

FILED

2010 JUL 14 A 8:44

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,)
ALABAMA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)
AND STATE OF IOWA,)

Plaintiffs,)

v.)

MCWANE, INC.,)

Defendant.)

Civil Action No. _____

CV-10-JEO-1902-S

NOTICE OF LODGING OF CONSENT DECREE

The United States, by authority of the Attorney General of the United States and through the undersigned attorneys, hereby notifies the Court that, pursuant to 28 C.F.R. § 50.7, the enclosed Consent Decree is being lodged in this civil action concurrently with the filing of this Notice and the Complaint commencing this action. The proposed Consent Decree is subject to a public notice and comment period before it may be entered. Pursuant to Paragraph 87 of the proposed Consent Decree, and 28 C.F.R. § 50.7, the public will have thirty days in which to submit comments to the United States Department of Justice on the proposed Partial Consent Decree. The thirty-day period will begin on the date notice of the lodging of the proposed Consent Decree is published in the Federal Register. After the public comment period has expired, the United States will inform the Court of any public comments received and any responses thereto. If, after reviewing the public comments, the Environment and Natural Resources Division of the United States Department of Justice concludes that the proposed Partial Consent Decree should be entered, the United States will seek its entry as a final order of

the Court. Because of the public comment period, we respectfully request that the Court not execute the proposed Partial Consent Decree at this time

The Consent Decree, if entered, will fully resolve the claims alleged in the Complaint by Plaintiffs, the United States, the Alabama Department of Environmental Management, and the State of Iowa, against McWane, Inc., under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., and their implementing regulations and permits at twenty-eight of its facilities nationwide.

McWane is a national company operating iron foundries, brass foundries, and various valve and tank manufacturing facilities at twenty-eight facilities in fourteen states (identified in Paragraph 8(j) of the Consent Decree). McWane has four facilities in the Northern District of Alabama, including its headquarters at McWane Pipe in Birmingham, Alabama.


The proposed settlement requires McWane to pay a civil penalty of \$4,000,000, implement a slate of Supplemental Environmental Projects at a cost of \$9,154,050, and complete the final evaluation of a comprehensive, corporate-wide Environmental Management System at all of its facilities. McWane has already undertaken corrective measures to resolve the violations, at a cost of over \$7.6 million. The disclosed violations also revealed several patterns of violations for which the settlement secures injunctive relief. The proposed Consent Decree resolves only the specific violations alleged in the Complaint.

WHEREFORE, plaintiff respectfully requests that this Court receive the proposed Consent Decree for lodging only, and that it refrain from acting upon the same until the period for public comment has expired and the United States has moved for entry of the proposed Consent Decree.

Dated: July 14, 2010

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural
Resources Division

By: 
DEBORAH M. REYHER
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4113

JOYCE VANCE
United States Attorney
Northern District of Alabama

By: Sharon D. Kelly
Sharon D. Kelly
Civil Division Chief
Northern District of Alabama

OF COUNSEL:

Peter Moore, Esq.
Caroline Hermann, Esq.
United States Environmental Protection Agency

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

To McWane:

W. Warren Hamel, Esq.
Venable L.L.P.
Two Hopkins Place, Suite 1800
Baltimore, MD 21201-2978
wwhamel@venable.com

To the State of Alabama:

Rebecca E. Patty
Associate General Counsel
Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36110-2059
REP@adem.state.al.us

To the State of Iowa:

Brian Hutchins
Air Compliance and Monitoring Section
Iowa Department of Natural Resources
Air Quality Bureau
7900 Hickman Road, Suite 1
Windsor Heights, IA 50324
Brian.Hutchins@DNR.state.ia.us

David R. Sheridan
Assistant Attorney General
Environmental Law Division
Iowa Department of Justice
Lucas State Office Building
321 East 12th Street, Room 018
Des Moines, Iowa 50319
DSHERID@ag.state.ia.us



Sharon D. Kelly
Assistant United States Attorney

**PROPOSED
CONSENT DECREE**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,)
ALABAMA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)
AND STATE OF IOWA,)

Plaintiffs,)

v.)

MCWANE, INC.,)

Defendant.)

