



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

APPENDIX D

Portions of the Consent Order and Agreement Between the DEP and Horsehead

**Bureau of Air Quality
Department of Environmental Protection**

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Horsehead Corporation	:	Potential Air Quality Violations
300 Frankfort Road	:	of the NAAQS for Lead;
Monaca, PA 15061-2295	:	NAAQS Attainment

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("Consent Order and Agreement") is entered into this 24th day of November, 2012, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and Horsehead Corporation (hereinafter "Horsehead").

The Department has found and determined the following:

A. ~~The Department is the agency with the duty and authority to administer and enforce the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. §§ 4001—4015 ("Air Pollution Control Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder.~~

B. ~~Horsehead is a Delaware corporation with a mailing address of 300 Frankfort Road, Monaca, PA 15061-2295.~~

C. ~~Horsehead owns and operates a zinc production plant in Potter Township, Beaver County, Pennsylvania (hereinafter "Site"). Horsehead operates the Site pursuant to Title V Operating Permit No. 04-00044 (the "Permit").~~

D. ~~Horsehead operates the following stationary sources of lead emissions at the Site: the Furnace Plant, the Sinter Plant, the Secondary Materials Operations, and the zinc oxide~~

~~manufacturing operation. On November 10, 2011, Horsehead provided the Department with an updated emission inventory for the Site for calendar year 2010, which reports lead emission rates for all lead-emitting sources at the Site. The updated emission inventory demonstrates that the combined lead emissions from the Furnace Plant, the Sinter Plant, and the Secondary Materials Operations constitute at least 99% of the total lead emissions at the Site.~~

~~E. On November 12, 2008 (effective date January 12, 2009), the Environmental Protection Agency (“EPA”) issued a final rule entitled “National Ambient Air Quality Standards for Lead; Final Rule” (the “Lead NAAQS”). 73 Fed. Reg. 66964 – 67062. Among other things, the Lead NAAQS revised certain requirements pertaining to where state and local agencies are required to conduct lead monitoring.~~

~~F. As part of the monitoring requirements in the Lead NAAQS, the Department was required to monitor ambient air near lead sources which are expected to or have been shown to have a potential to contribute to a 3-month average lead concentration in ambient air in excess of 50 percent of the applicable Lead NAAQS standards (based on historical monitoring data, modeling, or other means).~~

~~G. The Department identified the Site as a facility having the potential to contribute to a 3-month average lead concentration in ambient air in excess of 50 percent of the applicable Lead NAAQS standards, and began monitoring for lead in the Lower Beaver Valley (“Beaver Valley Monitor”) on January 1, 2010. The Beaver Valley Monitor is located in Center Township, Pennsylvania.~~

~~H. The Lead NAAQS establishes a new ambient air quality standard for lead of 0.15 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”), arithmetic mean concentration over a 3-month period.~~

~~I. Monitoring results from the Department’s former Vanport Monitor exceeded the new Lead NAAQS standard. In November 2010, EPA designated the Lower Beaver Valley,~~

~~which included Vanport and Potter Townships, as a non-attainment area for lead (“LBV Lead Nonattainment Area”). 75 Fed. Reg. 71033 (November 22, 2010). Center Township was included in the LBV Lead Nonattainment Area as of December 31, 2011. 76 Fed. Reg. 72097 (November 22, 2011).~~

~~J. The Department is required under the Clean Air Act to submit a State Implementation Plan (“SIP”) to EPA that specifies how Pennsylvania expects to achieve compliance with the new ambient standard for lead under the Lead NAAQS.~~

~~K. As required under Section 172(c)(1) of the Clean Air Act, 42 U.S.C. § 7502(c)(1), and Pennsylvania’s SIP codified at 40 CFR § 52.2020, Horsehead shall employ reasonably available control measures (“RACM”), including reasonably available control technology (“RACT”), as expeditiously as practicable to reduce lead emissions from existing emission sources at the Site as more fully detailed in this Consent Order and Agreement.~~

~~L. Permanently discontinuing production of zinc metal from the Furnace Plant, the Sinter Plant, and the Secondary Materials Operations on or before October 1, 2014, satisfies Horsehead’s RACM and RACT obligations for reducing lead emissions from existing emission sources at the Site to the extent required under Section 172(c)(1) of the Clean Air Act.~~

