

**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 2021CV000949
DAVE YOST,	:	
OHIO ATTORNEY GENERAL	:	JUDGE FARMER
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
REPUBLIC STEEL	:	
	:	
Defendant.	:	

FINAL CONSENT ORDER AND FINAL JUDGMENT ENTRY

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“Director”), has filed an amended complaint seeking injunctive relief and civil penalties against Defendant Republic Steel (“Defendant”) for alleged violations of Ohio’s air pollution control laws under R.C. Chapter 3704, the rules adopted thereunder, and its air pollution control permits, concerning Defendant’s iron and steel manufacturing facility located at 2633 Eighth Street NE, Canton, Stark County, Ohio. Defendant went into a period of permanent idling on August 10, 2023, and announced a permanent shutdown on September 10, 2023.

Plaintiff and Defendant have consented to the entry of this Consent Order (“Order”).

Therefore, without trial, admission, or determination of any issue of fact or law, except as expressly provided herein, and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. "Canton Air Pollution Control" ("CAPC") means the Canton City Public Health Air Pollution Control Division, which is Ohio EPA's contracted local air agency in Stark County, Ohio.
 - b. "Collocated Monitor" means the secondary air monitor located at Stark County Auditor Parcel #10015200, located at approximately latitude 40.8003 and longitude -81.3312 at Georgetown Road in Canton, Ohio.
 - c. "Community Monitor" means the air monitor located at Stark County Auditor Parcel #400564, located at approximately latitude 40.79949223 and longitude -81.33581637 near Georgeview Estates neighborhood at Marietta Avenue in Canton, Ohio. This monitor is used to determine attainment with the NAAQS.
 - d. "Day" means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.
 - e. "Defendant" means Republic Steel.
 - f. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or the Director's designee.
 - g. "DES" means the Department of Environmental Services at Ohio EPA.
 - h. "Facility" means the Defendant's operation located at 2633 Eighth Street NE, Canton, Stark County, Ohio including Stark County Auditor Parcel #246729, #400756, #400834, #400836, and #400837.

- i. "Fenceline Monitor" means the air monitor located at Stark County Auditor Parcel #10015200, located at approximately latitude 40.8003 and longitude -81.3312 at Georgetown Road in Canton, Ohio. This monitor is a source-oriented monitor pursuant to 40 CFR 58.10(a)(4). This monitor is used to determine attainment with the NAAQS.
- j. "Lead NAAQS" means the primary and secondary National Ambient Air Quality Standards for lead, measured as lead in total suspended particulates, not to exceed 0.15 micrograms per cubic meter over a 3- month rolling average.
- k. "Order" refers to this Consent Order.
- l. "Ohio EPA" refers to the Ohio Environmental Protection Agency.
- m. "Parties" means Plaintiff, the State of Ohio, and Defendant, Republic Steel, also known for purposes of this Order as Republic Steel - Canton.
- n. "Person" means an individual, public, or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- o. "State" means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Amended Complaint.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 3704. The Amended Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. Defendant is a Delaware company, registered as a foreign corporation in Ohio with its principal place of business at 2633 Eighth Street NE, Canton, Stark County, Ohio.

4. This Order shall apply to and be binding only upon Defendant and, to the extent consistent with Civ.R. 65(D), on its agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendant who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein.

5. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability except as expressly provided herein. If insolvency, bankruptcy, or other financial failure occurs, Defendant must pay the remaining unpaid balance of all amounts required under this consent order including costs, fees, funds, programs, and civil and stipulated penalties unless prohibited by law or court order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. Plaintiff alleges that Defendant is responsible for violations of Ohio's air pollution control laws of the State of Ohio under R.C. 3704. Defendant denies all such

allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendant for the claims alleged in Plaintiff's Amended Complaint and of its officers, directors, employees, agents, servants, attorneys, shareholders, and successors in interest for the claims alleged in Plaintiff's Amended Complaint. Entering into this Order, the Order itself, the taking of any action in accordance with the Order, and/or any work performed under the Order does not constitute and cannot be admitted as evidence of admission of liability, wrongdoing, or misconduct on the part of Defendant, its officers, directors, employees, agents, servants, attorneys, shareholders, and successors in interest by the State of Ohio.

7. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations not alleged in the Amended Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable action against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Facility that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce.

8. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.

9. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Amended Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

10. Nothing in this Order shall relieve Defendant of its obligation to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

11. Nothing herein shall restrict the right of Defendant to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State of Ohio in this Order. However, with respect to the actions reserved by the State of Ohio in this Section, Defendant shall not assert and/or maintain any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTIVE RELIEF

12. Defendant shall comply with R.C. Chapter 3704 and the rules adopted thereunder, as well as the terms and conditions of all permits issued by Ohio EPA. If Ohio EPA issues any permits or permit modifications as a result of this Consent Order or orders to Defendant in the future, Defendant shall comply with the terms and conditions of such permits and/or modifications.

13. Within thirty (30) days from the effective date of these Orders, Defendant shall submit to Ohio EPA and CAPC a request for the permanent shutdown and termination of all air permits associated with facility ID 1576050694. For emissions units that might temporarily continue to operate while the facility is being closed, such as roadways, parking lots, storage piles and material handling areas, Defendant shall comply with Ohio Adm.Code 3745-17 until Defendant demonstrates the emissions units are de minimis.

14. Within thirty (30) days from the effective date of these Orders, Defendant shall submit to Ohio EPA and CAPC a request for permanent shutdown and termination of all air permits associated with facility ID 1576000015, located at the Defendant's facility property, and for the previous Stein LLC slag operations.

15. Within thirty (30) days from the effective date of these Orders, Defendant shall pay \$18,523.90 in outstanding fees owed to Ohio EPA. Payment shall be made to the Treasurer, State of Ohio at Ohio EPA, PO Box 77005, Cleveland, Ohio 44194-7005 and include Revenue ID 1582395 on the payment check. By no later than April 15, 2024, Defendant shall submit an Emissions Inventory Statement and Fee Emissions Report for 2023 and shall pay associated fees by the date set forth in the invoice issued by Ohio EPA.

Lead Monitoring and Responses to Exceedances

16. Defendant shall provide Ohio EPA and CAPC staff access to the air monitoring platform associated with the Fenceline Monitor through December 31, 2026. If Defendant sells the property of the Fenceline Monitor location, Defendant shall do so with an easement granting Ohio EPA and CAPC staff access to the air monitoring platform until this date. The purpose of the source-oriented monitor pursuant to 40 CFR 58.10(a)(4) is to determine compliance with the NAAQS for lead. Defendant shall provide sixty thousand dollars (\$60,000.00) to reimburse

CAPC time and material costs of the ongoing utility, operational, maintenance, quality control, quality assurance, data review/reporting and laboratory analysis costs for the Fenceline Monitor and Collocated Monitor. This shall be paid in six payments of ten thousand dollars (\$10,000.00) with the first payment being due on or before January 1, 2024, and each subsequent payment due on or before the first of each following month for a total of six consecutive months. Within thirty (30) days of the effective date of these Orders, Defendant shall pay \$22,252.19 for past due air monitoring fees to CAPC. Payment shall be made to the Canton City Public Health Air Pollution Control at 420 Market Avenue, North Canton, Ohio 44702 c/o Terri Dzienis or her successor. The specific details of the ambient air monitoring including frequency will be determined, and may be modified, by the Director or a designee of the Director. Nothing in this order shall prevent the parties from agreeing to extend Ohio EPA's access to the site to a later date.

17. Beginning with the entry of this Order, if either the Community Monitor or the Fenceline Monitor measures a three-month average of lead above the lead NAAQS of 0.15 ug/m³ based on DES lab values, Defendant shall immediately cease activities that are creating or could possibly be contributing to the NAAQS exceedance, and institute measures including but not limited to additional watering, additional cleaning, building/equipment repairs, additional closing of building openings, updated work practices, and/or applying additional chemical suppressant to control fugitive dust from the Facility. These actions shall be completed, and a summary of the actions shall be provided to Ohio EPA and CAPC within fourteen (14) days of Defendant being notified of the exceedance.

