



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

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DOVER, DELAWARE 19901

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**NOTICE OF CONCILIATION  
AND ADMINISTRATIVE PENALTY ORDER**

Pursuant to 7 Del. C. § 6005

**Order No. 2012-A-0051**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
ENFORCEMENT OFFICER*

**Issued To:**

Attn: Mr. Tom Wesolowski,  
Manager, Environment  
Evraz Claymont Steel, Inc.  
4001 Philadelphia Pike  
Claymont, DE 19703

**Registered Agent:**

Corporation Service Company  
2711 Centerville Road Suite 400  
Wilmington, DE 19808

Dear Mr. Wesolowski:

The Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") has found Evraz Claymont Steel, Inc. ("Respondent" or "Evraz") in violation of 7 Del. C. Chapters 60 and 63 and 7 DE Admin. Code 1302, *Regulations Governing Hazardous Waste* or ("DRGHW") and its air permit. Accordingly, the Department is in its discretion issuing this Notice of Conciliation and Administrative Penalty Order ("Order") in an endeavor to obtain compliance.

***BACKGROUND***

Evraz operates a carbon plate mini-mill located at 4001 Philadelphia Pike in Claymont, Delaware ("Facility"). It specializes in the manufacture of custom-order discrete steel plate for North American markets, and has an annual production capacity of over 500,000 tons. Evraz, among other things, utilizes an Electric Arc Furnace at its Facility to recycle scrap steel.

*Delaware's Good Nature depends on you!*

The Electric Arc Furnace operation is a batch process which is equipped with an emissions capture, conveyance, and control system. The components of this system include an overhead canopy, a tapping hood, and a direct shell evacuation system vented to an associated Cadre Baghouse. Emissions of particulate matter and gases are collected through the capture system during each batch operation under negative pressure by an induced draft fan and are vented to the Cadre Baghouse in order to collect the particulate emissions, which contain metal compounds. Once captured, the particulate matter is transferred from the baghouse to a storage silo and subsequently gravity fed to tank trailer trucks for transportation and disposal off-site. The emission control dust from the primary production of steel in electric arc furnaces is listed as a hazardous waste in federal regulations promulgated under the Resource Conservation and Recovery Act (“RCRA”) with a waste number “K061.”<sup>1</sup> The connection between the storage silo (hereinafter the “K061 Silo Tank”) and the truck is a corrugated concentric tube. As the K061 is fed by gravity through the inner tube to the truck, the displacement air travels upwards into the K061 Silo Tank through the outer tube, thus making the operation a closed system. The connection between the tube and the truck is crucial and if not seated properly, the K061 may be released into the atmosphere.

The Facility is governed by numerous permits issued pursuant to 7 DE Admin. Code 1102 (“Regulation 1102 permits”) and 7 DE Admin. Code 1130 (“Title V permit”). At the time of the inspections outlined below, operation of the Electric Arc Furnace and the associated K061 Silo Tank were governed by Regulation 1102 permit **APC-81/0363-OPERATION(Amendment 4)(NOX RACT)(PTE)** dated July 2, 2008 and the hazardous waste regulations. In letters dated August 17, 1990 and November 15, 1990, DNREC issued a determination to the owner of the Facility at that time, Citisteel USA, Inc., stating that the K061 Silo Tank was regulated under RCRA as a hazardous waste storage tank. Subsequently, in a letter dated June 1, 1998, Elizabeth A. Cotsworth, Acting Director of the Office of Solid Waste of the U.S. Environmental Protection Agency (“EPA”) opined that a baghouse-silo system at a different location that collected electric arc furnace dust was considered as part of the dust handling system so as to exempt it from regulation under RCRA (“Cotsworth letter”). In a letter dated July 29, 1998, Citisteel USA, Inc. requested that DNREC re-evaluate its 1990 determination and clarify the regulatory status of the K061 Silo Tank in light of the Cotsworth letter. By letter dated January 29, 1999, DNREC informed Citisteel USA, Inc., that it was amending its previous decision, concurring with EPA that baghouse silos such as the K061 Silo Tank are not subject to hazardous waste regulation, but rather governed by air pollution control regulations. The letter added, however, that reintroducing vacuumed, spilled or released K061 hazardous waste back into the K061 Silo Tank, which was Citisteel USA, Inc.’s practice at the time, caused the K061 Silo Tank to be subject to requirements of the DRGHW. Thus, to avoid regulation of the K061 Silo Tank as a hazardous waste accumulation tank, Citisteel USA, Inc., would be required to place vacuumed, spilled or released K061 into other containers and manage those containers pursuant to the hazardous waste regulations. Thereafter, on February 17, 1999, Citisteel USA, Inc., informed DNREC that it intended to continue its practice of “recycling” spilled or released K061 back into the K061 Silo Tank, and thus, would continue to operate the silo as a regulated hazardous waste storage tank with less than 90 days of storage.