~~M. Between 2004 and 2006, the Department determined that certain emissions from the Site caused incidents of noncompliance with applicable fugitive emissions standards and exceedances of visible emissions standards. In order to address the Department’s claims of noncompliance, the Department and Horsehead entered into three Consent Orders and Agreements, as set forth below in Paragraphs N, O, and P.~~

~~N. On April 8, 2005, Horsehead and the Department entered into a Consent Order and Agreement that required Horsehead to take measures to address fugitive and visible emissions at the Site (the “April 2005 COA”). The April 2005 COA was amended on several~~

occasions. The April 2005 COA, as amended, expired on June 30, 2010, and was replaced by a subsequent Consent Order and Agreement, which was executed on July 2, 2010, as described below in Paragraph P.

O. On June 28, 2006, Horsehead and the Department entered into a Consent Order and Agreement that required Horsehead to take measures to address fugitive emissions at the Site (the "June 2006 COA"). The June 2006 COA was amended on several occasions. The June 2006 COA, as amended, expired on June 30, 2010, and was replaced by a subsequent Consent Order and Agreement, which was executed on July 2, 2010, as described below in Paragraph P.

P. On July 2, 2010, Horsehead and the Department entered into a Consent Order and Agreement (the "July 2010 COA") that required Horsehead to take the following measures related to fugitive and visible emissions at the Site:

i. Implement a plan to evaluate the effectiveness of automating the red jacket valves in the furnaces. Consistent with this provision of the July 2010 COA, Horsehead installed a transducer in the top of one of the furnaces at the Site and used pressure readings from the transducer to automate the unit's red jacket valve. Preliminary engineering studies appeared to demonstrate that automating the red jacket valves might be effective, and Horsehead notified the Department that it would continue to implement the project. However, further evaluation and additional information concerning automation of the red jacket valves in all furnaces at the Site demonstrated that continued automation of the red jacket valves is not effective. Therefore, Horsehead discontinued automation of the red jacket valves and notified the Department in accordance with the July 2010 COA.

ii. Implement a plan to evaluate the effectiveness of automating the barrel vents in the furnaces, by controlling air volume drawn through the furnace barrel vents.

Consistent with this provision of the July 2010 COA, Horsehead installed a transducer in the top of one the furnaces to monitor top pressure.

(a) The July 2010 COA provided that, if the results of Horsehead's evaluation demonstrated that automating the barrel vents would be effective, Horsehead would install transducers in each of the furnaces at the Site on or before June 30, 2012.

(b) The results of Horsehead's evaluation demonstrated that automating the barrel vents is effective; accordingly, Horsehead has installed transducers in each of the furnaces at the Site.

iii. Develop and submit to the Department a preventative maintenance plan for all baghouses at the Site on or before September 30, 2010 (the "Baghouse Preventative Maintenance Plan"). Horsehead submitted the Baghouse Preventative Maintenance Plan to the Department on August 29, 2010, and thereafter commenced implementation of the plan. The Department approved the Baghouse Preventative Maintenance Plan on November 28, 2011.

iv. Procure and install a computer program to control all product fan inlet dampers and bleed air dampers for improved air flow and fan performance (the "PLC") on or before June 30, 2012. Horsehead installed the PLC on January 31, 2011.

v. Submit to the Department a plan to further reduce the number of cap-offs (i.e., the practice of temporarily taking worn bags out of service rather than immediately replacing them) (the "Cap-off Plan") on or before August 1, 2010. Horsehead submitted the Cap-off Plan to the Department on July 29, 2010. The July 2010 COA further required Horsehead to implement the Cap-off Plan. Horsehead completed implementation of the Cap-off Plan on November 30, 2010.

vi. Provide the Department with quarterly progress reports, which describe progress made on corrective actions specified in the July 2010 COA. Horsehead has submitted quarterly progress reports pursuant to the schedule identified in the July 2010 COA.

