States, until the termination of this Consent Decree, Defendants must deliver any such records or documents to EPA. Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they must provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege claimed by Defendants. No documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree may be withheld on the grounds that they are privileged.

65. 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 and the ACHD pursuant to applicable federal or state laws, regulations, or permits.

XV. FAILURE OF COMPLIANCE

66. The United States and the ACHD do not, by their respective consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. §§ 7401 to 7671q, including, the federally approved provisions of the Pennsylvania State Implementation Plan. Notwithstanding the United States' and the ACHD's review and approval

of any document(s) submitted to it by Defendants pursuant to this Consent Decree, Defendants will remain solely responsible for compliance with the terms of the CAA and this Consent Decree.

XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of, and shall resolve all civil liability of Defendants to the Plaintiffs for the claims alleged in their Complaint(s) through the date of lodging this consent decree with the Court. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims or any criminal liability of Defendants.

68. Neither this Consent Decree, nor any requirement hereunder, is to be interpreted to be a Permit, or a modification of an existing Permit, issued pursuant to the CAA, 42 U.S.C. §§ 7401 to 7671q, nor will it in any way relieve Defendants of any obligation to obtain a Permit and comply with the requirements of any Permit or with any other applicable federal or state, and local statutes and regulations.

69. This Consent Decree may not be construed to prevent or limit the rights of the United States and the ACHD to obtain penalties or injunctive relief under the CAA, or under other federal or state laws, regulations, or permit conditions, except for any of the allegations contained in the Complaint or this Consent Decree.

70. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits. Defendants' compliance with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

71. This Consent Decree does not limit or affect the rights of Defendants or of the

United States and the ACHD 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 Defendants, except as otherwise provided by law.

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

73. The United States and the ACHD reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

XVII. COSTS

74. The Parties will each bear their own costs of litigation of this action, including attorneys' fees, except as provided in Paragraphs 15 and 44.

XVIII. NOTICES

75. Except as otherwise provided in this Consent Decree, whenever written notifications, submissions, or communications to the United States or ACHD to the Defendants are required by this Consent Decree, they must be made in writing and addressed as follows:

As to the United States:

United States Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Re: DOJ No. 90-5-2-1-09378

Or by Overnight Courier Service to

Chief, Environmental Enforcement Section
Environment and Natural Resources Division

U.S. Department of Justice
601 D. Street, N.W., Room 2121
Washington, D.C. 20004

Re: DOJ No. 90-5-2-1-09378

United States Environmental Protection Agency

Chris Pilla, Chief
U.S. Environmental Protection Agency
Region III – Air Protection Division
Air Enforcement Branch
Mail Code -3AP12
1650 Arch Street
Philadelphia, PA 19103-2029

with copies submitted simultaneously to:

Benjamin M. Cohan, Esq.
Senior Assistant Regional Counsel
Mail Code – 3RC10
1650 Arch Street
Philadelphia, PA 19103-2029

As to the ACHD:

James E. Thompson
Manager, Air Quality Program
Allegheny County Health Department
301 39th Street
Pittsburgh, PA 15201-1891

with copies submitted simultaneously to:

Michael A. Parker, Esq.
Assistant Solicitor
Allegheny County Health Department
301 39th Street
Pittsburgh, PA 15201-1891

As to Allegheny Ludlum Corporation:

President
1000 River Road

Brackenridge, PA 15014
With copies submitted simultaneously to:

General Counsel
1000 Six PPG Place
Pittsburgh, PA 15222

As to Harsco Corporation

President
Harsco Metals
P.O. Box 5003
Cranberry Township, PA 16066

With copies submitted simultaneously to:

General Counsel
Harsco Corporation
350 Poplar Church Road
Camp Hill, PA 17001

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

76. Notifications to or communications shall be deemed submitted on the date they are: hand-delivered; postmarked and sent by certified mail, return receipt requested; or sent by overnight courier service, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. Any such materials shall include a reference to the name, caption and number of this action.

XIX. RETENTION OF JURISDICTION

77. The Court will retain jurisdiction of this case until termination of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, to effectuate or enforce compliance with its terms, or to resolve disputes in

accordance with Section XIII ("Dispute Resolution") of this Consent Decree.

XX. MODIFICATION

78. With the exception of modifications of timelines to account for Force Majeure events as described in Section XII, the terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it will be effective only upon approval by the Court. The terms and schedules contained in Section VIII ("Compliance Requirements") of this Consent Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects Defendants' ability to meet the objectives of this Consent Decree.