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<sup>1</sup> For purposes of this Notice of Conciliation and Order, this emission control dust will be referenced as “K061.”

The Department's Solid and Hazardous Waste Management Section ("SHWMS") conducted a DRGHW Compliance Assessment at Respondent's facility on March 18, 2010. The Department's March 18, 2010 assessment noted 10 violations of the DRGHW, based upon information gathered during the assessment. Three of the violations noted by SHWMS representatives involved the K061 Silo Tank and were based upon the K061 Silo Tank being subject to DRGHW at the time of the Compliance Assessment.

In addition, the SHWMS notified the Department's Division of Air Quality ("DAQ")<sup>2</sup> of the results of its compliance assessment, flagging the tank for potential air compliance issues. More specifically, the SHWMS employee conducting the inspection observed that the top of the K061 Silo Tank appeared to be damaged. A further investigation by DAQ staff determined that the man-way access port on top of the K061 Silo Tank was lacking a proper closure or clamping mechanism and that it had some missing or broken clamps. It was further noted that the K061 Silo Tank had a bent support beam on top, which may have caused the denting or displacement on the top portion of the K061 Silo Tank that was observed by the SHWMS employee. Finally, DAQ observed deteriorated duct tape located on the piping associated with the K061 Silo Tank in several areas, which appeared to be intended to prevent leakage of the K061 to the atmosphere.

The Department issued Notice of Violation No. 10-HW-17, dated June 11, 2010, to Respondent on June 25, 2010, for the violations discovered on March 18 and on April 1, 2010. On December 3, 2010 the Department issued a "Return to Compliance Schedule" letter to Evraz requiring it to submit either a "fitness for use" determination for the current K061 Silo Tank certified by a professional engineer, or if the tank was determined to be unfit for use, a compliance schedule demonstrating when the tank would be brought into compliance.

On January 17, 2011, Evraz responded to the Return to Compliance Schedule letter, noting its position that based upon EPA guidance (the Cotsworth letter), Evraz did not agree that the K061 Silo Tank was subject to Delaware's *Regulations Governing Hazardous Waste*, but instead was properly considered to be dust handling equipment subject to the Clean Air Act. Evraz further submitted a January 10, 2011 letter from TAI Engineers along with a proposed Compliance Schedule. TAI had performed an engineering evaluation of the K061 Silo Tank. In its letter dated January 10, 2011, TAI indicated that the outer shell and the roof were damaged to a point that exceeds the tolerances of the original design standards. It did not find any penetrations in the outer shell or any evidence of leakage of material through the outer shell. Nonetheless, the letter stated that: "Pending further analysis or repairs the [K061 Silo Tank] is not suitable for continued service due to the condition of the outer shell and roof of the silo. The structural support members on the roof must be replaced per API-653 regardless of the results of further analysis."

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<sup>2</sup> Effective July 1, 2010, the Delaware General Assembly passed into law a re-organization for the Department that resulted in splitting the Division of Air and Waste Management into two distinct Divisions. The former "Air Quality Management Section" is now the Division of Air Quality ("DAQ"); the SHWMB is now designated a section, SHWMS, under a separate and newly designated division, the Division of Waste and Hazardous Substances ("WHS").

With respect to a compliance schedule, Evraz noted different options it was evaluating for the K061 Silo Tank. Evraz is currently required to install, and is in the process of installing additional baghouse capacity and necessary equipment to capture dust emissions from certain operations. The additional capacity will require additional storage. Thus, Evraz indicated that it was evaluating three options: 1) expanding and repairing the existing K061 Silo Tank, 2) constructing a new K061 Silo Tank and decommissioning the current K061 Silo Tank, and 3) constructing a new K061 Silo Tank and repairing the current K061 Silo Tank. After Evraz undertook an additional inspection, it notified the Department on March 8, 2011 that Option 2 was unworkable due to the maximum load bearing capacity of the area where a new silo would need to be located. Evraz further noted that it had engaged TAI Engineers to design a new roof for the existing K061 Silo Tank and the design was expected to be finalized by March 20, 2011.

