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STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

SOUTH DEARBORN ENVIRONMENTAL
IMPROVEMENT ASSOCIATION, INC., a
Michigan non-profit corporation;
DETROITERS WORKING FOR
ENVIRONMENTAL JUSTICE, a Michigan non-
profit corporation; ORIGINAL UNITED
CITIZENS OF SOUTHWEST DETROIT, a
Michigan non-profit corporation; and
SIERRA CLUB, a California corporation,

Appellants,

v

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, a Department of
the Executive Branch of the State of
Michigan; and DAN WYANT, Director of the
Michigan Department of Environmental
Quality.

Appellees.

Case No. 14-008887-AA

Hon. Robert L. Ziolkowski

14-008887-AA
APPELLANTS' OBJECTIONS
TO ADMINISTRATIVE
RECORD, FILED IN MY OFFICE
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OR, ALTERNATIVELY, 8/18/2014 3:05:46 PM
CATHY M. GARRETT
MOTION TO DIRECT
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COMPLETE ADMINISTRATIVE
RECORD

Christopher M. Bzdok (P53094)
Emerson Hilton (P76363)
OLSON, BZDOK & HOWARD, P.C.
Attorneys for Appellant SDEIA
420 East Front Street
Traverse City, MI 49686
Telephone: (231) 946-0044
Email: chris@envlaw.com
emerson@envlaw.com

Tracy Jane Andrews (P67467)
LAW OFFICE OF TRACY JANE ANDREWS, PLLC
Co-Counsel for Appellant SDEIA
317-B Lake Avenue
Traverse City, MI 49684
Telephone: (231) 714-9402
Email: tjandrews@ymail.com

Nicholas Schroeck (P70888)
Stephanie Karisny (P76529)
Attorneys for Appellants DWEJ, OUCSD and
Sierra Club
4444 Second Avenue
Detroit, MI 48201
Telephone: (586) 610-2059
Email: nschroeck@gmail.com
skarisny@gmail.com

1. The Appellants, South Dearborn Environmental Improvement Association, Inc. (SDEIA); Detroiters Working for Environmental Justice (DWEJ); Original United Citizens of Southwest Detroit (OUCSW); Southwest Detroit Community Benefits Coalition (SWDCBC); and Sierra Club (collectively, “Appellants”) object to the administrative record filed by Appellant Michigan Department of Environmental Quality (MDEQ) because it is incomplete. Appellants request an order directing MDEQ to file the whole administrative record for an air permit issued by MDEQ to Severstal Dearborn, LLC (Severstal).

2. Appellants specifically request inclusion of the following categories of omitted documents:

- a. Documents related to Severstal’s compliance with air regulation and permits (including, without limit, Exhibits 1 through 6 attached to this motion);
- b. Documents evidencing MDEQ decisions to deny the air permit, and reversal of those decisions (including, without limit, Exhibit 7 to this motion);
- c. MDEQ documents evaluating Severstal’s “grandfathering” arguments – that the company should be exempt from Clean Air Act requirements passed since 2005 (including, without limit, Exhibit 8 to this motion);
- d. Documents related to a unlawful “extension agreement” entered by MDEQ and Severstal (including, without limit, Exhibits 9 through 11 to this motion);
- e. Documents related to the MDEQ Executive Office’s direct participation in the permit negotiations (including, without limit, Exhibit 12 to this motion);
- f. Documents related to the Michigan Economic Development Corporation’s intervention in the permit negotiations (including, without limit, Exhibits 4, 5, 6, 7, and 13 through 30 to this motion);
- g. Documents related to the original air permit in this matter; and
- h. Other documents absent from the filed record (including, without limit, Exhibits 31 through 35 to this motion).

3. MDEQ issued a new air pollution permit to Severstal on May 12, 2014, over Appellants’ objections. The new permit is titled Permit to Install (PTI) No. 182-05C (“the

Permit”). The Permit allows Severstal to emit hundreds more tons of air pollution into Appellants’ communities than Severstal was allowed to emit under its prior permit.

4. Appellants filed a Claim of Appeal challenging the Permit on July 10, 2014.

5. MDEQ filed an incomplete Administrative Record on August 4, 2014.

6. On August 8, Appellants notified MDEQ of substantial gaps identified in the filed Administrative Record.

7. There are likely additional gaps in the Administrative Record that are not identifiable by Appellants.

8. Michigan Court Rule 7.109(A)(2) provides that the contents of the record for a circuit court appeal of an agency decision is defined in MCR 7.210(A)(2), which in turn provides that the record includes all documents and files of the agency.

9. MDEQ has failed to file all the documents and files related to the Permit, as required by MCR 7.109(A)(2) and 7.210(A)(2).

10. Appellants request the Court order MDEQ to file the complete Administrative Record, including (without limit) the documents identified in Paragraph 2, above.

Respectfully Submitted:

OLSON, BZDOK & HOWARD, P.C.
Attorneys for Appellant SDEIA

Date: August 18, 2014

By: /s/ Christopher M. Bzdok
Christopher M. Bzdok (P35094)
Emerson Hilton (P76363)

LAW OFFICE OF TRACY JANE ANDREWS, PLLC
Co-Counsel for Appellant SDEIA

Date: August 18 2014

By: /s/ Tracy Jane Andrews
Tracy Jane Andrews (P67467)

GREAT LAKES ENVIRONMENTAL LAW CENTER
Attorneys for Appellants DWEJ, OUCSD, SDCBC, and
Sierra Club

Date: August 18, 2014

By: /s/ Stephanie Karisny
Nicholas Schroeck (P70888)
Stephanie Karisny (P76529)

STATE OF MICHIGAN
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SOUTH DEARBORN ENVIRONMENTAL
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UNITED CITIZENS OF SOUTHWEST
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MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, a
Department of the Executive Branch
of the State of Michigan; and DAN
WYANT, Director of the Michigan
Department of Environmental
Quality,
Appellees,

v

AK STEEL CORPORATION,
Intervening Appellee.

Christopher M. Bzdok (P53094)
Emerson Hilton (P76363)
OLSON, BZDOK & HOWARD, P.C.
Attorneys for Appellant SDEIA
420 East Front Street
Traverse City, MI 49686
Telephone: (231) 946-0044
Emails: chris@envlaw.com
emerson@envlaw.com

Case No. 14-008887-AA

Hon. Daniel A. Hathaway 14-008887-AA
FILED IN MY OFFICE
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CATHY M. GARRETT

**SUPPLEMENTAL BRIEF IN
SUPPORT OF APPELLANTS'
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ADMINISTRATIVE RECORD,
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Tracy Jane Andrews (P67467)
LAW OFFICE OF TRACY JANE
ANDREWS, PLLC
Co-Counsel for Appellant SDEIA
317-B Avenue
Traverse City, MI 49684
Telephone: (231) 714-9402
Email: tjandrews@gmail.com

Nicholas Schroeck (P70888)
Stephanie Karisny (P76529)
Attorneys for Appellants DWEJ,
OUCSD, and Sierra Club
4444 Second Avenue
Detroit, MI 48201
Telephone: (586) 610-2059
Emails: nschroeck@gmail.com
skarisny@gmail.com

Neil D. Gordon (P56374)
Assistant Attorney General
Environmental, Natural Resources
and Agriculture Division
Attorney for Appellees
P. O. Box 30755
Lansing, MI 48909
Telephone: (517) 373-7540
Email: GordonN1@michigan.gov

William C. Schaefer (P26495)
Edward S. Toth (P44734)
Barbara D. Urlaub (P38290)
DRIGGERS, SCHULTZ & HERBST, P.C.
Attorneys for Intervening Appellee
AK Steel Corporation
2600 W. Big Beaver Road, Suite 550
Troy, MI 48084
Telephone: (248) 649-6000/649-6442
Emails: schaefer@driggerssschultz.com
ethoth@driggerssschultz.com
burlaub@driggerssschultz.com

Scott R. Dismukes (P61811)
David R. Rockman (P78190)
ECKERT SEAMANS CHERIN & MELLOTT,
LLC, Attorneys for Intervening
Appellee AK Steel Corporation
600 Grant Street, 44th Floor
Pittsburgh, PA 15219-2788
Telephone: (412) 566-6000
Emails: dismukes@eckertseamans.com
drockman@eckertseamans.com

**SUPPLEMENTAL BRIEF IN SUPPORT OF
APPELLANTS' OBJECTIONS TO THE ADMINISTRATIVE RECORD,
OR, ALTERNATIVELY, MOTION TO DIRECT APPELLEE TO FILE
COMPLETE ADMINISTRATIVE RECORD**

I. Introduction.

This case involves the validity of an air pollution permit issued to Severstal Dearborn, LLC (Severstal), by the Michigan Department of Environmental Quality (DEQ). The AK Steel Corporation (AK Steel) purchased Severstal and its assets in late 2014 and succeeded to Severstal's interest in the permit.