Civil Action No. [CV] 10-JEO-1902-S

CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), the State of Alabama on behalf of the Alabama Department of Environmental Management, and the State of Iowa (collectively “Plaintiffs”), have filed a Complaint alleging that Defendant, McWane, Inc., (“McWane”) has violated numerous provisions of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.; the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq.; the reporting requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603(a); the Clean Water Act (“CWA”), 33 U.S.C. § 1311 et seq.; the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004(a); Ala. Code §§ 22-22-1 et seq.; 22-30-1 et seq;

and Iowa Code §§ 455B.131 et seq. and 455B.171 et seq., at twenty-eight of its various manufacturing facilities across the country;

WHEREAS, McWane has cooperated with the United States to investigate the violations addressed in the Complaint, has undertaken numerous corrective actions, and has established a comprehensive Environmental Management System ("EMS") to promote future environmental compliance at all its Facilities nationwide;

WHEREAS, the objectives of the Parties in this Consent Decree are to document prior corrective action taken by McWane during the negotiation of this settlement, to provide for appropriate injunctive relief to complete additional corrective action, to conduct a final review of the Environmental Management System, and to assess an appropriate penalty to resolve the allegations of the Complaint;

WHEREAS, by agreeing to entry of this Consent Decree, McWane makes no admission of law or fact with respect to any of the allegations set forth in the Complaint filed herewith and referenced in this Consent Decree, and denies any violation of any law or regulation identified therein;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c) and 9613(b); Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11045(c)(4) and 11045(b)(3); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 17(a)(1) of TSCA, 15 U.S.C. § 2616(a)(1); Section 1414 of SDWA, 42 U.S.C. § 300g-3; and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, because: 1) the action arises in part under the laws of the United States; 2) the United States is a plaintiff; and 3) the action is brought in part to recover penalties incurred under Acts of Congress. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 109(c) of CERCLA, 42 U.S.C. § 9609(c); Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11045(b)(3) and 11045(c)(4); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 17(a)(2) of TSCA, 15 U.S.C. § 2616(a)(2); and pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because some of the events giving rise to the claims alleged in this Complaint occurred in this district, McWane conducts business in a Facility located in this district, and McWane's corporate headquarters is in this District. For purposes of this Decree, or any action to enforce this Decree, EPA and McWane consent to the Court's jurisdiction over this Decree and any such action and over McWane, and consent to venue in this judicial district. This Court has supplemental jurisdiction over the State law claims asserted by Alabama and Iowa pursuant to 28 U.S.C. § 1367.

2. Pursuant to RCRA § 3008(a)(2), 42 U.S.C. § 6928(a)(2), CAA § 113(b), 42 U.S.C. § 7413(b), CWA § 309(b), 33 U.S.C. § 1319(b); and SDWA §§ 1414(a)(1)(B) & (a)(2)(B), 42 U.S.C. §§ 300g-3(a)(1)(B) & (a)(2)(B), notice of the commencement of this action has been given to the following states: Alabama, California, Illinois, Indiana, Iowa, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia.

3. For purposes of this Consent Decree, McWane agrees that the Complaint states claims upon which relief may be granted pursuant to RCRA, 42 U.S.C. §§ 6901 et seq., TSCA, 15 U.S.C. § 2601 et seq., the CAA, 42 U.S.C. § 7401 et seq.; the reporting requirements of CERCLA, 42 U.S.C. § 9603(a); the CWA, 33 U.S.C. § 1311 et seq.; the SDWA, 42 U.S.C. § 6901 et seq.; and EPCRA, 42 U.S.C. § 11004(a).

II. APPLICABILITY

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

5. No transfer of ownership or operation of a Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve McWane of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake any unperformed obligations required under this Decree and to be substituted for the Defendant as a Party under the Decree and thus be bound by the terms thereof; and (2) the United States, after consultation with the appropriate State if the Facility at issue lies within one of the States, consents to relieve Defendant of its obligations. The United States' decision to refuse to approve the substitution of the transferee for the Defendant shall not be subject to judicial review.