During this time, Evraz continued to use the K061 Silo Tank while the Department continued to request Evraz provide an affirmation that the tank was structurally sound. Initially, Evraz indicated that weather conditions caused delays in completing the necessary inspection. However, an additional inspection by TAI Engineers took place on May 19, 2011. At that time, weather was determined not to be sufficiently cooperative to allow the anticipated torching of an opening on the roof, and an alternative inspection route was utilized. A 1.5" vent pipe on the roof was opened to allow access to the inside of the secondary containment area next to the dented exterior wall. Using a small fiber-optic camera placed inside the opening, a detailed visual inspection of the space between the walls and both walls in the proximity of the dent in the external wall was performed. The visual inspection did not find any cracks, major leaks, or any signs of any dust between the walls that tended to corroborate the absence of any leaks. However, no accurate measurements of the internal wall were possible due to the limitations of the camera. Consequently, Evraz scheduled another inspection coinciding with the next scheduled shutdown of the Facility's melt shop on Thursday, June 2, 2011. During a June 9, 2011 inspection, Evraz was able to torch an opening in the K061 Silo Tank in close proximity of the dented area and TAI was able to obtain some measurements of the internal wall of the tank. After that inspection and based on those measurements, TAI issued a report, dated June 30, 2011, concluding that the K061 Silo Tank was fit for continued service, but recommending replacement of the roof of the K061 Silo Tank at the next available opportunity and prior to a snow event.

At a meeting on October 17, 2011, Evraz representatives verbally conveyed to DNREC that to the best of their knowledge Evraz was not, and at no time had been managing its spilled or released K061 by reintroducing (or recycling) it into the K061 Silo Tank. DNREC informed Evraz that if Evraz desired the K061 Silo Tank to be subject to the air quality regulations rather than being managed as a hazardous waste storage tank, Evraz must submit written documentation verifying its statement.

On December 21, 2011, Evraz forwarded to DNREC a letter from TAI Engineers indicating that outer shell repairs were completed, a new roof had been installed, and two new 8" pressure-vacuum vents to decrease the likelihood of damage to the new roof due to over-pressurization were in place. The letter stated that based on the repairs that were made and the results of a site visit on December 15, 2011, the K061 Silo Tank was fit for continued service. DNREC conveyed to Evraz during a meeting on January 9, 2012, that the letter was insufficient

because the letter failed to meet certain criteria for engineering certification of repairs as set forth in DRGHW §§ 265.195(f) and 122.11(d). On January 26, 2012, Evraz submitted a second letter from TAI Engineers certifying silo repairs; however, this letter was also found to be insufficient. On February 2, 2012, Evraz, through its consultant TAI Engineers, submitted a letter fulfilling the certification requirements of DRGHW.

Also, on February 2, 2012, Tom Wesolowski of Evraz, in a telephone voice mail to Marjorie Crofts, Director, Division of Waste and Hazardous Substances, notified DNREC that based upon a reevaluation of site operations, Evraz wished to maintain the option to reintroduce spilled or released K061 into the K061 Silo Tank. On February 15, 2012, Todd D. Kantorczyk, Esq., Counsel for Evraz, reaffirmed the desire of his client to maintain the option to reintroduce spilled or released K061 into the K061 Silo Tank.

Two additional K061 Silo Tank repairs recommended by TAI Engineers, those of painting repair areas and installing two 2 inch pressure vacuum vents were completed on January 30, 2012 and May 22, 2012, respectively.

A separate issue involves Evraz evaluating a project to facilitate combustion with pure oxygen instead of air within its reheat furnace. The alternative combustion is expected to result in reduction of the emission of nitrogen oxides (“NOx”) and other air pollutants from the reheat furnace. To further its evaluation of the potential project at the reheat furnace, on or about May of 2011, Evraz replaced four burners and performed other construction at the reheat furnace to conduct a pilot test of the potential oxygen combustion configuration (the “Pilot Test”). Evraz did not obtain a construction permit from DNREC before initiating construction activities associated with the Pilot Test, or an operation permit from DNREC before operating the modified unit. In discussions between Evraz and DNREC, DNREC told Evraz that it believed this “Pilot Test” constituted a violation of the requirement to acquire a permit from DNREC before modifying the burners. Thereafter, pursuant to the Operational Flexibility provisions of 7 DE Admin. Code 1302, *Air Quality Regulation* No. 1130, Section 6.8, Evraz notified DNREC by letter dated October 27, 2011, that it believed the burner replacement did not constitute a modification under the Department’s air quality regulations. After November 3, 2011, Evraz continued with the replacement of the existing air-fuel burners with REBOX flameless (infrared) burners during the scheduled shut down of the facility.

