COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ROANOKE ELECTRIC STEEL CORPORATION
D.B.A. STEEL DYNAMICS – ROANOKE BAR DIVISION
VPDES Permit No. VA0001589

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Roanoke Electric Steel Corporation, regarding the wastewater treatment plant at the Roanoke Electric Steel Corporation's Steel Dynamics – Roanoke Bar Division facility in Roanoke, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

2. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "CFR" means the Code of Federal Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "DMR" means Discharge Monitoring Report.

7. "EPA" means the United States Environmental Protection Agency.

8. "Facility" or "Plant" means the wastewater treatment plant, owned and operated by RES, located at 102 Westside Boulevard NW, Roanoke, Virginia, which treats and discharges industrial wastewater, a form of industrial waste.

9. "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources, as described in Va. Code § 62.1-44.3.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

12. "Permit" means VPDES Permit No. VA0001589, which was issued under the State Water Control Law and the Regulation to RES on June 10, 2005 and is scheduled to expire on June 9, 2010.

13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

16. "RES" means the Roanoke Electric Steel Corporation, d.b.a. Steel Dynamics – Roanoke Bar Division, a corporation authorized to do business in Virginia and its affiliates,

partners, subsidiaries, and parents. RES is a "person" within the meaning of Va. Code § 62.1-44.3.

17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

19. "Va. Code" means the Code of Virginia (1950), as amended.

20. "VAC" means the Virginia Administrative Code.

21. "VPDES" means Virginia Pollutant Discharge Elimination System.

22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. RES owns and operates the Plant in Roanoke, Virginia. The Permit allows RES to discharge treated industrial wastes from the Plant, to Peters Creek, in strict compliance with the terms and conditions of the Permit.

2. Peters Creek is located in the Roanoke River Basin. Peters Creek is listed in the 303(d) Category 5 (Impaired) Waters List for recreational impairment because of elevated *E. coli* counts. Multiple sources, including municipal separate storm sewer systems, wildlife, and non-point wet weather discharges are suspected causes of the impairment.

3. A complete and approvable application for reissuance of the Permit was due December 11, 2009. DEQ staff mailed a reissuance reminder letter to RES on June 3, 2009, sent RES a reminder e-mail on September 23, 2009, and gave RES reissuance reminder phone calls on November 30 and December 9, 2010.

4. On December 10, 2009, the Department received an application for reissuance of the Permit. A letter from the Department to RES dated December 29, 2009 deemed the application incomplete. Significant incomplete portions of the application included missing throughput data and missing water quality criteria monitoring data for both treated process wastewater (EPA Form 2C) and stormwater (EPA Form 2F).

5. On March 10, 2010, DEQ issued Warning Letter No. W2010-03-W-1003 to RES citing the failure to submit a Water Quality Monitoring Standards Report and failure to submit a complete VPDES Permit Application on or before six months before the Permit expiration date. On April 6, 2010, DEQ issued Notice of Violation ("NOV") No.

W2010-04-W-0001 to RES citing the same violations. On May 6, 2010, DEQ issued NOV No. W2010-05-W-0001 to RES citing the same violations.

6. On April 20, 2010, a representative of RES met with DEQ staff to discuss the NOV and the remaining items RES still needed to provide to complete its application for Permit reissuance.

7. RES' operating logs indicate that it discharged treated wastewater from the Plant every day from December 1, 2009 through April 1, 2010.

8. Part II(M) of the Permit states that "If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at lease 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit."

9. Part I(B)(5) of the Permit states that "The permittee shall monitor the effluent at Outfall 005 for the substances noted in Attachment A, 'Water Quality Criteria Monitoring' according to the indicated analysis number, quantification level, sample type and frequency. Monitoring shall be initiated after the start of the third year from the permit's effective date. Using Attachment A as the reporting form, the data shall be submitted with the next application for reissuance which is due at least 180 days prior to the expiration date of this permit. Monitoring and analysis shall be conducted in accordance with 40 CFR 136 or alternative EPA approved methods. It is the responsibility of the permittee to ensure that proper Q[uality]A[ssurance]/Q[uality]C[ontrol] protocols are followed during the sample gathering and analytical procedures. The DEQ will use this data for making specific permit decisions in the future. This permit may be modified or, alternatively, revoked and reissued to incorporate limits for any of the substances."

10. 9 VAC 25-31-100(D) states that "All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit."

11. 9 VAC 25-31-100(E)(1) states that "The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity."

12. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

13. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

15. The Department has issued no permits or certificates to RES for the Plant other than VPDES Permit No. VA0001589.

16. Peters Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

17. Based on the results of the April 20, 2010 meeting and the incomplete application for reissuance of the Permit referenced in Paragraph C(4) above, the Board concludes that RES has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-31-50, by discharging treated industrial wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in Paragraph C(4) above.

18. In order for RES to return to compliance, DEQ staff and representatives of RES have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders RES, and RES agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $15,600.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

RES shall include its Federal Employer Identification Number (FEIN) (54-0585263) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RES for good cause shown by RES, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, RES admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. RES consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. RES declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by RES to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. RES shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. RES shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RES shall

notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

a. the reasons for the delay or noncompliance;

b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which RES intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and RES. Nevertheless, RES agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

a. RES petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to RES.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RES from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by RES and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of RES certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind RES to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of RES.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, RES voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Regional Director
Department of Environmental Quality

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Roanoke Electric Steel Corporation, d.b.a. Steel Dynamics – Roanoke Bar Division, voluntarily agrees to the issuance of this Order.

Date: 6/03/10 By: T. Joe Crawford, VICE PRESIDENT + GM
(Person) (Title)
Roanoke Electric Steel, d.b.a. Steel Dynamics – Roanoke Bar Division

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 3rd day of June, 2010, by J. Joe Crawford who is Vice President + GM of, Roanoke Electric Steel, d.b.a. Steel Dynamics – Roanoke Bar Division on behalf of the Corporation.

Carolyn J. Walker
Notary Public

227120
Registration No.

My commission expires: 10/31/10

Notary seal:

CAROLYN J. WALKER
NOTARY
PUBLIC
REG. # 227120
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Permit Expiration and Reissuance**. RES shall:

   a. Comply with the expired Permit (VPDES Permit No. VA0001589, which was issued under the State Water Control Law and the Regulation to RES on June 10, 2005 and is scheduled to expire on June 9, 2010), which is incorporated herein by reference;

   b. Not later than July 1, 2010, submit all water quality monitoring and throughput data required for the permit application; and

   c. Respond to any DEQ Notice of Deficiency regarding any submittals related to the application for Permit reissuance within fourteen (14) calendar days.

2. **DEQ Contact**

   Unless otherwise specified in this Order, RES shall make all submittals as required by Appendix A of this Order to:

   Robert Steele
   Regional Enforcement Coordinator
   VA DEQ –BRRO-R
   3019 Peters Creek Road
   Roanoke, VA 24019
   (540) 562-6777 (phone)
   (540) 562-6725 (fax)
   Robert.Steele@deq.virginia.gov