The permit in question dramatically increases the amount of authorized air pollution that may be emitted from the former Rouge Steel plant in Dearborn. During the course of an extraordinarily long and complex permitting process that began in 2009, the Michigan Economic Development Corporation (MEDC) played an active, extensive, and substantive role in negotiations between DEQ, Severstal, the U.S. Environmental Protection Agency (EPA), various state legislators, the Governor's office, and other interested parties. MEDC organized and recorded discussions at high-level meetings, researched significant legal issues, kept the Governor and elected officials apprised about the permit, and otherwise participated in day-to-day review and decision-making processes that culminated in issuance of the permit.

Despite the extensive and substantive involvement of MEDC in DEQ's permitting process, the administrative record filed by DEQ for purposes of

Appellants' claim of appeal excludes many documents related to MEDC's involvement. Appellants initially raised this issue in objections to the administrative record filed in 2014, and Appellants continue to seek an order requiring the administrative record to include all files and documents related to DEQ's permitting and decision-making processes, including all files and documents related to MEDC's participation in those processes. At a scheduling conference with this Court's predecessor in December 2014, and in light of the Court's then-impending retirement, Appellants requested permission from the other parties to file supplemental briefing on this issue with this Court. The other parties did not object to this request. This brief is intended to supplement, but not replace, Appellants' previous briefing and argument on the necessity of including in the administrative record all files and documents related to MEDC's involvement in DEQ's permitting and decision-making processes.

II. Procedural History.

DEQ issued the subject permit, PTI No. 182-05C, on May 12, 2014. On July 10, 2014, Appellants South Dearborn Environmental Improvement Association (SDEIA), Detroiters Working for Environmental Justice (DWEJ), Southwest Detroit Community Benefits Coalition (SWDCBC), and the Sierra Club (collectively, Appellants) filed a claim of appeal under Part 55 of the Michigan Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et*

seq. The claim of appeal asks this Court to vacate the permit because it is unlawful.

On August 4, 2014, in response to Appellants' claim of appeal, DEQ filed an incomplete administrative record with the Court. On August 8, Appellants notified DEQ that the administrative record improperly omitted many important documents. DEQ added a handful of documents identified by Appellants to the record, but the agency refused to include many other important documents. As a result, Appellants filed a motion objecting to the administrative record, and sought an order compelling DEQ to file a complete record including certain categories of documents as well as with specific individual documents identified by Appellants and attached as exhibits to their original motion.¹ Appellee DEQ and Intervening Appellee AK Steel filed responses to Appellants objections, and, on September 10, 2014, the issues were presented at a hearing before this Court's predecessor.²

At the hearing, Appellants' motion was granted in part and denied in part.³ Relevant here, the Court also reserved a ruling on, and took under advisement, the

¹ The specific documents previously taken under advisement by the Court are collectively included with this supplemental brief as **Attachment A**. For convenience, each document in this exhibit retains the numbering used in Appellants' original motion objecting to the administrative record.

² A complete transcript of the September 10, 2014 hearing is included with this supplemental brief as **Attachment B**. Subsequent citations to this transcript will be to "Tr. [Page Number]."

³ The Court granted Appellants' request that the administrative record include Exhibit 8 to Appellants' original motion, as well as Appellants' request that the record include a series of historical violation notices sent by DEQ to Severstal. AK Steel later objected to the proposed order submitted by Appellants after the hearing, meaning that the necessity of including these

question whether the administrative record should include documents related to MEDC's pervasive involvement in DEQ's permitting and decision-making processes. This Court's predecessor never ruled on the issue. Appellants' supplemental brief now asks the Court to answer that question in the affirmative because these documents are a necessary part of the administrative record. As such, Appellants respectfully request that this Court order DEQ, consistent with the agency's obligations under Michigan law, to supplement the administrative record with the documents included in Attachment A (Exhibits 4-7, 12-23, 25-28, and 31 of Appellants' original motion), as well as any other known files or documents related to MEDC's involvement in DEQ's permitting and decision-making processes.

III. Legal Standards.

This appeal is governed by Part 55 of NREPA, MCL 324.5505(8) and MCL 324.5506(14), by Section 631 of the Revised Judicature Act, MCL 600.631, and by Chapter 7 of the Michigan Court Rules, MCR 7.100 *et seq.* Substantively, the permit issued by DEQ "was not authorized by law if it violated a statute or constitution, exceeded the agency's statutory authority or jurisdiction, materially prejudiced a party as the result of unlawful procedures, or was arbitrary and

violation notices in the administrative record is now before this Court again in a separate motion. Also at the September 10 hearing, the Court denied Appellants' request that the record include Exhibits 9 through 11 to their original motion.

capricious.” *Natural Res Def Council v DEQ*, 300 Mich App 79, 87-88; 832 NW2d 288 (2013).

This appeal must be “heard on the original record.” MCR 7.109(A). The original record “is as defined in MCR 7.210(A)(2).” *Id.* MCR 7.210(A)(2) provides that the record for a circuit court appeal of an agency decision, as here, includes “all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties.” In reviewing DEQ’s decision to issue the subject permit in this case, the Court must review “the whole record, not just those portions which support the agency’s findings.” *W Ottawa Educ Ass’n v West Ottawa Pub Sch Bd of Educ*, 126 Mich App 306, 313; 337 NW2d 533 (1983). A reviewing court “must have a record containing the information upon which the agency relied when it made its decision as well as any documentation revealing the agency’s decision-making process.” *Holmes v United States*, 98 Fed Cl 767, 780 (2011).

IV. MEDC’s Participation in DEQ’s Permitting Process was Both Pervasive and Substantive.

Although DEQ is the agency in charge of air pollution permits in Michigan, MEDC was directly and extensively involved in the extraordinarily long and complex permitting process that resulted in Severstal’s permit. The exact nature of MEDC’s role in that process, and the manner in which MEDC affected DEQ’s

decision to issue the permit, is not for this Court to decide at the present time. But the standard of review for appeals of air pollution permits, which includes whether the permitting decision resulted from unlawful procedures or was arbitrary and capricious, requires a complete record of all documents and files related to DEQ's underlying permitting and decision-making processes, including files and documents generated by MEDC that memorialize and describe MEDC's role in those processes.

Negotiations over the subject permit began in 2009, after tests performed in late 2008 showed that Severstal's facility could not meet the air pollution limits in its then-existing permit.⁴ These test results prompted Severstal to apply for a new permit, in 2010, that would increase the amount of authorized pollution emitted from its plant.⁵ MEDC intervened in the permitting process on Severstal's behalf in 2012, shortly after DEQ indicated that it was required by law to deny Severstal's permit. Severstal's CEO, Sergei Kuznetsov, asked for MEDC's assistance with DEQ at a meeting with Governor Rick Snyder and MEDC Executive Director Michael Finney during the state officials' visit to the steel plant in June of that year.⁶ In addition, Kuznetsov appealed directly to Steven Hilfinger, then Director

⁴ AR Permit 433 (Permit to Install Application Summary for 182-05C, Page 4).

⁵ *Id.* (Permit to Install Application Summary for 182-05C, Page 6).

⁶ AR Public Hearing and Comments 49, Ex. 21.

of the Michigan Department of Labor and Regulatory Affairs, who in turn assigned the task of assisting Severstal to MEDC.⁷

In the months that followed, MEDC did far more than merely “assist” Severstal. MEDC employees ran meetings between DEQ and Severstal, had private meetings with Severstal in DEQ’s absence, lobbied DEQ on Severstal’s behalf, had a seat at the negotiating table along with DEQ and Severstal, reviewed and commented on draft documents and correspondence between DEQ and Severstal, and generally set the agenda for all negotiations between the parties.

In early 2013, for example, MEDC and DEQ staff met with State Senator Mike Kowall to discuss DEQ’s then-impending decision to deny the permit. MEDC employee Amy Banninga reported:

We had our meeting with Senator Kowall today. [DEQ Deputy Director] Jim Sygo, [DEQ Air Quality Division Chief] Vince Helwig, Maggie Daterna, and I met with him at 4:30. He was not surprised by DEQ’s decision, just wanted to understand if there was anything else that could change their mind. . . . The Senator will be visiting the company on Thursday morning as part of a contingent of state senators, DEQ will wait until Thursday afternoon to talk with the company DEQ will ask the company to withdraw their application, or they will deny. . . . Sen. Kowall’s concerns: That the company will decide not to make the capital improvements they are proposing . . .⁸

The administrative record filed by DEQ includes no documents related to this meeting.

⁷ Exhibit 14 to Appellants’ Original Motion.

⁸ Exhibit 7 to Appellants’ Original Motion.