## ***FINDINGS OF VIOLATIONS***

DNREC maintains that Evraz’s actions described below violate the stated requirements of Delaware law and regulations. Evraz consents and agrees to this Order, but expressly does so without any admission of fact or law, including without limitation any admission of potential violations of Delaware law or regulations.

### **1. Section 279.22(c)(1) of the DRGHW states in part:**

*“(c) Labels.*

*(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil”.*”

On March 18, 2010, Department representatives observed oil draining into a 275 gallon tote in the Maintenance Shop. The tote was not labeled. Also near the tote, was a 5-gallon jug containing used oil that was pending transfer into the tote. The jug was not labeled. These are both violations of §279.22(c)(1).

**2. Section 279.22(b)(3) of the DRGHW states in part:**

*“(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:*

*(3) Closed during storage, except when it is necessary to add or remove oil.”*

On March 18, 2010, Department representatives observed a 5-gallon jug containing used oil that was pending transfer into a tote. The jug was open; a violation of §279.22(b)(3).

**3. Section 265.16(c) of the DRGHW states:**

*“(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.”*

On March 18, 2010, Department representatives discovered that facility personnel had not completed an annual review of their initial training in calendar year 2008; a violation of §265.16(c).

**4. Section 265.195(a) of the DRGHW states:**

*“(a) The owner or operator must inspect, where present, at least once each operating day:*

*(1) Overfill/spill control equipment (e.g., waste-feed cut-off systems, bypass systems, and drainage systems), to ensure that it is in good working order;*

*(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;*

*(3) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and*

*(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots; dead vegetation);”*

On March 18, 2010, Department representatives discovered that K061 Silo Tank inspection records were missing for 12/31/08, 07/11/09, and 09/14/09; a violation of §265.195(a).

**5. Section 265.52(d) of the DRGHW states:**

*“(d) The plan must list names, addresses (office and home), and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”*

On March 18, 2010, Respondent’s Contingency Plan did not include the name of the current Emergency Coordinator, nor did it include his home address; a violation of §265.52(d).

**6. Section 265.53(b) of the DRGHW states:**

*“A printed copy of the contingency plan and all provisions to the plan must be:*

*(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. Documentation of written submission and receipt must be maintained at the facility.”*

On March 18, 2010, Department representatives determined that Respondent’s Contingency Plan had not been submitted to the local authorities; a violation of §265.53(b).

**7. Section 265.54 of the DRGHW states:**

*“The contingency plan must be reviewed, and immediately amended, if necessary, whenever:*

*(a) Applicable regulations are revised;*

*(b) The plan fails in an emergency;*

*(c) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous constituents, or changes the responses necessary in an emergency;*

*(d) The list of emergency coordinators changes; or*

*(e) The list of emergency equipment changes.”*

On March 18, 2010, Department representatives discovered that the contingency plan had been reviewed in May 2009, and attached to the contingency plan were revisions resulting from changes to Respondent’s organizational structure; however, the contingency plan had not been amended to include the results of the review; a violation of §265.54.

**8. Section 265.195(a)(2) of the DRGHW states:**

*“(a) The owner or operator must inspect, where present, at least once each operating day:*

*(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste.”*

On March 18, 2010, Department representatives observed spots of rust on the supply pipes, located at the top of the K061 Silo Tank, that had not been documented by Respondent; a violation of §265.195(a)(2).

**9. Section 265.195(a)(4) of the DRGHW states:**

*“(a) The owner or operator must inspect, where present, at least once each operating day:*

*(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots; dead vegetation).”*

On March 18, 2010, Department representatives observed a deformation at the top of the K061 Silo Tank that had not been documented by Respondent; a violation of §265.195(a)(4).

**10. Section 265.15(c) of the DRGHW states:**

*“(c) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.”*

On March 18, 2010, Department representatives observed a deformation at the top of the K061 silo tank and spots of rust on pipes that had not been corrected; a violation of §265.15(c).