At least thirty (30) Days prior to such transfer, McWane shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed transfer agreement, to EPA (headquarters and appropriate region), and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. McWane shall (1) provide a copy of this Consent Decree to a) its President/CEO, Executive Vice Presidents, and General Counsel, b) Corporate Environmental Group, and c) leadership employees of each Facility whose duties include environmental management or compliance responsibilities (the General Manager, Plant Manager, Environmental Manager, and Maintenance Manager of each Facility); (2) place an electronic version of the Consent Decree on its EMS website; (3) post notice of lodging of the Consent Decree and its availability in a location at each Facility where legal notices are posted; and (4) place a notice of lodging of the Consent Decree and its availability in the first two McWane corporate newsletters published after the Effective Date of the Consent Decree. McWane shall also provide a copy of this Consent Decree to the principal contact at any contractor or other agent retained to perform Work required under this Consent Decree, and shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, McWane shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions

necessary to comply with the provisions of this Consent Decree, except as may be permitted under Section IX (Force Majeure) of this Consent Decree.

III. DEFINITIONS

8. Except as otherwise provided in this Consent Decree (including its Appendices), definitions for the terms presented herein shall be incorporated from the following statutes and their corresponding regulations: RCRA, as amended, 42 U.S.C. § 6903; TSCA, 15 U.S.C. § 2602; CAA, 42 U.S.C. § 7602; the reporting requirements of CERCLA, 42 U.S.C. § 9601; CWA, 33 U.S.C. § 1362; SDWA, 42 U.S.C. § 6903; EPCRA, 42 U.S.C. § 11049; Ala Code §§ 22-22-1, 22-28-2, and 22-30-3, and Iowa Code §§ 455B.131 et seq. and 455B.171 et seq. In the case of a conflict between the federal and state definitions, federal definitions shall control. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. ADEM shall mean the Alabama Department of Environmental Management and any of its successor departments or agencies;
- b. Complaint shall mean the complaint filed by the United States and the States in this action;
- c. Consent Decree or Decree shall mean this Decree and all Appendices attached hereto (listed in Section XXIII). In the event of any conflict between this Decree and any Appendix hereto, this Decree shall control;
- d. Day shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day

would fall on a Saturday, Sunday, or federal or applicable state holiday, the period shall run until the close of business of the next business day;

e. Defendant or McWane shall mean McWane, Inc. and its subsidiaries and operating divisions;

f. EPA shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. EPA EMS Standard means the EPA's *Compliance-Focused Environmental Management System - Enforcement Agreement Guidance* (Document number EPA-330/9-97-002R), Revised June 2005;

h. Effective Date is defined in Section XV;

i. EMS Element shall mean each of the individual subjects covered in the EPA EMS Standard;

j. Facility shall refer to any one or more of the following McWane Facilities:

EPA Region 2

Kennedy Valve Company, Elmira, New York

Amerex Corporation, Scotch Plains, New Jersey

Atlantic States, Phillipsburg, New Jersey

EPA Region 3

Tyler Pipe Company, Macungie, Pennsylvania

Manchester Tank Company, Petersburg, Virginia

EPA Region 4

M&H Valve Company, Anniston, Alabama

Union Foundry, Anniston, Alabama

Empire Coke Company, Sipsey Mine, Birmingham, Alabama

M&H Valve Company Landfill, 1251 Parkwood Drive, Anniston, Alabama

Empire Coke Company, Dilworth Mine, Sipsey, Alabama

Empire Coke Company, Dilworth Washer, Sipsey, Alabama

Empire Coke Company, Rice Chapel Mine, Sipsey, Alabama

Empire Coke Company, Tuscaloosa, Alabama

Amerex Corporation, Trussville, Alabama

Manchester Tank Company, Crossville, Tennessee

EPA Region 5

Manchester Tank Company, Quincy, Illinois

Manchester Tank Company, Bedford, Indiana

Manchester Tank Company, Elkhart, Indiana

Clow Water Systems Company, Coshocton, Ohio

EPA Region 6

Manchester Tank Company, Lubbock, Texas

Tyler Pipe Company, Tyler, Texas

EPA Region 7

Clow Valve Company, Oskaloosa, Iowa

Mitrisin Disposal Site, Oskaloosa, Iowa

Manchester Tank Company, Hannibal, Missouri

Tyler Pipe Company, Marshfield, Missouri

EPA Region 8

Pacific States Cast Iron Pipe Company, Provo, Utah

EPA Region 9

Anaco, Corona, California

Clow Valve, Corona, California

- k. Interest shall mean the interest specified in 28 U.S.C. § 1961.