Q. The requirements of the July 2010 COA expired on June 30, 2012, and are hereby superseded by the instant Consent Order and Agreement.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Horsehead as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4(9)(i) and 10.1 of the Air Pollution Control Act, 35 P.S. Sections 4004(9)(i) and 4010.1, and Section 1917-A of the Administrative Code, 71 P.S. Section 510-17.

2. Findings.

a. Horsehead agrees that the findings in Paragraphs A through Q are true and correct and, in any matter or proceeding involving Horsehead and the Department, Horsehead shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action.

a. Horsehead shall permanently discontinue production of zinc metal from the Furnace Plant, the Sinter Plant and the Secondary Materials Operations at the Site on or before October 1, 2014. These Sources are identified in the Permit as: Sinter Plant – 400, 401, 403, 404; Furnace Plant – 501, 502, 506, 508, 510; Secondary Materials Operations – 702, 703, 705, and 706. Horsehead shall satisfy its obligations under this Paragraph 3.a. by either:

- (i) Dismantling or disabling the Furnace Plant, the Sinter Plant and the Secondary Materials Operations so that they cannot be operated, or;
- (ii) Annually submitting a written certification to the Department, on or before January 15 of each year following the discontinuation of production of zinc metal from the Furnace Plant and the Sinter Plant, certifying that the Furnace Plant, the Sinter Plant and the Secondary Materials Operations are not being used for the production of zinc metal. Horsehead's obligation to submit annual certifications under this Paragraph 3.a.(ii) shall terminate upon Horsehead's compliance with Paragraph 3.a.(i) of this Consent Order and Agreement.

b. Following the permanent discontinuation of production of zinc metal from the Furnace Plant, the Sinter Plant and the Secondary Materials Operations, in accordance with Paragraph 3.a. of this Consent Order and Agreement, Horsehead shall limit the aggregate potential lead emission rate from all stationary sources and fugitive emissions at the Site to 0.1 tons/year (tpy), over each consecutive twelve (12) month rolling period. Within 30 days of permanently discontinuing production of zinc metal from the Furnace Plant, the Sinter Plant and

the Secondary Materials Operations, Horsehead shall submit to the Department an application to modify the Permit to reflect this aggregate annual lead emissions limit for the Site, or notify the Department that Horsehead has ceased operations of regulated air emission sources at the Site.

c. Until Horsehead permanently discontinues production of zinc metal from the Furnace Plant, the Sinter Plant and the Secondary Materials Operations, in accordance with Paragraph 3.a. of this Consent Order Agreement, Horsehead shall operate the Furnace Plant, the Sinter Plant, and the Secondary Materials Operations at the Site in a manner consistent with good operating practices.

d. Commencing with the effective date of this Consent Order and Agreement and continuing until Horsehead satisfies its obligations under Paragraph 3.a. (other than submittal of any annual certifications pursuant to Paragraph 3.a.(ii)), Horsehead agrees to take the following measures:

- (i) Take any/all steps necessary to maintain the automated barrel vents referenced in Paragraph P.ii., above, which became fully operational on March 15, 2012.
- (ii) Continue to implement the Baghouse Preventative Maintenance Plan referenced in Paragraph P.iii. as follows:
 - A) The time between PW and Intermediate Collector rebuilds at the Site shall not exceed four years.
 - B) The time between Coke and Residue Collector rebuilds at the Site shall not exceed two years.
 - C) To the extent that Horsehead cannot implement necessary baghouse repairs through available resources at the Site on a

reasonable basis, Horsehead shall employ a baghouse repair contractor at the Site.

D) Horsehead shall conduct flow checks on major collectors two times per year.

E) Horsehead shall conduct inspections of the baghouses, both externally and internally, in accordance with the specific inspection procedures and forms identified in the Baghouse Preventative Maintenance Plan.

e. Horsehead shall submit to the Department semiannual progress reports, which describe:

- (i) the status of Horsehead's activities relative to its obligations pursuant to Paragraph 3.a. of this Consent Order and Agreement; and;
- (ii) progress made on the corrective actions specified in Paragraph 3.d. of this Consent Order and Agreement.