XXI. EFFECTIVE DATE AND TERM

79. This Consent Decree shall be effective upon the date of its entry by the Court ("Effective Date").

80. This Consent Decree shall terminate after Defendants have fulfilled all of their obligations under this Consent Decree and have maintained continuous satisfactory performance with this Consent Decree for a five (5) year period following entry of the Consent Decree, provided that either Defendant serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all supporting documentation.

81. Following receipt by the United States and the ACHD 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 Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States and the ACHD agree

that the Decree may be terminated, the parties shall submit for the Court's approval, a joint stipulation terminating the Decree.

82. If the United States and the ACHD do not agree that the Decree may be terminated, either Defendant may invoke Dispute Resolution under Section XIII of this Decree. However, such Defendant shall not seek Dispute Resolution of any dispute regarding termination until forty-five days after service of their Request for Termination.

XXII. PUBLIC PARTICIPATION

83. This Consent Decree will be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with 28 U.S.C. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. If no changes to the Decree are proposed in response to public comments, Defendants consent to the entry of this Consent Decree without further notice and will not oppose entry of this Consent Decree.

XXIII. SIGNATORIES/SERVICE

84. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice (or his or her delegatee) 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.

85. This Consent Decree may be signed in counterparts, and such counterpart signature pages will be given full force and effect.

86. Defendants agree not to oppose entry of this Consent Decree by the Court or to

challenge any provision of the Consent Decree, unless the United States and the ACHD have notified Defendants in writing that they no longer support entry of the Consent Decree.

87. Defendants hereby agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements of Rule 4 of the Federal Rules of Civil Procedure ("FRCP") and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

88. This Consent Decree and the attached Appendices A, B, C and D constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written relating to settlement of this matter. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor can it be used in construing the terms of this Consent Decree.

XXV. FINAL JUDGMENT

88. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute a final judgment of the claims settled herein.

So Ordered and Approved this _____ day of _____, 2009.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U. S. and Allegheny County Health Dept. v. Allegheny Ludlum Corporation and Harsco Corporation (W.D. Pa.)

FOR THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF JUSTICE
Environment and Natural Resources Division

11/20/09
DATE

W. Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section

Elliot M. Rockler
Trial Attorney
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-2653
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Robert S. Cessar
Acting United States Attorney
Western District of Pennsylvania

11-20-09
DATE

By: s/Paul E. Skirtich
Assistant United States Attorney
United States Attorney's Office
U. S. Post Office & Courthouse
700 Grant Street
Suite 4000
Pittsburgh, PA 15219
(412) 894-7418

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U. S. and Allegheny County Health Dept. v. Allegheny Ludlum Corporation and Harsco Corporation (W.D. Pa.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9/22/09
DATE

for

William C. Early
Acting Regional Administrator, Region III
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

9/18/09
DATE

Judith M. Katz
Acting Regional Counsel, Region III
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

9/16/09
DATE

Benjamin M. Cohan
Senior Assistant Regional Counsel, Region III
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U. S. and Allegheny County Health Dept. v. Allegheny Ludlum Corporation and Harsco Corporation (W.D. Pa.)

FOR THE ALLEGHENY COUNTY HEALTH DEPARTMENT

9/23/09
DATE

Bruce W. Dixon, M.D.
Director
Allegheny County Health Department
3333 Forbes Avenue
Pittsburgh, PA 15213

9/23/09
DATE

Henry Miller, III
Solicitor
Allegheny County Health Department
3333 Forbes Avenue
Pittsburgh, PA 15213

9/23/2009
DATE

Michael A. Parker
Assistant Solicitor
Allegheny County Health Department
301 39th Street, Building #7
Pittsburgh, PA 15201-1891

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U. S. and Allegheny County Health Dept. v. Allegheny Ludlum Corporation and Harsco Corporation (W.D. Pa.)

FOR ALLEGHENY LUDLUM CORPORATION

9/2/09
DATE

By: Jon D. Walton

Name: Jon D. Walton

Title: Executive Vice President

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U. S. and Allegheny County Health Dept. v. Allegheny Ludlum Corporation and Harsco Corporation (W.D. Pa.)

FOR HARSCO CORPORATION

9/8/09
DATE

By: _____

Name: William R. Jacob

Title: President - Harsco Metals Americas