Two days later, MEDC staff again participated in a discussion with MDEQ and Severstal regarding the permit:

DEQ had a phone discussion with Severstal and their attorney last night after the senators had left. They had quite a discussion, but ended up agreeing to go back and look at the most recent plan and see if they could take some time off the end. . . .⁹

Although this meeting was apparently a substantive turning point in DEQ's decision-making process, the administrative record filed by DEQ includes no documents related to the meeting.¹⁰ As such, there is no way to discern who was involved, who scheduled it, what was discussed, why DEQ reversed its decision to deny the permit, and why MEDC was privy to the discussion.

MEDC's extensive and substantive day-to-day role in DEQ's permitting process is described in numerous other documents, many of which are also missing from the administrative record:

- June 21-25, 2012, email correspondence between MEDC employees Amy Banninga and Susan Holben regarding the assignment to intervene in the permit process and the response to that request by MDEQ permit staff.¹¹
- June 25, 2012 "Discussion Points for MDEQ Cooperation" circulated by Severstal CEO Sergei Kuznetsov to officials at MEDC, MDEQ, and the Governor's office, as well as related email correspondence.¹²

⁹ *Id.*

¹⁰ The record does include an email "follow-up" to the meeting, but that email makes no reference to the participants, agenda, or substance of the meeting. See AR Misc. 30.

¹¹ Exhibits 13 and 15 to Appellants' Original Motion.

¹² Exhibit 16 to Appellants' Original Motion.

- Notes of a meeting held July 5, 2012, involving MEDC officials and Severstal representatives, discussing MDEQ’s position on issues related to the permit, strategies for overcoming those positions, and contacts that MEDC would make to top MDEQ officials on Severstal’s behalf.¹³
- Notes of a meeting held July 12, 2012 between top MDEQ officials and representatives from MEDC and Severstal, including Severstal’s legal counsel. MDEQ Deputy Director James Sygo, and Air Quality Division Chief Vince Hellwig (who was the decision-maker on the permit) attended for MDEQ.¹⁴
- July 13, 2012 email from Severstal’s James Earl to Sygo and Hellwig of MDEQ, thanking them for agreeing at the meeting not to deny the permit – a reversal from Hellwig’s letter eight days prior.¹⁵
- Email dated August 14, 2012 from MEDC’s Amy Banninga to MDEQ upper management indicating that “[t]he boys from Pittsburgh just gave me another call” (referring to Severstal’s outside counsel), posing questions to MDEQ on behalf of Severstal, and suggesting she would “force bi-weekly phone calls [between MDEQ and Severstal] to stay aligned.”¹⁶
- Notes of meetings held August 21 and 22, 2012, that show MDEQ asserting that the permit must be denied or withdrawn, because Severstal was not in compliance and was the subject of pending enforcement action that had not been resolved, and MEDC and Severstal pressuring MDEQ to reverse that position.¹⁷
- September 10, 2012, task list sent by MEDC’s Amy Banninga to MDEQ upper management and Severstal representatives, directing the permit process on Severstal’s behalf.¹⁸

¹³ Exhibits 17, 18, and 19 to Appellants’ Original Motion.

¹⁴ Exhibit 20 to Appellants’ Original Motion.

¹⁵ Exhibit 21 to Appellants’ Original Motion.

¹⁶ AR Permit 260.

¹⁷ Exhibits 26, 27, and 28 to Appellants’ Original Motion.

¹⁸ AR Misc 18, 19.

- MEDC’s notes of a meeting held September 14, 2012, between MEDC, MDEQ, and Severstal representatives regarding Severstal’s request for “regulatory grandfathering” (exemption from Clean Air Act rules enacted since 2006) and other issues crucial to this appeal.¹⁹
- Emails dated January 18, 2013, between Amy Banninga, Michael Finney, and Steven Hilfinger of MEDC discussing MDEQ’s intention to once again deny the Severstal permit, and discussing whether there was “[a]ny way to avoid this result.”²⁰

Of particular importance, MEDC was directly involved in two crucial aspects of DEQ’s decision-making process. First, as outlined above, MEDC intervened when DEQ announced in 2012 that it was required by law to deny Severstal’s permit application due to substantial ongoing air pollution violations at the plant and a fast-approaching regulatory deadline to issue or deny the permit. Shortly thereafter, DEQ reversed course, ultimately entering into an unprecedented “extension agreement” with Severstal that allowed the permit application to be taken “off-line” while compliance problems were purportedly resolved.²¹ Second, MEDC actively facilitated discussions between DEQ and Severstal in which the company ultimately convinced DEQ to “grandfather” its permit application by reviewing it under outdated and less stringent air pollution laws from 2007 rather than the laws in place at the time the permit was issued.

¹⁹ Exhibit 6 to Appellants’ Original Motion.

²⁰ Exhibit 7 to Appellants’ Original Motion.

²¹ See AR Permit 275; Exhibits 20 and 21 to Appellants’ Original Motion.

In sum, the administrative record excludes numerous documents that demonstrate MEDC's unusual, active, and substantive role in DEQ's permitting process. Because MEDC's unique role was so important, and because many documents generated by MEDC shed light on otherwise unknown aspects of DEQ's decision-making process, the inclusion of all documents and files related to MEDC's participation in the permitting process is essential to this Court's eventual determination of whether the permit was arbitrary and capricious, the result of unlawful procedures, or otherwise contrary to law.

V. The Administrative Record Must Include All Files and Documents Related to MEDC's Involvement in DEQ's Decision-Making Process.

Appellants have identified numerous documents demonstrating that MEDC participated directly, substantively, and pervasively in DEQ's permitting process. Because these documents shed important light on the two agencies' collaboration in the permitting process, and ultimately on the extent and nature of MEDC's influence over DEQ's ultimate permitting decision, they must be included in the administrative record.

As an initial matter, both DEQ and AK Steel incorrectly suggest that Appellants seek to "expand" the administrative record in this case. Indeed, both appellees cite *Michigan Association of Home Builders v Director of Department of Labor & Economic Growth*, 481 Mich 496; 750 NW2d 593 (2008), a case standing

for the unremarkable proposition that a trial court must ground its review of agency action in the administrative record, and may not remand a case to the agency with instructions to expand the record for purposes of appellate review. In this case, however, Appellants simply seek an order requiring DEQ to file a complete administrative record. *Home Builders* does not preclude Appellants' request, but instead merely begs the question whether the administrative record filed by DEQ is, in fact, complete.

A complete administrative record in this case must include all files and documents pertaining to DEQ's permitting and decision-making processes, including documents that explain MEDC's unusual role in those processes, and documents generated by MEDC that shed light on those processes. That is consistent with MCR 7.210(A)(2), which requires that the record include "all files [and] documents" relating to DEQ's permitting decision. DEQ denies that this is the relevant standard, calling it "clearly wrong and far too broad." (DEQ Br. at 9.) According to DEQ, the record should not include all files and documents that relate to DEQ's permitting decision, but instead should be limited to files and documents that it "actually considered before it made its decision." (*Id.* at 8.) The text of MCR 7.210(A)(2) evinces no such limitation, either express or implied. Moreover, DEQ's proposed interpretation is squarely at odds with the Court of Appeals' opinion in *West Ottawa*, which explained that judicial review of agency

action must include more than just the documents that support an agency's findings. 126 Mich App 306, 313; 337 NW2d 533 (1983).

In support of its strained interpretation of MCR 7.210(A)(2), DEQ cites two opinions of the U.S. Court of Federal Claims. (See DEQ Br. at 8-9.) But neither opinion supports DEQ's suggestion that an administrative record should be limited to documents "actually considered" by an agency. To the contrary, the *Smith* opinion says that a proper record should include "all the materials compiled by the agency before it made its decision." 114 Fed Cl 691, 694 (2014). In fact, the *Smith* opinion expressly cites another recent Court of Claims opinion for the proposition that "the court must have a record containing the information upon which the agency relied when it made its decision as well as any documentation revealing the agency's decision-making process." 114 Fed Cl at 695, *quoting Holmes*, 98 Fed Cl at 780 (emphasis added).

The opinion in *Joint Venture of Comint Systems Corp v United States*, also cited by DEQ, similarly cautions that an "administrative record is not a documentary record maintained contemporaneously with the events or actions included in it," but is instead "a convenient vehicle for bringing the decision of an administrative body before a reviewing agency or court." 100 Fed Cl 159, 165 (2011) (internal quotations marks and citation omitted). *Smith*, *Holmes*, and *Joint Venture* all emphasize the important role of an administrative record in uncovering

and explicating an agency's decision-making process, whether or not each document in the record was "actually considered" by the agency. As such, these cases support Appellants' argument that documents and files related to MEDC's pervasive participation in DEQ's decision-making process should be included in the administrative record here.