18. If any lead ambient air monitoring individual daily value exceeds 0.75 ug/m³ based on DES lab values at either the Community Monitor or the Fenceline Monitor, Defendant must act to reduce the ambient impact of the Facility with respect to lead emissions. This/these

action(s) may include, but is/are not limited to, additional watering, additional cleaning, building/equipment repairs, additional closing of building openings, updated work practices, and/or applying additional chemical suppressant. These actions shall be completed, and a summary of the actions shall be provided to Ohio EPA and CAPC within fourteen (14) days of Defendant being notified of the monitoring value that exceeded 0.75 ug/m3.

Canton Community Fund

19. Defendant shall pay three hundred thousand dollars (\$300,000.00) to the Canton City Board of Health to establish a fund ("Canton Community Fund"), by delivering payment to the Canton City Public Health at 420 Market Avenue, North Canton, Ohio 44702 c/o James Adams or successor in payments of fifty thousand dollars (\$50,000.00) with the first payment due on or before January 1, 2024, and each subsequent payment due on the first of each following month for a total of six consecutive months. Any funds in the Canton Community Fund may be used for power washing of houses or other activities in the City of Canton's discretion with Ohio EPA approval. Once the funds have been exhausted in the Canton Community Fund, Defendant shall not be required, pursuant to the terms of this Order, to provide additional funds. The City of Canton will a) allocate and administer the Canton Community Fund; b) retain any contractor(s) to perform the work; and c) make decisions as to how to allocate the funds. Defendant shall not be responsible for any damage to property that may be caused by any activities that are funded using the Canton Community Fund.

VI. CIVIL PENALTY

20. The State's twenty-four count amended complaint addresses an alleged nuisance involving pollutants allegedly caused and/or released from the Facility, as well as alleging violations of permits and regulations issued pursuant to R.C. Chapter 3704. The civil penalty under this Section derives from those allegations.

21. Defendant voluntarily ceased operation at its Canton Facility on or about August 10, 2023, and has announced that the shutdown is permanent. Defendant has also made a claim to the State that it lacks the financial means to satisfy the State's civil penalty demand at this time and has provided documentation to the State in support of that claim. The inability-to-pay determination under this Section accounts for these facts.

22. The Court hereby imposes on Defendant a civil penalty of two million five hundred thousand dollars (\$2,500,000.00). In recognition of Defendant's inability-to-pay demonstration, the State agrees not to collect the penalty, provided all other amounts due under this Order (paragraphs 15, 16, and 19) are paid as required herein.

23. If full payment of the amounts due under this Consent Order in paragraphs 15, 16, and 19 are not received by the State of Ohio in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C.131.02(D), shall become immediately due and owing. The remaining unpaid balance of delinquent payments shall accrue interest at the rate per annum required by R.C.5704.47 calculated from the Effective Date of this Order.

24. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to any outstanding balance due under this Consent Order, collection costs of ten percent (10%) shall be owing and fully recoverable from Defendant to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

25. The State of Ohio reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total amounts due, plus applicable statutory interest and collection costs, if the full amounts due are not paid according to the schedules in

this Order. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

VII. STIPULATED PENALTIES

26. Beginning with the entry of this Order, if either of the Monitor Locations measures the three-month rolling average of lead above the lead NAAQS, 0.15 ug/m³, for any three-month rolling period, Defendant shall pay twenty-five thousand dollars (\$25,000.00) per each three-month rolling period.

27. Unless otherwise set out in this Section, if the Defendant fails to comply with any requirement contained in paragraphs 13, 14, 16, 17, or 18, of this Order, excluding the payment provisions in paragraph 16, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- a. Defendant shall pay five hundred dollars (\$500.00) per day for each day any such requirement of this Order is violated up to the first thirty (30) days of violation;
- b. For each day any such requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendant shall pay seven hundred and fifty dollars (\$750.00) per day;
- c. For each day any such requirement of this Order is violated for more than ninety (90) days of violation, Defendant shall pay one thousand five hundred dollars (\$1,500.00) per day.

28. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Hannah Smith, Paralegal, or her successor, at the Office of the

Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. Defendant's payment and the State of Ohio's acceptance of such stipulated penalties under this Section shall not be construed to limit the State of Ohio's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3704, including civil penalties under R.C. 3704.06; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; and/or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendant shall not be an admission of liability by Defendant.