The first semiannual status report shall be submitted by March 31, 2013, with subsequent status reports submitted every six months thereafter for the periods from September 1 through February 28, and March 1 through August 31, respectively, until Horsehead satisfies its obligations under Paragraph 3.a. of this Consent Order and Agreement, or commences submittal of annual certifications pursuant to Paragraph 3.a.(ii) of this Consent Order and Agreement.

4. Incorporation into SIP. Paragraph Nos. 3, 5, and 6 of this Consent Order and Agreement shall be incorporated into the SIP, described in Paragraph J, above, that the Department submits to EPA to demonstrate how it will achieve and maintain compliance with the new Lead NAAQS.

5. Source Testing. Following Horsehead's discontinuation of zinc metal production at the Furnace Plant, Sinter Plant and the Secondary Materials Operations as set forth in Paragraph 3.a., above, **and** if Horsehead continues other operations at the Site, Horsehead shall perform one round of source testing to demonstrate its compliance with the 0.1 tpy emission limit for lead set forth in Paragraph 3.b., above. Testing shall address the following sources, to the extent that Horsehead continues to operate such sources following discontinuation of zinc metal production at the Furnace Plant, the Sinter Plant and the Secondary Materials Operations at the Site:

Larvik Furnaces 1-5 (Source No. 904) – Control Device 902

Refinery Feed Pot (Source 802)

Testing shall be carried out as follows:

a. Within thirty (30) days of the discontinuation of zinc metal production at the Furnace Plant, Sinter Plant and the Secondary Materials Operations, Horsehead shall submit stack test protocols to test for lead emissions to the Department for review and approval at least 30 days prior to the proposed source testing date. The test protocol shall meet all applicable requirements specified in the most current version of the Department's Source Testing Manual.

b. Pursuant to 25 Pa. Code § 139.3, at least 15 calendar days prior to commencing the lead stack tests, written notification as to the date and time of testing shall be given to the Southwest Regional Office. Notification shall also be sent to the Bureau of Air Quality, Division of Source Testing and Monitoring. Stack testing shall not commence prior to the receipt of a protocol acceptance letter from the Department.

c. Pursuant to 25 Pa. Code § 139.53(a)(3) within 15 calendar days after completion of the lead testing, if a complete test report has not yet been submitted, an electronic

mail notification shall be sent to the Department's Division of Source Testing and Monitoring indicating the completion date of the on-site testing.

d. Pursuant to 40 CFR Part 60.8(a), 40 CFR Part 61.13(f) and 40 CFR Part 63.7(g), a complete test report shall be submitted to the Department no later than 60 calendar days after completion of the lead tests. If tests are being conducted pursuant to 40 CFR Part 61, a complete test report shall be submitted to the Department within 31 days after completion of the test.

e. Pursuant to 25 Pa. Code § 139.53(b), a complete test report shall include a summary of the lead emission results on the first page of the report indicating the lead emissions from each source and the total lead emissions for the facility, and comparing the total emissions to the new limit of 0.1 tpy. The summary results will include, at a minimum, the following information:

- (i) A statement that the owner or operator has reviewed the report from the emissions testing body and agrees with the findings.
- (ii) The basis for the evaluation (e.g., Permit number(s) and condition(s)).
- (iii) Summary of results with respect to each source and the facility.
- (iv) Statement of compliance with the facility lead limit of 0.1 tpy.

f. Notwithstanding the foregoing, in the event Horsehead is not operating any source identified under Paragraph 5 of the Consent Order and Agreement during the time for performance testing, but then returns such source(s) to service, Horsehead must satisfy the provisions of subparagraphs 5.a. through 5.e. commencing thirty (30) days after the startup of such source(s).

g. Pursuant to 25 Pa. Code § 139.3, all submittals shall meet all applicable requirements specified in the most current version of the Department's Source Testing Manual.

h. All testing shall be performed in accordance with 25 Pa. Code Chapter 139 (relating to sampling and testing).

i. Pursuant to 25 Pa. Code §§ 139.53(a)(1) and 139.53(a)(3), all submittals, besides notifications, shall be accomplished through PSIMS*Online (Pennsylvania Source Testing Information Management System) available through <http://www.depgreenport.state.pa.ecomm/Login.jsp>, when it becomes available. If internet submittal can not be accomplished, three copies of the submittal shall be sent to the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, Division of Source Testing and Monitoring, 400 Market Street, 12th Floor Rachel Carson State Office Building, Harrisburg, PA 17105-8468, with deadlines verified through document postmarks.