In another attempt to explain away the plain language of MCR 7.210(A)(2), counsel for DEQ suggested at the September 10, 2014 hearing that the language of that court rule should not be read literally:

THE COURT: What I'm having a problem there with your argument is, in reading the Court rule, and the appeal for the administrative tribunal or agency, the Record includes, all documents, filings, testimony, orders of the tribunal, agency or officer. So, now we've included testimony.

MR. GORDON: It's as if it's written in the context of a contested case. I think the drafters of the rule are contemplating that's the context.

THE COURT: I appreciate it. But I'm bound by the rule.

Tr. 37. Just as nothing in the language of the rule itself supports DEQ's attempt to limit the scope of its administrative record to documents it "actually considered," nothing in the text of the rule suggests that it should or could apply differently in the context of a contested case than it applies in the context of this permit appeal. Unlike DEQ, AK Steel agrees with Appellants that DEQ's "obligation was to include 'all documents related to the Permit.'" (AK Steel Br. at 4.) At bottom, the

relevant court rule says that the administrative record must include “all documents [and] files” of the agency, not just those documents and files that support the agency’s decision, or those that the agency “actually considered.”

DEQ and AK Steel unconvincingly argue that, because DEQ purportedly never possessed certain MEDC documents, those documents cannot be part of the administrative record. (See DEQ Br. at 10; AK Steel Br. at 5.) But this argument obscures the fact that the handful of MEDC documents in question provides a window upon – or even a transcript of – DEQ’s own decision-making process. Exhibit 6 to Appellants’ original motion, for example, consists of hand-written notes taken by an MEDC employee during a 2012 meeting between high-level representatives of DEQ and Severstal, including the final decision-maker on the subject permit. Because the vast majority of these notes describe the comments and concerns shared by those representatives during the meeting, the notes unquestionably constitute “documentation revealing the agency’s decision-making process.” See *Holmes*, 98 Fed Cl at 780.

This view was recognized by the Court at the September 10, 2014 hearing:

THE COURT: So what the suggestion here is that . . . even though [DEQ] may not have had these, MEDC documents, there are references within those documents of conversations which arguably is testimony that, you know, how could somebody say they didn’t consider something when there’s something in their memo saying we just talked to this guy about sending this, so that still may suggest that they must have considered it.

Tr. 37-38. Thus even if certain documents in MEDC's possession were never in DEQ's possession, that would not mean, as DEQ and AK Steel propose, that those documents are irrelevant to this Court's review of the agency's underlying decision-making process. To the contrary, notes regarding high-level negotiations between DEQ and Severstal leadership, where MEDC was not only in attendance but scheduled the meeting and set the agenda, are plainly relevant to meaningful judicial review of the agency action at issue.

DEQ has also expressed an exaggerated concern that Appellants' interpretation of the relevant court rule "would unlawfully bring into the record a wide range of documents simply because they, for example, relate in some way to Severstal's [equipment]." (DEQ Br. at 9.) Appellants' effort to ensure that DEQ provides a complete administrative record, however, is focused solely on files and documents related to the permit issued to Severstal and the decision-making process that led to the permit. AK Steel again disagrees with DEQ on this point, acknowledging in its brief that "Appellants do not contend that [DEQ] needed to include every last document in its files, regardless of relationship to the permit decision." (AK Steel Br. at 4.) To the extent that DEQ or AK Steel are concerned with the overall size of the current record – apparently 12,000 pages, according to an informal count by AK Steel's printing vendor – Appellants note that they seek to require DEQ to include a relatively small number of additional pages in the

record. The expansive record in this case is not the fault of Appellants, but it is instead the result of an extraordinarily long and complex series of negotiations between Severstal, DEQ, and MEDC. Appellants' substantial and legally warranted concern about the record's omission of documents related to MEDC is certainly not outweighed by a concern that those documents are too voluminous or lengthy to be included in an already expansive record.

Finally, a common theme in DEQ's and AK Steel's respective arguments is that the Court should exclude evidence of MEDC's involvement in the permitting process from the record because that involvement was not improper. Such an argument is premature, at best, and at worst it is an improper effort to limit this Court's ultimate responsibility as an appellate decision-maker. Appellants are not now asking this Court to make any substantive decision regarding the scope or propriety that involvement. Appellants are simply asking that the administrative record include all files and documents related to DEQ's permitting and decision-making processes, as required by law, including all files and documents related to MEDC's involvement in those processes. DEQ and AK Steel cannot justify the exclusion of required documents from the record simply because they assert that those documents will not affect the outcome of this case. That is a decision for the Court to make, not DEQ or AK Steel, and it is a decision that cannot be made on the incomplete record filed by DEQ.

VI. Conclusion

For the reasons explained above, and as explained in more detail in prior briefing, Appellants respectfully request that this Court order DEQ to include in its administrative record the documents attached to Appellants' original motion as Exhibits 4-7, 12-23, 25-28, and 31, as well as all other files and documents relating to MEDC's involvement in DEQ's permitting and decision-making processes.

OLSON, BZDOK & HOWARD, P.C.
Attorneys for Appellant SDEIA

Date: February 5, 2015

/s/ Christopher M. Bzdok

By: _____

Christopher M. Bzdok (P53094)
Emerson Hilton (P76363)

LAW OFFICE OF TRACY JANE ANDREWS, PLLC
Co-Counsel for Appellant SDEIA

Date: February 5, 2015

/s/ Tracy Jane Andrews

By: _____

Tracy Jane Andrews (P67467)

GREAT LAKES ENVIRONMENTAL LAW CENTER
Attorneys for Appellants DWEJ, OUCSD,
and Sierra Club

Date: February 5, 2015

/s/ Stephanie Karisny

By: _____

Nicholas Schroeck (P70888)
Stephanie Karisny (P76529)

14-008887-AA

FILED IN MY OFFICE
WAYNE COUNTY CLERK
2/5/2015 3:13:50 PM
CATHY M. GARRETT

Attachment A

Includes the following exhibits
submitted with Appellants' Objections to
Administrative Record or,
Alternatively, Motion to Direct
Appellee to File Complete
Administrative Record,
and previously taken under advisement
by the Court:

Ex 4-7

Ex 12-23

Ex 25-28

Ex 31

Amy Banninga

From: Michael Finney
Sent: Friday, May 17, 2013 4:21 PM
To: Amy Banninga; Governor Rick Snyder
Cc: Steve Hilfinger; Dennis Muchmore; John Roberts; Allison Scott
Subject: Re: Severstal

Hello Governor Snyder,

Thought you would like to be aware of this action.

Mike

Michael A. Finney
President & CEO
Michigan Economic Development Corporation

Email: Michael@Michigan.org
Work: 517-241-1400

One Click - Thousands of Jobs mitalent.org

On May 17, 2013, at 1:19 PM, "Amy Banninga" <banningaa1@michigan.org> wrote:

I thought you should know that the Department of Justice is preparing a filing in federal court since Severstal has not been forthcoming in settlement negotiations with EPA. Director Wyant has sent a referral to the AG to join the action and this was at the request of DOJ.

-----Original Message-----

From: Hellwig, Vince (DEQ) [<mailto:HELLWIGV@michigan.gov>]
Sent: Friday, May 17, 2013 1:10 PM
To: Amy Banninga
Cc: Sygo, Jim (DEQ)
Subject: RE: Severstal Bi-weekly Update - April 29, 2013 through May 10, 2013

Amy,
Severstal is progressing with the milestones in the schedule. However there were several other violations: in March there was an opacity violation at the ESP, in May there was a notice of violation for the "C" cast house for failure to keep records on the baghouse operations and maintenance, and there was a violation of an emissions stack test at the galvanizing line.

In addition the Department of Justice is preparing a filing in federal court since Severstal has not been forthcoming in settlement negotiations with EPA. Director Wyant has sent a referral to the AG to join the action and this was at the request of DOJ.

-----Original Message-----

From: Amy Banninga [<mailto:banningaa1@michigan.org>]

Sent: Friday, May 17, 2013 11:19 AM
To: Hellwig, Vince (DEQ)
Subject: FW: Severstal Bi-weekly Update - April 29, 2013 through May 10, 2013

Vince--

Just wanted to check in to see how it's going with Severstal. I hope it's all positive, but want to make sure I know if there are any issues.

Let me know--don't need details unless there are problems.