Interest shall be compounded annually on October 1st of each year;

l. Notify and Submit and other terms signifying an obligation to transmit or communicate documents and information shall mean to deliver in-person, transmit by facsimile or electronically (if an email address is provided), deposit in the United States mail, or dispatch by express courier in accordance with Section XIV (Notifications) of this Consent Decree no later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federal holiday, the delivery, deposit, or dispatch shall be due on the next business day. Response deadlines shall be calculated from the date of actual receipt of the document(s) requiring a response;

m. Paragraph shall mean a portion of this Decree identified by an Arabic numeral;

n. Parties shall mean the United States, the States, and McWane;

o. Section shall mean a portion of this Decree identified by a roman numeral;

p. States shall mean the Alabama Department of Environmental Management, on behalf of the State of Alabama, and the State of Iowa. Rights afforded to the States under this Consent Decree are limited to Facilities within the respective States;

q. United States shall mean the United States of America, acting on behalf of EPA;

r. Work shall mean any activity that McWane must perform to comply with the requirements of this Decree, including Appendices.

IV. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, McWane shall pay the United States and the States the sum of \$4,000,000.00 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, as set forth below:

a. McWane shall pay \$91,467.00 plus accrued Interest to the United States as a civil penalty related to the CWA SPCC violations alleged in the Complaint. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North; Birmingham, AL 35203). At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane, Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-08282, to the United

States in accordance with Section XIV of this Decree (Notices); by email to

acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

b. McWane shall pay \$10,941.00 plus accrued Interest to the "EPA Hazardous Substance Superfund" as a civil penalty related to the CERCLA Section 103 violations alleged in the Complaint, by FedWire Electronic Funds Transfer (EFT or wire transfer) to the U.S. Department of Justice account in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North, Birmingham, AL 35203) to McWane following entry of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane, Inc., and shall reference the civil action number, the EPA Regions in which the CERCLA 103 violations occurred, and DOJ case number 90-5-1-1-08282, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. McWane shall pay \$3,472,789.00 plus accrued Interest to the United States as a civil penalty related to the balance of the claims alleged in the Complaint, by

FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice, in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North; Birmingham, AL 35203) to McWane following entry of the Consent Decree. At the time of payment, McWane shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-08282.

d. Within thirty (30) Days after the Effective Date of this Consent Decree, McWane shall pay the sum of \$424,803.00 plus accrued Interest as a civil penalty to the States as follows:

i. A check in the amount of \$332,000.00 plus accrued Interest payable to the Alabama Department of Environmental Management at:

Office of General Counsel
Attention: Rebecca E. Patty
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059

ii. A check in the amount of \$92,803.00 plus accrued Interest payable to the State of Iowa at:

David R. Sheridan

Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg.
321 E. 12th Street, Room 018
Des Moines, IA 50319

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

V. COMPLIANCE REQUIREMENTS

11. Previously Completed Corrective Action. Prior to the lodging of this Consent Decree, McWane corrected nearly all the violations alleged in the Complaint by performing the corrective actions identified in Appendix 1 (Corrective Action Summary) of this Consent Decree, which includes a certification in compliance with Paragraph 35 that all corrective actions identified in Appendix 1 have been fully completed as of the date of lodging of this Consent Decree. McWane shall maintain documentation existing as of the date of lodging of the Consent Decree of all such corrective actions, in accordance with Section XI (Information and Document Retention) of this Decree.

12. Storm Water Pollution Prevention Plans (SWPPP). McWane has modified the SWPPP procedure in its EMS in accordance with comments provided by EPA. The modified procedure is provided in Appendix 2. McWane shall implement the modified procedure at all Facilities as set forth in Appendix 2 and shall continue to revise the SWPPP procedure as appropriate.