6. Contingency Measures. Control measures to bring the Lower Beaver Valley into attainment with the Lead NAAQS include contingency measures that are ready to be implemented if monitored violations of the Lead NAAQS persist at the Beaver Valley or Vanport air quality monitors. Specifically, Horsehead shall implement contingency measures if all of the following occur:

a. the production of zinc metal ceases at the Furnace Plant, the Sinter Plant and the Secondary Materials Operations at the Site,

b. Horsehead maintains ongoing operations on the site and has not transferred a controlling legal or equitable interest in the Site to a non-affiliated entity,

c. monitored violations of the Lead NAAQS persist,

d. the Department determines in writing that Horsehead's ongoing emissions cause or significantly contribute to the ongoing Lead NAAQS exceedances. Horsehead shall

implement the contingency measures within the specified time frames following receipt of written notice from the Department to implement the contingency measures, **and**

e. the Department determines in writing that specific contingency measures from among those listed below are necessary and appropriate to abate the emissions which the Department has determined are causing or significantly contributing to the ongoing Lead NAAQS exceedances measured at the Beaver Valley or Vanport air quality monitors.

(i) Suppression of fugitive dust from roadways.

A) As expeditiously as possible, but no later than thirty (30) days after written Department notice, Horsehead will arrange for all paved roads in the eastern half of the facility area that are subject to vehicle traffic to be treated with a wet suppression system twice daily. (Except on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow.) The specific roads to be treated with a wet suppression system, in accordance with Paragraph 6.e.(i)(1), are identified on the map appended hereto as Attachment A to this Consent Order and Agreement.

B) As expeditiously as possible, but no later than ninety (90) days from written Department notice, Horsehead will install a vehicle wash at an appropriate location outside of the exits of the material storage and handling areas to remove dust and other accumulated materials to prevent the inadvertent transfer of lead contaminated material. The vehicle wash must include

washing of tires, wheel, undercarriage and exterior surface of the vehicle followed by vehicle inspection, to assure that dust and other accumulated materials have been removed.

ii. Fabric Filter upgrade.

- A) As expeditiously as possible, but no later than two hundred and seventy (270) days from written Department notice, Horsehead shall completely retrofit the baghouses for: Source ID 904, Larvik Furnace Environmental Collector (Source ID D02); Source ID 802, Refinery Feed Pot Collectors. Horsehead will replace all bags in the identified baghouses with Polytetrafluoroet (“PTFE”) membrane media. Horsehead shall submit a Request for Determination (RFD) to the Department requesting exemption from the plan approval requirements for the replacement of the bags within sixty (60) days after receipt of the Department’s written notice, and shall enter into an agreement to purchase the bags within one hundred and fifty (150) days after receipt of the Department’s written notice.
- B) If Horsehead can demonstrate that by adding cartridge filters to its existing baghouse using the current bags will be at least as effective at reducing lead emissions as switching to PTFE bags (as described in subparagraph 6.e.(ii)(1) above), then it may utilize cartridge filters in lieu of PTFE bags. The schedule set forth in subparagraph 6.e.(ii)(1) shall be followed.

iii. If Horsehead identifies and demonstrates to the Department's satisfaction alternative control measures(s) that would achieve equal or greater lead emission reductions than the Contingency Measure(s) identified above, Horsehead may substitute the new control measure(s) for the contingency measure(s) identified above upon the Department's written approval. Any substitute contingency measure shall be implemented under the same time frame as the original measure, unless both parties agree to a modified contingency schedule.

iv. Nothing in this agreement shall prevent Horsehead from implementing the contingencies or additional emission controls not listed in this agreement prior to receiving notification from the Department.