Amy

-----Original Message-----

From: SDismukes@eckertseamans.com [mailto:SDismukes@eckertseamans.com]
Sent: Wednesday, May 15, 2013 2:29 PM
To: mclemorw@michigan.gov; kosterk1@michigan.gov; DOLEHANTYM@michigan.gov; fiedlerl@michigan.gov; seidel@michigan.gov; sygoj@michigan.gov; hellwigv@michigan.gov; gordonn1@michigan.gov; mszymans@severstalna.com; jearl@severstalna.com; Bruce.Black@severstalna.com; pond@descc.com; Ed.Asbury@severstalna.com; Ronald.Kostyo@severstalna.com; Amy Banninga; may@rtpenv.com; saini@rtpenv.com; sdismukes@eckertseamans.com; drockman@eckertseamans.com
Subject: Severstal Bi-weekly Update - April 29, 2013 through May 10, 2013

All:

Please find below the bi-weekly update of activities associated with Severstal's Permit Application 182-05C correction efforts and associated emissions testing and compliance-related activities for the weeks of April 29, 2013 through May 10, 2013.

- * During the week of April 29, Severstal conducted stack testing at the C Blast Furnace Stove Stack and C Blast Furnace Casthouse. The testing involved measurement of particulate matter (filterable and condensable) at both sources, and metals (lead and manganese) at the C Blast Furnace Casthouse. The required visible emissions testing demonstrated compliance.

- * On May 2nd, Severstal's slag handling contractor, the Edw. C. Levy Co., submitted a PTI application to DEQ for the construction of a slag pot watering station, for the handling of desulfurization slag, and a pot reheater station.

Scott R. Dismukes
Eckert Seamans Cherin & Mellott, LLC
U. S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219-2788
Telephone: 412.566.1998
Fax: 412.566.6099
Cell: 412.417.1279

Amiee Evans

From: Amy Banninga
Sent: Wednesday, February 19, 2014 4:10 PM
To: Aaron Young; Christine Roeder; Vince Nystrom; Michael Finney; Steve Hilfinger
Cc: Karen Putnam
Subject: FW: Severstal Dearborn LLC
Attachments: 182-05CCoLtr.pdf; 182-05C.pdf; 182-05CFactSheet.pdf; 182-05CIPLtr.pdf; 182-05CNOH.pdf

Just wanted to update you on the work the Ombudsman office has been doing with Severstal.

The company continues to perform heavy maintenance to systems that contributed to their numerous infractions. They have made a great deal of progress, which has made it possible for DEQ to move their permit to install forward to public hearing. Notice for the Public Information session and Public Hearing have been issued and the hearing is scheduled for March 19th.

This is progress, but there is still a separate EPA enforcement action underway that will be newsworthy. There may be some who do not agree with moving forward with this permit to install new equipment while there are still outstanding historic infractions that include possible criminal changes.

From: Hartman, Amie (DEQ)
Sent: Wednesday, February 12, 2014 9:13 AM
To: jearl@severstalna.com
Cc: rkalinowsky@nthconsultants.com; may@rtpenv.com; mayoro@city.windsor.on.ca; MINISTER@ENE.GOV.ON.CA; madeleine.godwin@ontario.ca; Michael.moroney@ontario.ca; Doug.mcdougall@ontario.ca; Karen.clark2@ontario.ca; cmanzon@city.windsor.on.ca; mcdonaldj@ottawa.ijc.org; aparent@city.windsor.on.ca; damico.genevieve@epa.gov; BLATHRAS.CONSTANTINE@EPA.GOV; mike.ahern@epa.state.oh.us; ivarga5@yahoo.com; Sygo, Jim (DEQ); Wurfel, Brad (DEQ); Ethridge, Christopher (DEQ); McLemore, Wilhemina (DEQ); Hellwig, Vince (DEQ); Rosenbaum, Barb (DEQ); Mitchell, Mark (DEQ); Switzer, Annette (DEQ); Koster, Katherine (DEQ); Sills, Robert (DEQ); Hengesbach, Stephanie (DEQ); Dolehanty, Mary Ann (DEQ); Seidel, Teresa (DEQ); Brown, Ambrosia (DEQ); Hess, Tom (DEQ)
Subject: Severstal Dearborn LLC

Mr. Earl,

I have attached the public participation documents for Permit to Install Application number 182-05C for Severstal Dearborn LLC, located at 4001 Miller Road, Dearborn, Michigan.

If you have any questions, please contact Annette Switzer.

Thank you.

Amie Hartman, Secretary
Permit Section, Air Quality Division
Michigan Department of Environmental Quality
517-284-6793
Hartmana4@michigan.gov

AGENDA - SEVERSTAL & MDEQ - September 14, 2012

1. Severstal Progress Report
 - a. Culpability Analysis
 - b. LRF Stack Re-Test
2. Permitting Process
 - a. Regulatory Grandfathering Analysis
 - b. Deadline 9/21/2012
3. Clarifying Commitments & Communications

David Rockwell
Phil - Envir Consult
Marty
Scott D
Jim E
David Morris
JMS
Lynn F
Vince

Marty - recognizes Severstal's "systemic issues"
→ - now recognizes need for integrated environmental management systems
- SMART objectives around env compliance to equality importance
- need to compensation & perf reviews
? - repeatedly said he is not responsible for environmental. Who on their sr leadership is?

Jim S - letter not what expected -
Agrees w/ need to revise permit -
shares objectives
This is a correction of 2003 permit
EPA 114 request - led to conflicting data

Phil - Concerned of break in record that will trigger new regs - EPA + Sierra Club
- "Reset" - does that add new issues to the permit - how do we establish continuity in admin record
- Requests letter from state that clarifies stoppage of efforts, but continuing correction process
"administrative convenience" 14 iterative
- Scott assessed withdrawal from line / crosses

Threshold - loses continuum - opens up to litigation - Scott says high risk - letter is not sufficient protection
Doesn't think an AG opinion sufficient

JIMS

DEQ Order to withdraw & why

? When did administrative record begin (2010)
would Ding "administratively complete" date & things? Can DEQ say they shouldn't have done this?
Can both parties agree not complete?

Vince says technically complete - subsequent data for cleanup

BPA did not include permit in Nav - but DEQ believes they will
Opacity
Fallout
Not Permit

Scott

? Can DEQ/Severstal agree portion of app was incorrect - so not complete

higher efficiency bags - Viability under

Jim asked if Severstal could have met revised limits in permit that was going out for comment? Scott says maybe? (Generally yes - IER data raised new data issue MQ still open)

LRP - open

basis for not technically complete
Intent was good, but new info revealed
Old method incomplete

Telling Agreement

with major uncertainties

9/14/12

Tolling Agreement

Jim S

- Mutual
- Conditions, deadlines, obligations
- Intent to give apply
 - do all testing to package essentially a new app
- Shall deny not may
- ORR recommendation not applicable to air
- Still risk - legal challenge to going around Rule 207 - Fallback will be denial if challenged

Neil Gordon - DEQ

- OK w/ tolling - but
- Does not agree w/ need to
highlight consent here - does not show any
more relationship to the original permit

Consent Decree

- Vince says there must be a notation
APP 19 plan + ^{Public Notice} Comment period

Tolling

- No basis in law - so comment period may be required

Open Issues

- Administrative record

- DEQ's role in state defense
bulky of record

Consideration?

Each party giving up something?