**11. Condition 3.1 of Permit: APC-81/0363-OPERATION(Amendment 4)(NO<sub>x</sub> RACT)(PTE) states:**

*At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the facility, including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determinations of whether acceptable operating procedures are being used will be based on information available to the Department, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”*

During a site visit on April 1, 2010, the DAQ discovered that Evraz Claymont Steel was operating the EAF and associated equipment in violation of **Permit: APC-81/0363-OPERATION(Amendment 4)(NOX RACT)(PTE)**. Specifically, the DAQ discovered that the man-way access port on top of K061 Silo Tank was lacking a proper closure or clamping mechanism (i.e., some missing or broken clamps). The DAQ also discovered the K061 Silo Tank had a bent support beam on top which may have caused the denting or displacement on the top of the portion of the K061 Silo Tank which had been noted by the SHWMS representative during its inspection. Finally, deteriorated duct tape was located on the piping associated with the K061 Silo Tank in several areas which was apparently used to prevent leakage of the K061 waste to the atmosphere. For these reasons, Evraz Claymont Steel Claymont is found to be in violation of Condition 3.1 of **Permit: APC-81/0363-OPERATION(Amendment 4)(NOX RACT)(PTE)**, issued July 2, 2008, for failing to maintain the Facility in a manner consistent with good air pollution control practices for minimizing emissions.

**12. 7 Del. C. § 6003(b)(1) states:**

*“(b) No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article: (1) Which may cause or contribute to the discharge of an air contaminant.”*

Evraz violated this provision of Delaware law when it replaced four burners and performed other construction at the reheat furnace to conduct its pilot test of the potential oxygen combustion configuration, and when it replaced the remaining burners at the reheat furnace on or about November 2011, and in each case began operating the altered equipment.

**13. Regulation No. 1102 § 2.1 of Delaware’s Regulations Governing the Control of Air Pollution states:**

*“...no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department...”*

Evraz violated this Delaware regulation when it replaced four burners and performed other construction at the reheat furnace to conduct its pilot test of the potential oxygen combustion configuration on or about May of 2010, and when it replaced the remaining burners at the reheat furnace on or about November 2011, and in each case began operating the altered equipment.

**14. Section 262.12(c) of the DRGHW states:**

*“(c) A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and a Delaware*

hazardous waste transporter permit or to treatment, storage, or disposal facilities that have not received and EPA identification number.”

On December 1, 2, 5, and 6, 2011, Evraz manifested shipments of K061 hazardous waste to Horsehead Corporation in Palmerton, Pennsylvania. Each shipment was transported by Monarch Transport Environmental, Inc. While permitted to transport used oil in the state of Delaware, Monarch Transport Environmental, Inc., is not a permitted transporter of listed hazardous waste. This constitutes a violation of §262.12(c) of DRGHW.

### ***CONCILIATION***

It is the desire of the Department that Respondent take actions to achieve and maintain compliance with Delaware law and regulations. Therefore, Respondent consents to take the following actions to achieve and maintain compliance as set out below and as authorized by 7 *Del. C.* § 6005(b)(2).

### ***ASSESSMENT OF PENALTY AND COSTS***

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, Respondent is ordered to take the following actions:

1. Respondent will reimburse DNREC the amount of \$2,500 as cost recovery related to the alleged violations identified in this Order. Respondent shall submit a check to the Department in the amount of \$2,500 to pay costs within 30 days from the date of this Order. The check shall be made payable to the “State of Delaware” and shall be directed to: Valerie M. Satterfield, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.

2. Respondent will provide \$3,000 to the Department within 30 days from the date of this Order and DNREC shall forward it for use on a project chosen in DNREC’s sole discretion.

3. Evraz, having stated on February 2, 2012 and having reaffirmed the statement on February 15, 2012 that it desires to maintain the option to reintroduce spilled or released K061 into the K061 Silo Tank, will operate the tank into the future as a regulated hazardous waste tank subject to DRGHW. Regardless of the option chosen for managing any spilled or released K061 at a given time, the K061 Silo Tank shall into the future be operated as a regulated hazardous waste tank subject to DRGHW. If, however, DNREC determines in the future that K061 is not a hazardous waste, then Evraz shall not be required to operate the K061 Silo Tank as a regulated hazardous waste tank subject to DRGHW. In addition, nothing in this paragraph shall preclude Evraz from requesting DNREC’s permission to operate the K061 Silo Tank as an air pollution control device rather than a regulated hazardous waste tank subject to DRGHW.