~~7. Execution of this Consent Order and Agreement is in settlement of the Department's claims for noncompliance by Horsehead under Paragraphs I and M - P, above, and Horsehead's satisfaction of the requirements of this Consent Order and Agreement otherwise resolves any obligations applicable to Horsehead related to the Site's compliance under Paragraph K above and with the 2008 Lead NAAQS. Notwithstanding the foregoing, the Department reserves the right to require additional control measures to reduce lead emissions from any remaining Horsehead operations if monitored violations of the Lead NAAQS persist after all provisions of this Consent Order and Agreement have been fully implemented.~~

8. Stipulated Civil Penalties.

a. ~~In the event Horsehead fails to comply in a timely manner with any requirement specified in Paragraphs 3.b. and 3.c. of this Consent Order and Agreement, Horsehead shall be in violation of this Consent Order and Agreement and shall pay a civil penalty in the amount of \$375.00 per day for each such violation, in accordance with this Section 8.~~

b. ~~In the event Horsehead fails to comply in a timely manner with the requirement specified in Paragraph 3.a.(ii) of this Consent Order and Agreement, if applicable, to submit an annual certification, Horsehead shall be in violation of this Consent Order and Agreement and shall pay a civil penalty in the amount of \$1,000.00 per day for each such violation, in accordance with this Section 8.~~

c. ~~In the event Horsehead fails to comply in a timely manner with Paragraph 3.a. of this Consent Order and Agreement, Horsehead shall be in violation of this Consent Order and Agreement and shall pay a civil penalty in the amount of \$10,000.00 per day for each such violation, in accordance with this Section 8. Notwithstanding the foregoing, Horsehead's obligation to annually submit a written certification to the Department, as set forth in Paragraph 3.a.(ii) above, shall be governed by the stipulated penalty provision in Paragraph 8.b., and not this Paragraph 8.c.~~

d. ~~Horsehead will implement the measures identified in Section 3 of this Consent Order and Agreement to continue to address fugitive and visible emissions at the Site. In the event that, prior to the date that Horsehead satisfies its obligations under this Consent Order and Agreement emissions from the Site nonetheless fail to comply with applicable fugitive and/or visible emissions standards identified in 25 Pa. Code § 123.1 or § 123.41, then Horsehead shall be in violation of this Consent Order and Agreement and shall pay a civil penalty in the amount of \$9,000.00 per month, for any month(s) during which any such instance(s) of noncompliance occurs.~~

e. ~~All stipulated civil penalty payments shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania, Clean Air Fund" and sent to the Air Quality Program Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.~~

f. ~~Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of the month following Horsehead's receipt of a written demand for such stipulated penalty from the Department. Any stipulated penalty payment shall be made as described in Paragraph 8.e. above.~~

g. ~~Any payment under this paragraph shall neither waive Horsehead's duty to meet its obligation under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Horsehead's compliance with the terms and conditions of this Consent Order and Agreement. Payment of a stipulated penalty in accordance with this Paragraph 8 resolves only Horsehead's liability for civil penalties arising from the specified violation(s) for which the payment is made.~~

9. Additional Remedies.

a. ~~In the event Horsehead fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.~~

b. ~~The remedies provided by this Paragraph 9 and Paragraph 8 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.~~

10. Reservation of Rights. ~~The Department reserves the right to require additional measures to achieve compliance with applicable law. Horsehead reserves the right to challenge any action, which the Department may take to require those measures.~~

11. Liability of Operator. ~~Horsehead shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Unless the Department authorizes the transfer of Horsehead's responsibilities under this Consent Order and Agreement, Horsehead also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.~~

12. Transfer of Site.

a. ~~The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof unless authorized by the Department in writing.~~

b. ~~If Horsehead intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, Horsehead shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Southwest Regional Office of the Department of such intent.~~

13. Non-Transferable Obligations. ~~In the event that Horsehead transfers a controlling legal or equitable interest in the Site to any person or entity, other than an entity legally-affiliated with Horsehead, the obligations under this COA would not transfer to any new owner of the Site. For purposes of this COA, the exercise by a prospective purchaser of an option to purchase a controlling interest in the Site shall constitute the transfer of a controlling legal or equitable interest in the Site.~~

14. Correspondence with Department. ~~All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:~~

Mark A. Wayner PE
Regional Air Quality Program Manager
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone: (412) 442-4000
Fax: (412) 442-4194