13. Clow Water Systems Company, Coshocton, Ohio. McWane shall operate and monitor the cupola furnace at the Clow Water Facility in Coshocton in compliance with the conditions in the Ohio EPA Permit to Install (Permit #06-07432) and Appendix 3 (CAA

Compliance Measures at Clow Water Systems, Coshocton, Ohio) of this Consent Decree, which requires, among other things, that emissions of particulate matter (PM) from the exhaust stack for the cupola furnace shall not exceed 0.078 lbs per ton of molten iron produced, and which establishes a schedule for stack tests to assess compliance with this emission limit.

14. Environmental Management Systems. During the course of negotiations culminating in this Consent Decree, McWane has continued to develop and implement, with EPA input and assistance, a comprehensive company-wide environmental management system ("EMS"), to promote compliance with all environmental requirements, achieve pollution prevention, and accomplish pollution reduction at McWane Facilities, and to enhance overall environmental performance.

a. McWane, as of the date of lodging of this Consent Decree has engaged a qualified EMS Auditor, Steve Rowley, approved by EPA, to conduct an Audit of the operation of the EMS at the Union Foundry Facility in Anniston, Alabama and at the Clow Water Facility in Coshocton, Ohio, to identify and evaluate program gaps relative to the EPA EMS Standard as more fully described in subparagraph (b), below. The EMS Auditor was required by EPA: (1) not to have been involved in the development of the EMS or the EPA EMS Standard; (2) not to have any direct financial stake in the outcome of the EMS Audit conducted pursuant to this Consent Decree; (3) to satisfy the EMS Auditor qualification requirements of Table 1 of ISO 19011 (First edition, 2002-10-01); (4) to have expertise and competence in regulatory programs under federal and state environmental laws; and (5) to have at least a bachelor's degree from an accredited institution. McWane has not had any other contractual or financial relationship with the EMS Auditor. Should Mr. Rowley be unable to complete his EMS Auditor responsibilities,

McWane shall submit to EPA for approval the name of a substitute EMS Auditor meeting the above qualifications.

b. The audit criteria shall consist of the EPA EMS Standard, and any other EMS standards or criteria deemed appropriate by McWane. The EMS Audit shall evaluate the adequacy of EMS implementation relative to the Audit criteria, from top management down, throughout each major organizational unit at the Union Foundry and Clow Water facilities, and identify areas of concern. McWane shall conduct an EMS Audit in accordance with the provisions of ISO 19011 (First edition, 2002-10-01), and shall address the following issues:

- i. Whether there is a defined system, subsystem, program, or planned task for each EMS Element as listed in the EPA EMS Standard;
- ii. To what extent the system, subsystem, program, or task has been implemented, and is being utilized according to the EPA EMS Standard;
- iii. Whether each Facility operation's internal self-assessment procedures for programs and tasks comprising the EMS meet the EPA EMS Standard;
- iv. Whether McWane is effectively communicating relevant environmental requirements to affected parts of the organization, contractors, and on-site service providers;
- v. Whether further improvements should be made to the EMS to conform to the provisions of the EPA EMS Standard;

vi. Whether there are material deviations from McWane's written requirements or procedures; and

vii. Whether there is a process in place to promote continual improvement.

c. Representatives from McWane (other than those employed at the Facility being audited), EPA, and the States may participate in the EMS Audit as observers and answer questions posed by or discuss issues raised by the EMS Auditor, but may not interfere with the independent judgment of the EMS Auditor. McWane shall notify EPA Headquarters and the appropriate EPA Region, in accordance with Section XIV (Notices) of this Consent Decree, at least ten (10) Days before the commencement of each on-site portion of the EMS Audit.

d. McWane shall direct the EMS Auditor to develop and submit simultaneously to McWane and EPA an EMS Audit Report for the EMS Audit for each selected facility within sixty (60) Days following the completion of the final on-site portion of the EMS Audit at that Facility. The EMS Audit Report shall present the audit findings and shall contain the following information:

- i. The audit's scope, including the period of time covered by the audit;
- ii. The date(s) the on-site portions of the audit were conducted;
- iii. The identification of audit team members for each facility;
- iv. The identification of McWane representatives and regulatory agency personnel observing the audit;
- v. The names of the individuals to whom the EMS Auditor provided the EMS Audit Report;