4. Within 30 days of the issuance of this Order, Evraz shall submit to DNREC a complete application for an air quality construction permit and a request to operate the a) replaced REBOX infrared burners at the reheat furnace and b) any other changes to the reheat

furnace that have been undertaken to enable the reheat furnace to employ pure oxygen to facilitate the combustion of natural gas. These burners are anticipated to reduce NO<sub>x</sub> and other emissions from the reheat furnace; however, nothing herein is intended or should be construed to impose an additional obligation upon Evraz to achieve any specific NO<sub>x</sub> emissions level, nor impose any new enforceable NO<sub>x</sub> emission limit on the reheat furnace that is not already in effect in the permit or agreed to as part of this Order. It is the Department's understanding that these REBOX burners are already operating, and the permitting of the burners may generate NO<sub>x</sub> emissions reductions credits pursuant to Air Regulation No. 1134. If emission reduction credits are certified, Evraz shall surrender and transfer 5 tons of those NO<sub>x</sub> emissions reduction credits to the State of Delaware, DNREC, to be utilized in the sole discretion of the State. Evraz shall forfeit any and all use or claim to those credits. Any remaining NO<sub>x</sub> emissions reductions credits certified pursuant to Air Regulation No. 1134, shall remain the property of Evraz and may be sold or traded as allowed by law pursuant to Air Regulation No. 1134.

5. Within 30 days of the issuance of this Order, Evraz shall commence the procurement process to commission a study to assess the methods of conveying electric arc furnace ("EAF") dust from the baghouse to the transfer vessels ("EAF Dust Transfer Study"). The purpose of the EAF Dust Transfer Study shall be to propose recommendations to improve the existing system of dust handling and loading at Evraz's facility. The potential improvements to be studied will be designed to reduce fugitive releases of EAF dust into the environment during the process of transferring dust to the vessels designed to haul away the waste for further processing offsite. The study will include a review of the current practices in the steelmaking industry for transfer of the EAF dust collected by a baghouse, which apparently vary from facility to facility. Based on Evraz's initial review, the two most utilized options appear to be 1) the use of intermediate vessels in combination with fixed enclosures or 2) direct loading of dust from the baghouse into transfer vessels. Accordingly, at a minimum, the study will evaluate 1) expanding and improving the current enclosure surrounding the transfer location so that during loading operations a truck may fit completely within the enclosure while a new roll up door is in the down position; and 2) loading the EAF directly from the baghouse to transfer vessels, which would obviate the need to use the current EAF dust silo or other intermediate vessels. Evraz shall submit the final results of the study to the Department no later than 270 days from the date of issuance of this Order and then will work with DNREC to review the study recommendations. Evraz will choose a feasible option based on the study recommendations, implementing the option selected with a final completion date of January 31, 2014. If Evraz fails to comply with any of the deadlines listed this paragraph, it shall be subject to a stipulated penalty of \$10,000 payable to DNREC for the first 30 day period and \$1,000 per day thereafter. Evraz shall pay any stipulated penalties upon written demand by DNREC no later than 30 days after Evraz receives such demand from DNREC. Payment shall be made in the manner specified in paragraph 1 (above) for the payment of costs.

6. Evraz is further assessed an administrative penalty in the amount of \$25,000 for the violations identified herein. Evraz's obligation to pay that administrative penalty is hereby suspended on the condition that Evraz commit no future violations of Delaware or federal law related to: (a) initiating construction, installing, altering or initiating operation of any equipment, facility or air contaminant control device prior to receiving approval from DNREC (or, if eligible, prior to submitting a completed registration form); or (b) failure to obtain a hazardous

waste permit required for the treatment or disposal of hazardous waste at the Facility. The condition set forth in (b) does not include requirements related to accumulation time as set forth in DRGHW § 262.34. The term of this condition shall extend from the date of this Order until completion of implementation of the recommended action with respect to the EAF Dust Study or 12 months following the date of this Order, whichever is later, after which time Evraz shall have no additional obligations under this paragraph. If DNREC determines that Evraz has committed a violation of (a) or (b) during the time period set forth in this paragraph, DNREC may submit a written demand for payment of this suspended \$25,000 penalty and Evraz shall pay the \$25,000 penalty to DNREC within 30 days from issuance of that demand letter. Within this 30 day period, however, Evraz may request a hearing before the Secretary (at which Evraz may participate and present evidence) to seek a determination by the Secretary as to whether Evraz has committed a violation of (a) or (b). If, after this hearing, the Secretary determines that Evraz has committed a violation of (a) or (b), then Evraz shall pay the \$25,000 penalty to DNREC within 14 days of the Secretary's written determination. Evraz expressly waives its right to contest the Secretary's determination. Any payment pursuant to this paragraph shall be made in the manner specified in paragraph 1 (above) for the payment of costs.