15. Correspondence with Horsehead. All correspondence with Horsehead concerning this Consent Order and Agreement shall be addressed to:

David B. Swisher
Horsehead Corporation
4955 Steubenville Pike, Suite 405
Pittsburgh, PA 15205
Phone: (724) 773-2284
Fax: (724) 788-4526

With a copy to:

Gary Whitaker, Esq.
Vice President, General Counsel & Secretary
Horsehead Corporation
4955 Steubenville Pike, Suite 405
Pittsburgh, PA 15205
Phone: (724) 773-2270
Fax: (724) 788-1812

Horsehead shall notify the Department whenever there is a change in the name, title, or address of any contact person identified for Horsehead within this paragraph. Any communication made for any purpose under this Consent Order and Agreement, including its enforcement, may be made by facsimile, first class mail, hand delivery or overnight mail by reputable courier to the relevant address listed in Paragraph 14.

16. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

17. Survival. In accordance with Paragraph 4 of this Consent Order and Agreement, Paragraphs 3, 5, and 6 of this Consent Order and Agreement shall remain in effect as a requirement of the SIP upon approval by EPA following submittal by the Department in accordance with Paragraph J above. Notwithstanding the foregoing, Horsehead's obligations under Paragraphs 3.c. through 3.e. of this Consent Order and Agreement shall be satisfied upon Horsehead's compliance with its obligations under Paragraph 3.a. of this Consent Order and Agreement (other than submittal of any annual certifications pursuant to Paragraph 3.a.(ii)). Horsehead's obligations under Paragraph 3.b. shall be satisfied upon the earlier of the Department's issuance of a final modified permit reflecting the aggregate annual lead emissions for the Site, or Horsehead's notification to the Department that Horsehead has ceased operations of regulated air emission sources at the Site, in accordance with Paragraph 3.b. of this Consent Order and Agreement.

18. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

19. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

20. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

21. Decisions under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an Adjudication under 2 Pa. C.S. § 101. Any objection, which

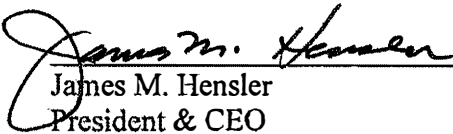
Horsehead may have to the decision, will be preserved until the Department enforces this Consent Order and Agreement.

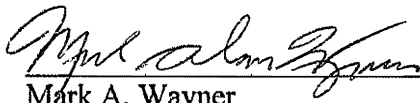
22. Counterparts. This document may be executed through counterparts of the signature page(s) transmitted by facsimile or electronically by portable document format (“pdf”).


IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Horsehead certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Horsehead; that Horsehead consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Horsehead hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content and validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Horsehead's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR HORSEHEAD CORPORATION:

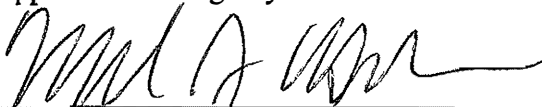
FOR THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