VIII. SUBMITTAL REQUIREMENT

29. Defendant shall submit all documents and/or plans of any kind that are required to be submitted electronically through Ohio EPA's Air Services Portal. All correspondence required to be submitted to CAPC and/or Ohio EPA pursuant to this Order shall be sent to: CAPC, ATTN: Terri Dzienis (tdzienis@cantonhealth.org), or successor; and Ohio Environmental Protection Agency, Division of Air Pollution Control, ATTN: James Kavalec (James.Kavalec@epa.ohio.gov), or successor. If a submittal is too large for email, Defendant shall email the CAPC and Ohio EPA contacts and arrange for the delivery of the submittal.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

30. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, federal, or state grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, federal, or state grants, loans and/or funds or by the processing of any applications for the same.

X. EFFECT OF ORDER

31. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any air contaminant source, source operation, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that emits or may emit any air pollutant or air contaminant not previously approved by Ohio EPA, under the Clean Air Act, or by a permitting authority or its delegates. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

32. Upon the effective date of this Order, the Amended Consent Order for Preliminary Injunction filed in this case with an effective date of August 30, 2022, is hereby terminated and superseded by this Order. Additionally, all prior orders issued by the Director of Ohio EPA under the authority of Chapter 3704 of the Ohio Revised Code (together with any requirements by letter or otherwise issued thereunder by the Director, Ohio EPA or CAPC) are hereby terminated and superseded by this Order, unless specifically incorporated herein, including but not limited to, Director's Final Findings and Orders dated November 16, 2016; Director's Final Findings and Orders dated April 26, 2019; Director's Final Findings and Orders dated May 14, 2019; Director's Final Findings and Orders dated February 26, 2021; and the October 20, 2021 Authorization letter.

XI. MODIFICATION

33. No modification shall be made to this Order without the written agreement of the Parties and the Court.

XII. POTENTIAL FORCE MAJEURE

34. In the event that Defendant's performance of its obligations under this Order is or may be delayed due to factors beyond Defendant's reasonable control (including events such as adverse weather conditions, etc.), Defendant shall promptly notify Ohio EPA in writing within fourteen (14) days of the event and describe in detail the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay. If Defendant demonstrates to the satisfaction of Ohio EPA that its performance of an obligation under this Order will be delayed due to factors beyond Defendant's reasonable control, the deadline for Defendant's performance of that obligation shall be extended for the time necessary to account for such delay, as determined by Ohio EPA based upon the facts and circumstances. Increased cost of compliance, among other circumstances, shall not be considered an event beyond the reasonable control of Defendant for purposes of this Order. Such deadline extensions by Ohio EPA under this Order shall not require modification of the terms of this Order or the approval of the Court.

35. In any action by Plaintiff to enforce any provision of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war, or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time to adjudicate the existence of such a defense is when an enforcement action, if any, is commenced by the Plaintiff. If such action is commenced, Defendant shall bear the burden of proving that any

delay was caused by circumstances entirely beyond its control. Unanticipated or increased costs associated with the implementation of any requirement of this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant for purposes of potential force majeure. Failure by Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. It shall be at the option of Plaintiff to construe the failure as a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses they may have under applicable law.

XIII. MISCELLANEOUS

36. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligations created by this Order.

37. Defendant shall inform Ohio EPA of any change in Registered Agents' address, business addresses, or telephone numbers or the cessation of the business that is the subject of this action.

XIV. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XV. ENTRY OF ORDER BY CLERK

39. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVI. EFFECTIVE DATE

40. This Order shall be effective upon the date of its entry by the Court.

XVII. COURT COSTS

41. Defendant is ordered to pay all court costs of this action.

XVIII. AUTHORITY TO ENTER INTO THE ORDER

42. Each signatory represents that he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions.

IT IS SO ORDERED.

JUDGE

DATE

APPROVED AND AGREED:

DAVE YOST
OHIO ATTORNEY GENERAL

Casey Chapman by Jack McManus

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CEO

Authorized Representative of Republic Steel