### ***FORCE MAJEURE***

1. If any event occurs that causes or may cause a delay or impediment to performance in complying with any dates set out for completing the EAF Dust Transfer Study or completion of construction of the Enclosure, Evraz shall notify DNREC in writing as soon as practicable, but in any event within twenty business days of when Evraz first knew of the event or should have known of the event by the exercise of due diligence. In this notice, Evraz shall specifically reference this paragraph and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Evraz to prevent or minimize the delay and the schedule by which those measures will be implemented. Evraz shall adopt all reasonable measures to avoid or minimize such delays.

2. Failure by Evraz to comply with the notice requirements of paragraph 1 as specified above shall render this entire Force Majeure Section voidable by DNREC as to the specific event for which Evraz has failed to comply with such notice requirement, and, if voided, it shall be of no effect as to the particular event involved.

3. DNREC shall notify Evraz in writing regarding any claim by Evraz of a delay or impediment to performance within twenty business days of DNREC's receipt of the Force Majeure notice required under paragraph 1.

4. If DNREC agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Evraz, including any entity controlled by Evraz, and that Evraz could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the circumstances. Such stipulation shall modify this Order by agreement of the Parties. Evraz shall not be liable for stipulated penalties for the period of any such agreed to delay.

5. If DNREC does not accept a claim by Evraz of a delay or impediment to performance, DNREC's position shall be binding. In such an event, DNREC shall notify Evraz in writing of such decision and Evraz may appeal that decision to the EAB.

6. Evraz shall bear the burden of proving that any delay of any deadline was caused by or will be caused by circumstances beyond its control, including any entity controlled by Evraz, and that Evraz could not have prevented the delay by the exercise of due diligence. Evraz shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

7. Unanticipated or increased costs or expenses associated with the performance of any obligations of Evraz under this Consent Decree shall not constitute circumstances beyond its control, or serve as a basis for an extension of time under this Section.

8. Notwithstanding any other provision of this Order, no inference shall be drawn nor presumptions adverse to any party established as a result of Evraz transmitting a notice of Force Majeure or the Parties' inability to reach agreement.

### ***PUBLIC HEARING***

This Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. §§ 6005(b)(3) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

### ***AGREEMENT***

Respondent may elect to waive its opportunity to contest this Order and agree to the terms set out herein by signing the waiver attached hereto. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Order which shall become a final Order. By signing the Waiver, Evraz makes no admission of fact or law, including without limitation any admission of potential violations of Delaware laws or regulations set out here. To the extent Evraz satisfies the schedules set out herein, DNREC will not take any further enforcement action for the violations alleged herein. However, any potential violations that were not alleged herein are expressly reserved from any release of liability or agreement not to take enforcement action set out in this paragraph.

If you have any questions, please contact Karen J'Anthony at (302) 739-9403 (for SHWMS) or Paul Foster at (302) 323-4542 (for DAQ).

1/8/13

Date



Collin P. O'Mara, Secretary

cc: Valerie M. Satterfield, Deputy Attorney General  
Marjorie A. Crofts, Division of Waste and Hazardous Substances Director  
Ali Mirzakhali, Division of Air Quality Director  
Nancy Marker, SHWMS Program Administrator  
Paul Foster, DAQ Program Manager  
Karen J'Anthony, SHWMS Program Manager  
Everett DeWhitt, DAQ Managing Engineer  
Bill Davis, SHWMS Environmental Scientist  
Brad Klotz, DAQ Engineer  
Jenny Bothell, Enforcement Coordinator  
Susan Baker, Paralegal  
Dawn Minor, Paralegal  
SHWMS File  
DAQ Dover File

15-51ssb(3)

***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Evraz Claymont Steel, Inc.** hereby waives its right to a hearing and its opportunity to appeal or contest this Order and agrees the terms of this Order as set out hereinabove.

**Evraz Claymont Steel, Inc.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_