DEQ's time

Voluntary projects

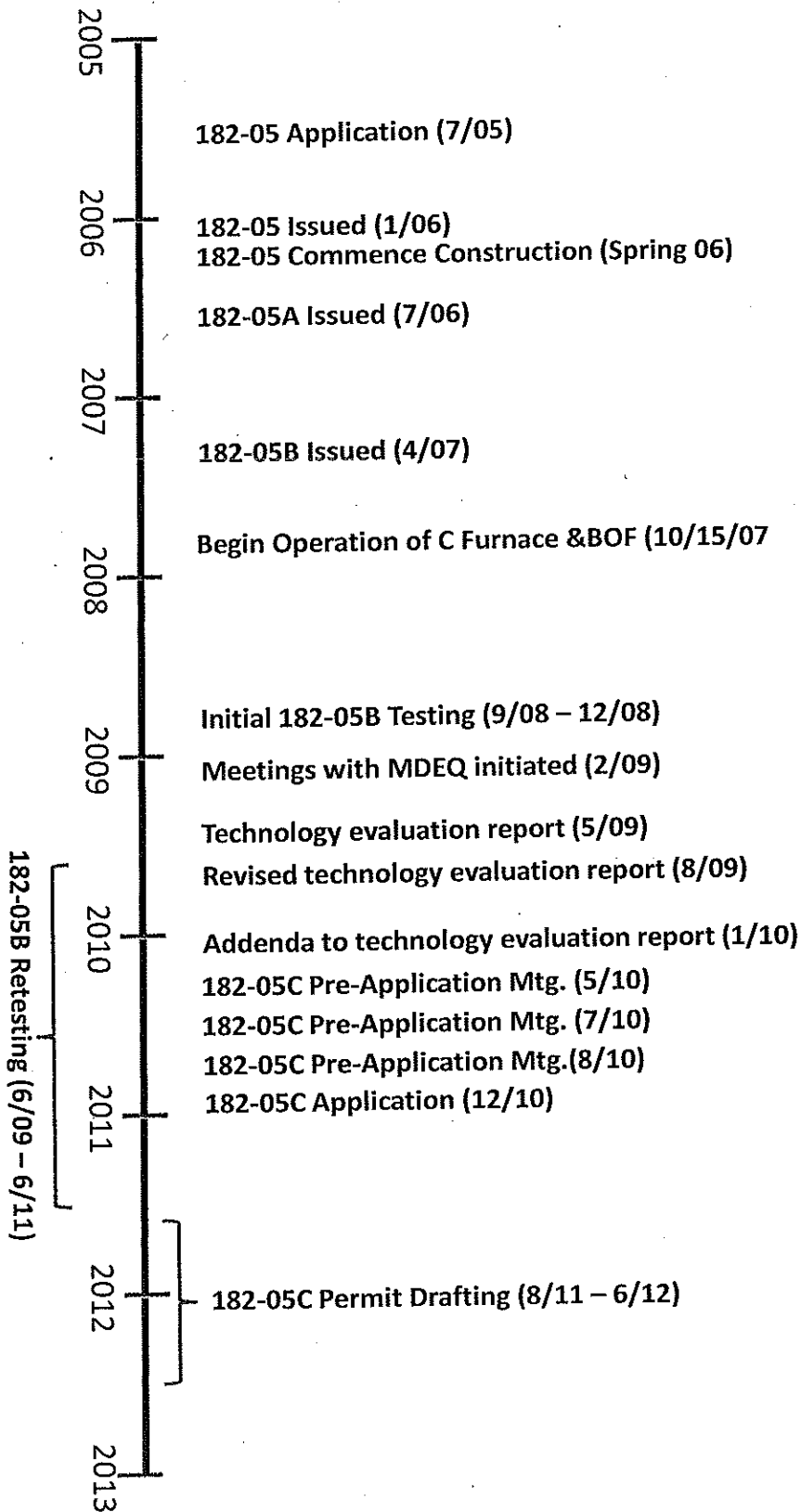
Compliance strategy w/ EPA completed

No corrected permit until EPA compliance program is in place? What if EPA takes years?

Completed by first wk October

Phil 9/14/12

PTI 182-05 History



Privileged and Confidential - Attorney-Client
Privilege, Prepared at the Request of an
Attorney

Phil 9/14/12

182-05C Permit Drafting

8/18/11	Rough draft received from Telesz
8/22/11	mtg w/ DEQ
8/25/11	mtg w/ DEQ
8/30/12	mtg w/ DEQ
9/6/11	mtg w/ DEQ
9/27/11	New draft submitted to MDEQ during mtg w/ Telesz & Koster
11/14/11	mtg w/ DEQ
12/9/11	mtg w/ DEQ
12/28/11	Telesz issued another draft
1/17/12	Severstal provided comments to 12/28 draft (in person mtg)
1/18/12	Call w/ MDEQ as a follow-up to outstanding issues regarding draft permit
1/25/12	Severstal provided comments to 1/17 draft
1/27/12	met w/ MDEQ to verbally discuss 1/25 comments
4/6/12	Telesz issued another draft
4/27/12	in person mtg to go over 4/6 draft
5/8/12	in person mtg to go over 4/6 draft
5/16/12	in person mtg w/ MDEQ to go over 4/6 Draft
5/25/12	Telesz submitted new draft
6/6/12	Severstal submitted final comments on agreed upon final draft conditions

Privileged and Confidential - Attorney-Client
Privilege, Prepared at the Request of an
Attorney

Phil 9/14/12

182-05 Testing Details

Emission Unit	Test Date	Pollutant
Annealing	Sep 18-19, 2008	PM, NOx (Meth 5, 202, 7E)
HSM Reheat Furn 1	Nov 4-5, 2008	PM, NOx (Meth 5, 202, 7E)
BOF BH	Sep 16-17, 2008	PM, PM ₁₀ , NOx (Meth 5, 7E, 201, 202)
BOF ESP	Nov 21 and 25, 2008 June 29-30, 2009	PM, NOx, CO (Meth 5, 7E, 10) PM ₁₀ (Meth 201A and OTM28)
Combined BOF	Nov 18-20, 2008	Pb, Mn, speciated Hg (Meth 29, ASTM D6784-02)
C FCE BH	Sep 23, 2008; Dec 17-18, 2008	PM, opacity (MACT) (Meth 5, 9) PM ₁₀ , NOx, SO ₂ , VOC, Pb, Mn (Meth 6C, 7E, 10, 25A, 29, 201A, 202)
C FCE Stove	Dec 9-10, 2008	PM, PM ₁₀ , NOx, CO, SO ₂ , Pb, Mn, Hg (Meth 5, 6C, 7E, 10, 29, 201A, 202)
Desulf BH	Jan 6-12, 2009	PM, PM ₁₀ , Pb, Mn (Meth 5, 29, 201A, 202)
LRF 1 and 2	Sep 30-Oct 3, 2008	PM, Pb (Meth 5, 29, 202)
RETEST ----		
BOF BH	Aug 25-26, 2009	PM10 (Meth 5/202 and 201A/OTM28)
BOF ESP	Oct 26-30, 2009	Temp CO CEMS
C FCE BH	June 11-12, 2009 Aug 27, 2009; Aug 17-19, 2010 May 26 - July 22, 2011	PM ₁₀ (OTM 28 used instead of Meth 202) and SO ₂ (Meth 6C) PM ₁₀ (Meth 5/202 and 201A/OTM28) Pb, Mn (Meth 29) Temp SO ₂ and NOx CEMS
C FCE Stove	June 15-17, 2011	Pb, Mn, Hg, CO, FPM, CPM, PM ₁₀ ?, SAM (Meth 5, 6C, 8, 10, 29, 202)
Desulf BH	Aug 17-19, 2010	PM ₁₀ and Confidential - Attorney-Client Privilege, Prepared at the Request of an Attorney

(v) The requirements for control technology determinations for major sources in accordance with 40 C.F.R. §63.40 to §63.44 and §63.50 to §63.56, adopted by reference in R 336.1299.

(d) Sufficient information has not been submitted by the applicant to enable the department to make reasonable judgments as required by subdivisions (a) to (c) of this subrule.

(2) When an application is denied, the applicant shall be notified in writing of the reasons therefore. A denial shall be without prejudice to the applicant's right to a hearing pursuant to section 5505(8) of the act or for filing a further application after revisions are made to meet objections specified as reasons for the denial.

History: 1979 ACS 1, Eff. Jan. 19, 1980; 2003 MR 12, Eff. July 1, 2003; 2008 MR 12, Eff. June 20, 2008.

R 336.1208 Rescinded.

History: 1979 ACS 1, Eff. Jan. 19, 1980; rescinded 1995 MR 7, Eff. July 26, 1995.

R 336.1208a Limiting potential to emit by registration.

Rule 208a. (1) A major source may limit potential to emit through a registration process if actual emission threshold levels established in this rule are not exceeded. The actual emissions shall be maintained below the threshold levels during every consecutive 12-month period, beginning with the 12-month period immediately preceding the stationary source's registration pursuant to this rule. The stationary source shall maintain actual emissions less than or equal to all of the following emission threshold levels:

(a) Consistent with the criteria in R 336.1211(1)(a)(i) as follows:

(i) Five tons for each consecutive 12-month period of any hazardous air pollutant that has been listed pursuant to section 112(b) of the clean air act.

(ii) Twelve and one-half tons for each consecutive 12-month period of any combination of hazardous air pollutants that have been listed pursuant to section 112(b) of the clean air act.

(iii) Fifty percent of a lesser quantity as the administrator of the United States environmental protection agency may establish by rule for any hazardous air pollutant listed pursuant to section 112(b) of the clean air act. The department shall maintain, and make available upon request, a list of the hazardous air pollutants for which a lesser quantity criteria has been established.

(b) Consistent with the criteria in R 336.1211(1)(a)(ii), 50 tons for each consecutive 12-month period of each of the following:

(i) Lead.

(ii) Sulfur dioxide.

(iii) Nitrogen oxides.

R 336.1206 Processing of applications for permits to install.

Rule 206. (1) The department shall review an application for a permit to install for administrative completeness pursuant to R 336.1203(1) within 10 days of its receipt by the department. The department shall notify the applicant in writing regarding the receipt and completeness of the application.

(2) Except for permit to install applications subject to a public comment period pursuant to R 336.1205(1)(b) or section 5511(3) of the act, the department shall take final action to approve or deny a permit within 60 days of receipt of all information required pursuant to R 336.1203(1) and (2). The department shall take final action to approve or deny a permit to install subject to a public comment period pursuant to R 336.1205(1)(b) or section 5511(3) of the act within 120 days of receipt of all information required pursuant to R 336.1203(1) and (2). For the purpose of this subrule, the time between when the department requests additional information from an applicant and when the applicant actually provides that information shall not be included in the 60-day and 120-day time frames for final action by the department. The failure of the department to act on an application that includes all the information required pursuant to R 336.1203(1) and (2) within the time frames specified in this subrule may be considered a final permit action solely for the purpose of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay.