- vi. A summary of the audit process, including any obstacles encountered;
- vii. Detailed audit findings, including the basis for each finding and each area of concern identified. The auditor shall distinguish between material deviations from the EMS standard that must be corrected (“Audit Findings”) and recommendations for optional EMS enhancements (“Recommendations”);
- viii. Identification of any Audit Findings corrected, or Recommendations addressed, during the audit and a description of the corrective measures and when they were implemented; and,
- ix. Certification by the EMS Auditor that the EMS Audit was conducted in accordance with the provisions of ISO 19011 (First edition, 2002-10-01).

e. Within ninety (90) Days of receiving the EMS Audit Report, McWane shall develop and submit for approval to EPA, in consultation with the States, a response to the EMS Audit Report (the “Audit Response and Action Plan”) addressing all Audit Findings, evaluating whether there is any need for conducting a root cause analysis, and identifying appropriate actions or measures that should be implemented to achieve conformance with the EPA EMS Standard, including a proposed schedule to complete such actions or measures. As an Appendix to the Audit Response and Action Plan, McWane shall include, for EPA’s review and comment only, a response to the EMS Audit Report addressing all Recommendations, evaluating whether there is any need for conducting a root cause analysis or implementing measures to address the Recommendations, including a proposed schedule to complete such actions or measures. For the purposes of this subsection, all submissions should be provided to the EPA Special Litigation and Projects Division, as identified in Section XIV (Notices).

f. Upon written approval by EPA pursuant to Paragraph 15, McWane shall implement the Audit Response and Action Plan according to the approved schedule.

g. Following completion of corrective measures pursuant to the Audit Response and Action Plan, or in the event of an EMS Audit in which no instances of nonconformance with the EMS Standard are found, McWane shall submit a Request for Certification of EMS Implementation to the EMS Auditor. The EMS Auditor shall, as necessary, reinspect the respective Facility (i.e., conduct a "Certification Review") and submit to McWane a written statement identifying those Audit Findings that have been addressed and any that have not, including an explanation describing the failure to address or correct, as appropriate, any Audit Findings. McWane shall correct in a timely manner any outstanding Audit Findings identified during the Certification Review. When the EMS Auditor concludes that all Audit Findings have been addressed at the respective Facility, the EMS Auditor shall issue to McWane a Certification of EMS Implementation for the Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard. Within ten (10) Days of receipt, McWane shall submit a copy of each Certification of EMS Implementation to EPA.

h. McWane shall develop, and submit to EPA for review and comment, proposed EMS improvements based on the results of the Audit Response and Action Plan, to be incorporated into McWane's EMS at all Facilities.

15. EPA Approval. After review of any work plan, report, or other item that is required to be submitted, or revised and resubmitted to EPA for approval pursuant to this Consent Decree, EPA, after consultation with the States, shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

16. If a submission submitted pursuant to Paragraph 15 is approved, McWane shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 15(b) or (c), McWane shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to McWane's right to dispute only the specified conditions, or the disapproved portions and the severability of the approved portions, under Section X of this Decree (Dispute Resolution).

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

18. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the forty-five (45)-Day period or other agreed period, but shall not be payable unless the resubmission is untimely or is again disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of McWane's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

19. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the States, may again require McWane to correct any deficiencies in the content of the submission in accordance with the preceding Paragraphs, or

may itself correct any deficiencies, subject to McWane's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs. If the resubmission is approved or corrected in whole or in part, McWane shall proceed in accordance with Paragraphs 16 and 17.

20. Permits. Where any compliance obligation under this Section requires McWane to obtain a federal, state, or local permit or approval, McWane shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. McWane shall implement and complete the following Supplemental Environmental Projects ("SEPs") in accordance with the terms and schedules set forth in Appendix 5 of this Consent Decree. McWane may use contractors or consultants in planning and implementing these SEPs:

- Greenwood Park Storm Water Management Area ("Greenwood Park SEP");
- Mercury Emissions Reduction Projects at Pacific States Cast Iron Pipe Co. and Tyler Pipe (Texas) Facilities ("Mercury Reduction SEPs");