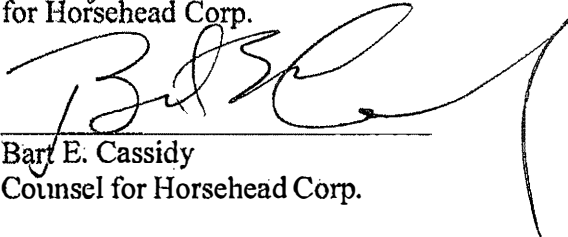

James M. Hensler
President & CEO


Mark A. Wayner
Regional Air Quality Program Manager

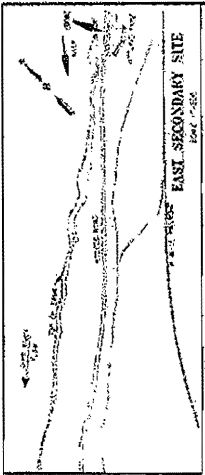
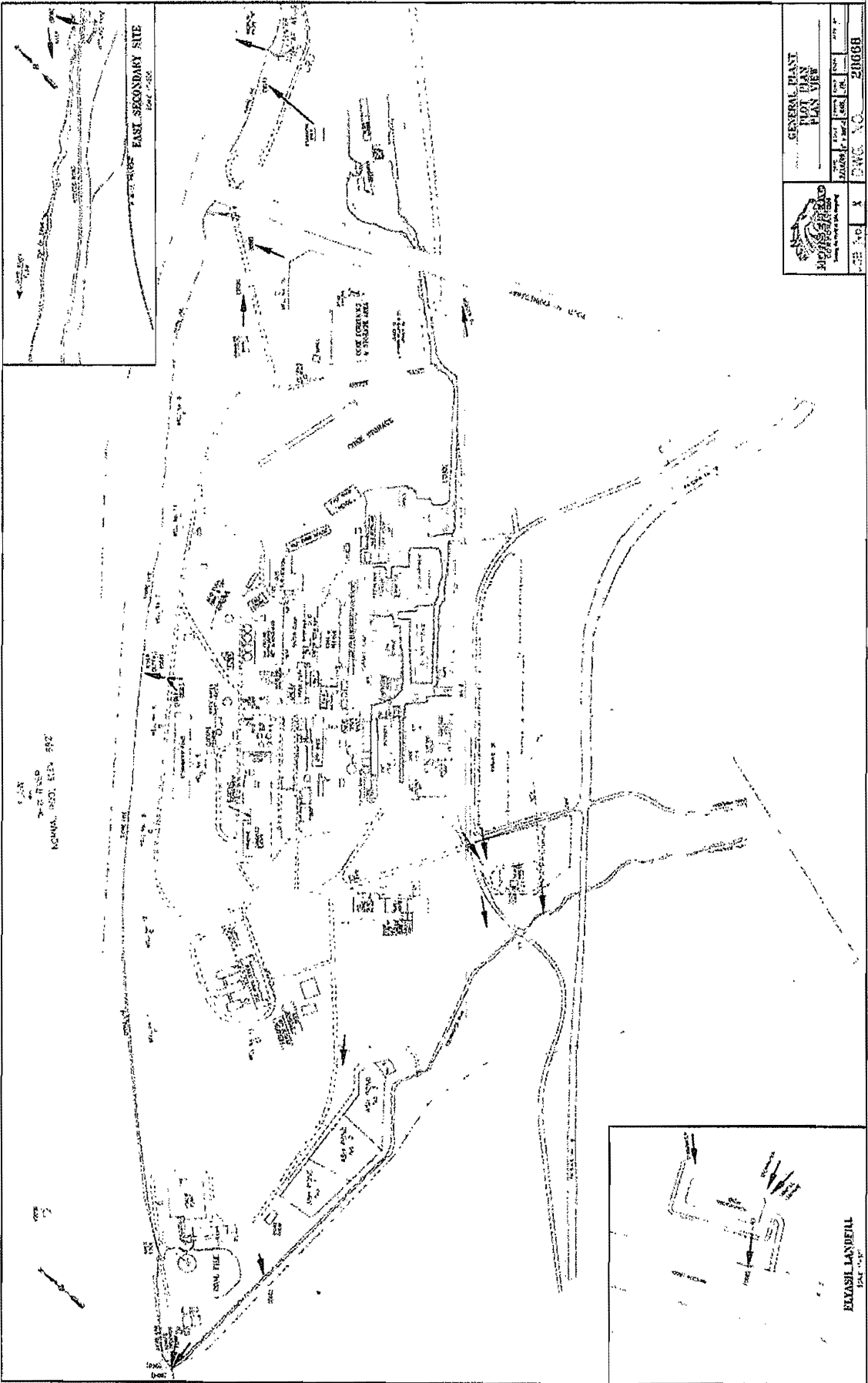

Gary Whitaker, Esq.
Vice President, General Counsel & Secretary
for Horsehead Corp.

Approved as to legality and form:


Michael J. Heilman
Assistant Regional Counsel


Bart E. Cassidy
Counsel for Horsehead Corp.

ATTACHMENT A



GENERAL PLANT LAYOUT PLAN PLAN VIEW		
DATE	BY	CHECKED
JULY 1978	J. W. DAVIS	J. W. DAVIS
DWS NO. 210038		