History: 1979 ACS 1, Eff. Jan. 19, 1980; 2003 MR 12, Eff. July 1, 2003.

R 336.1207 Denial of permits to install.

Rule 207. (1) The department shall deny an application for a permit to install if, in the judgment of the department, any of the following conditions exist:

(a) The equipment for which the permit is sought will not operate in compliance with the rules of the department or state law.

(b) Operation of the equipment for which the permit is sought will interfere with the attainment or maintenance of the air quality standard for any air contaminant.

(c) The equipment for which the permit is sought will violate the applicable requirements of the clean air act, as amended, 42 U.S.C. §7401 et seq., including any of the following:

(i) The standards of performance for stationary sources, 40 C.F.R. part 60, adopted by reference in R 336.1299.

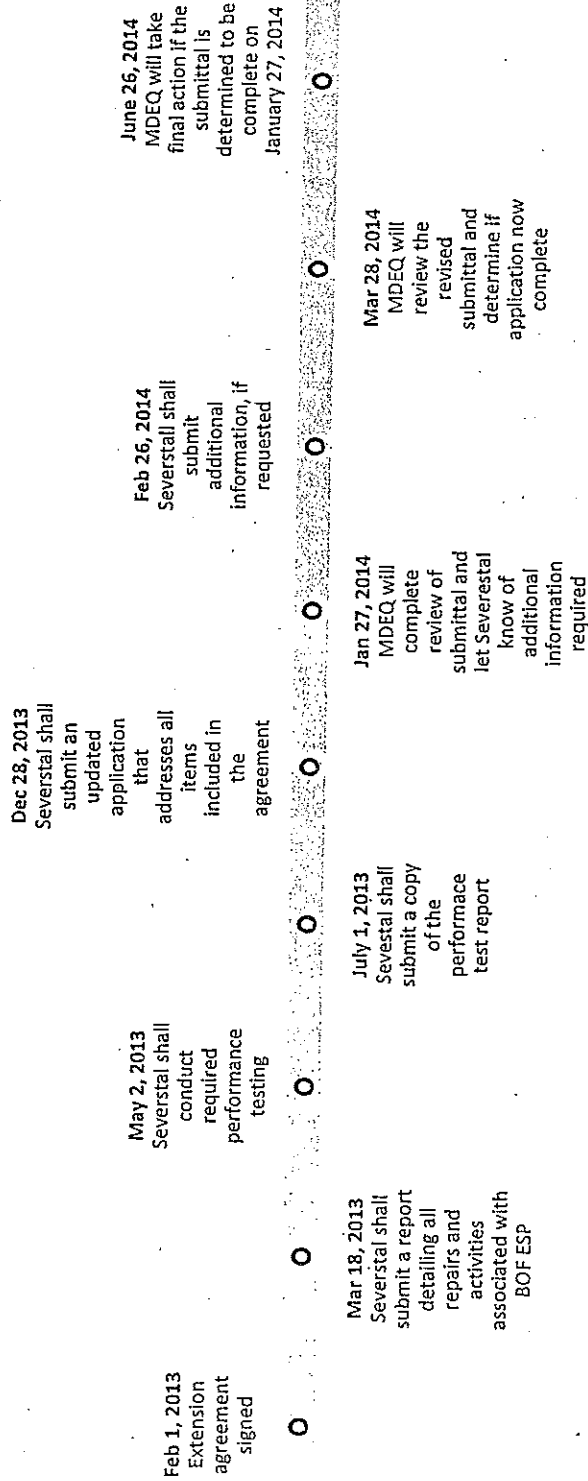
(ii) The national emission standards for hazardous air pollutants, 40 C.F.R. part 61, adopted by reference in R 336.1299.

(iii) The requirements of prevention of significant deterioration of air quality, R 336.2801 to R 336.2819 and R 336.2823.

(iv) The requirements of nonattainment new source review, R 336.2901 to R 336.2903, R 336.2907, and R 336.2908.

Extension Agreement Timeline

Severstal PTI Application 182-05C



Timeline

- 1-Feb-13 Extension Agreement Signed
- 18-Mar-13 Severstal shall submit a report detailing all repairs and activities associated with BOF ESP
- 2-May-13 Severstal shall conduct required performance testing
- 1-Jul-13 Severstal shall submit a copy of the performance test report
- 28-Dec-13 Severstal shall submit an updated application that addresses all items included in the agreement
- 27-Jan-14 MDEQ will complete review of submittal and let Severstal know of additional information required
- 26-Feb-14 Severstal shall submit additional information, if requested
- 28-Mar-14 MDEQ will review the revised submittal and determine if application now complete
- 26-Jun-14 MDEQ will take final action if the submittal is determined to be complete on January 27, 2014
- 26-Jul-14 MDEQ will take final action if the submittal is determined to be complete on March 28, 2014

Amiee Evans

From: Amy Banninga
Sent: Friday, January 25, 2013 8:19 AM
To: Steve Hilfinger; Michael Finney; James McBryde
Subject: RE: Severstal Update - January 2013

DEQ had a phone discussion with Severstal and their attorney last night after the senators had left. They had quite a discussion, but ended up agreeing to go back and look at the most recent plan and see if they could take some time off the end. There was a misunderstanding by some of the DEQ staff negotiating the details of the tolling agreement, and additional testing was added prior to submission of the revised permit application. This testing is necessary, as it may determine if the original permit was valid. But they may be able to change the timing of the testing and reduce the total time in the plan. Jim Sygo will be watching the process more closely to make sure that staff stays on plan.

DEQ and Severstal will be meeting in person next week, and I am planning to attend.

From: Amy Banninga
Sent: Wednesday, January 23, 2013 8:00 PM
To: Steve Hilfinger; Michael Finney; James McBryde
Subject: RE: Severstal Update - January 2013

We had our meeting with Senator Kowall today. Jim Sygo, Vince Helwig, Maggie Datema and I met with him at 4:30. He was definitely not surprised by DEQ's decision, just wanted to understand if there was anything else that could change their mind. Here's some background:

- The Senator will be visiting the company on Thursday morning as part of a contingent of state senators, including Tom Casperson. Casperson is interested because Severstal is a major buyer of taconite from Cleveland Cliffs UP mine. DEQ will wait until Thursday afternoon to talk with the company, so that the Senators are not "walking into a hornet's nest".
- DEQ will ask the company to withdraw their application, or they will deny. They have given the company this offer before, but the company did not want to withdraw because they were concerned that it would show a break in the administrative record, and indicate that they were not committed to the permitting process. They are in negotiations with EPA on several matters. DEQ does not believe this break in the record will make a difference for the company, but was previously willing to cede the issue. They offered the tolling agreement to give the company a few more months to provide better data. The company has now proposed that a few months be extended out more than a year. DEQ could face sanctions from EPA if they take things too far.
- The company has changed consultants several times, I think because their law firm has advised it. The Senator sees this an indication that they had poor consultants, and now are getting good advice. DEQ has said that the newest consulting firm is top notch. They definitely have excellent outside legal counsel. Every time we have met with the company, additional repairs and upgrades have been proposed, and I assume that their consultants are finding more issues the further they go, adding to the company's timeline for compliance.
- In my opinion, the best course for the company is to withdraw their permit application. If DEQ denies the permit, there will be a public hearing held that will air the many issues. The company previously said they were willing to go through the denial process, but more issues have surfaced since then. There have been over 200 violations, complaints and response visits to the site since 7/2010—10 since mid-August.

Senator Kowall's concerns:

- That the company will decide not to make the capital improvements they are proposing – the vertical mill. I encouraged him to separate company upgrades and expansion from base maintenance. The company talks about the billion dollars they have invested in upgrades, but they should also be including funding for maintenance to base systems, per the operations and maintenance plan required by their permit.

- The changes to the 21CJF. He said that the changes proposed would enable them to bond for their improvements. I assume this is related to the port authority changes, but I was confused. No matter what, we cannot issue federally tax exempt bonds, and we can already issue taxable bonds, if they can find a buyer. I may be missing something, so I will let Jim speak to that. He also mentioned that harbor dredging will be an allowed activity. Of a TIF? Again, I decided not to pursue, as we were there to talk Severstal.

Please let me know if you have any questions, or advice. I assume I will be fielding questions from their lawyers on Friday.

From: Amy Banninga
Sent: Friday, January 18, 2013 2:44 PM
To: Steve Hilfinger; Michael Finney
Subject: RE: Severstal Update - January 2013

DEQ has really gone the extra mile—maybe the extra 10 miles. Dan agrees there is no more they can do, but will be discussing with the governor. There is also a federal angle that could change this. I can provide more info if you would like to discuss.

From: Steve Hilfinger
Sent: Friday, January 18, 2013 2:37 PM
To: Michael Finney
Cc: Amy Banninga
Subject: Re: Severstal Update - January 2013

This is high profile. These guys may have made more capital investment here in last few years than anyone. Have had entourages from Gov's office visit site. Any way to avoid this result?

Sent from my iPhone. ml

On Jan 18, 2013, at 2:30 PM, "Michael Finney" <michael@michigan.org> wrote:

Hi Amy,

Thanks for the Update. I trust you are convinced that DEQ has gone as far as they can??

Mike

Michael A. Finney
President & CEO
Michigan Economic Development Corporation
<http://www.michiganadvantage.org>

Email: Michael@Michigan.org
Work: 517-241-1400
Cell: 734-660-4795



<Picture (Device Independent Bitmap) 1.jpg>

From: Amy Banninga
Sent: Friday, January 18, 2013 1:15 PM
To: Michael Finney; Steve Hilfinger
Subject: Severstal Update - January 2013

Mike and Steve--

I have been working with DEQ and Severstal since July and we've had some high and low points. At the end of next week, DEQ is planning to notify Severstal that they need to withdraw their permit application, or it will be denied. Denial will trigger the public hearing process.

They have not been able to work out the details of the tolling agreement that was agreed to in principle back in September. DEQ had not done this before, but they worked with their AG who agreed to try to craft a mutual agreement to take the application offline, and avoid the 180 day deadline for action. The agreement has gone back and forth and suffered some delays (AG was out of the country, explosion at the facility, holidays, etc.). These delays would have added a month or two to the process, but the company has now proposed a process that will extend it into 2014. I can discuss the details with you if you would like more information.

I recommended that DEQ assemble a communication plan so they have an opportunity to address the issue more effectively:

- Dan Wyant will be informing Governor Snyder
- DEQ staff and I are assembling a timeline and some talking points so we are communicating consistently
- DEQ's legislative liaison has set a meeting with Senator Kowall for next Thursday morning to inform him of the pending action. Jim McBryde agreed that I should attend, so Senator Kowall knows we have worked hard to find a solution, and answer any questions about the MEDC's role. Senator Kowall has been pursuing changes to the MSF Act related to Port Authorities. Severstal is a big user of the Port of Detroit, so he needs to be informed. Jim has another appointment on Thursday morning, so he will not be able to attend.
- DEQ will call the company on Friday, followed by official correspondence

Please call me if you would like more information, or would like to discuss your concerns.

Amy

From: Amy Banninga
Sent: Friday, September 14, 2012 12:39 PM
To: Michael Finney
Subject: RE: SWMF Michigan Medical Device Accelerator

Thanks--will do. I'm glad to hear that these "special" partner projects go through the standard process. That has not always been true, and has been a great source of staff frustration. A positive step toward employee engagement.

On a side note, I just finished another session with Severstal and DEQ and progress was finally made. The parties have agreed in concept to tolling the company's permit application, essentially putting it on hold while the company collects adequate and consistent data and makes major repairs. This will avoid denial or withdrawal of the permit application. Still a lot of legal details to work out, but a step in the right direction.

Have a wonderful weekend!

-----Original Message-----

From: Amy Banninga
Sent: Wednesday, August 22, 2012 12:57 PM
To: Michael Finney
Cc: Jennifer Nelson
Subject: Severstal Update

Just wanted to let you know that DEQ granted an extension to Severstal until September 21. DEQ did a nice job, Jim Sygo particularly. I ran into Dan Wyant and told him how well it went, but you may also want to say something to Dan if you see him.

Amy Banninga
Michigan Economic Development Corporation

Switzer, Annette (DEQ)

From: Dolehanty, Mary Ann (DEQ)
Sent: Tuesday, February 04, 2014 3:39 PM
To: Koster, Katherine (DEQ); Switzer, Annette (DEQ)
Cc: Mitchell, Mark (DEQ)
Subject: RE: Severstal notice

Katie,

When we met with Severstal on December 5th, I remember them mentioning their intent to host these types of meetings. If you recall, Severstal requested a meeting with the Director to discuss the 'issue' with the timing of the permit review process and the extension agreement. The 12/5 meeting was attended by Executive Office staff, Vince, Lynn, Teresa, Neil and me. Representing Severstal was Marty Szymanski, Dave Rockman, and their lobbyist. During the discussion, Marty made a comment about staff turnover at Severstal and that the new people were making environmental issues a priority. I can only presume that this Town Hall meeting is the 'outreach' meeting mentioned. I also recall them saying that they were planning to host Rep Tlaib at their facility for a discussion and tour shortly after our 12/5 meeting. I'm a little surprised that Tlaib's office was not aware of the outreach as Severstal indicated their intent to inform her early on, but we have had no discussions since that time regarding any outreach meeting so I can't say if they ever followed through with their intent.

Thanks.
Mary Ann

Mary Ann Dolehanty, Supervisor
Permit Section, Air Quality Division
Michigan Department of Environmental Quality
Effective October 7, 2013, my new phone number is 517-284-6791
dolehantym@michigan.gov

From: Koster, Katherine (DEQ)
Sent: Tuesday, February 04, 2014 1:09 PM
To: Switzer, Annette (DEQ)
Cc: Mitchell, Mark (DEQ); Dolehanty, Mary Ann (DEQ)
Subject: RE: Severstal notice

I know. I'm wondering if they are trying to get to the public first before our hearing. It's just odd because I've never heard of them hosting a public meeting like this.

From: Switzer, Annette (DEQ)
Sent: Tuesday, February 04, 2014 12:58 PM
To: Koster, Katherine (DEQ)
Cc: Lamb, Jonathan (DEQ); Mitchell, Mark (DEQ); Dolehanty, Mary Ann (DEQ)
Subject: RE: Severstal notice

Hi Katie,

This has nothing to do with the permit, we haven't even started public comment yet. So, I do not know what this is about.

Annette

Annette Switzer
517-284-6803

From: Koster, Katherine (DEQ)
Sent: Tuesday, February 04, 2014 12:23 PM
To: McLemore, Wilhemina (DEQ); Lamb, Jonathan (DEQ)
Cc: Switzer, Annette (DEQ); Seidel, Teresa (DEQ); Korniski, Jeffrey (DEQ)
Subject: FW: Severstal notice

I don't know what this is all about??

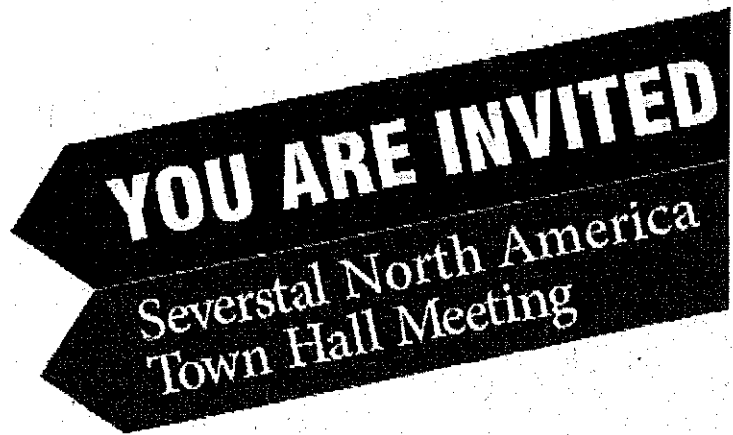
From: Amanda Kaye [<mailto:Akaye@house.mi.gov>]
Sent: Tuesday, February 04, 2014 12:10 PM
To: Koster, Katherine (DEQ)
Subject: Severstal notice

Hi Katie.

Thank you for the background information. Below is the notice our office received from Severstal announcing the meetings. It's not like them to reach out to the community, so we were certain that it was something they were required to do.

Amanda Kaye
Legislative Assistant
Rep. Rashida Tlaib
(517) 373-0823

From: Severstal [<mailto:mmb=bassettbassett.com@mail70.atl51.rsgsv.net>] On Behalf Of Severstal
Sent: Wednesday, January 29, 2014 1:12 PM
To: Rep. Rashida Tlaib (District 6)
Subject: You Are Invited To Our Town Hall Meeting



Wednesday
February 5th, 2014
6pm-8pm

Cristo Rey High School
5679 W. Vernor Hwy.
Detroit, Michigan 48209

Light refreshments

Thursday
February 6th, 2014
6pm-8pm

Salina Elementary School
2700 Ferney
Dearborn, Michigan 48120

Light refreshments

Together, we can accomplish more.

Severstal is invested in making our community the best it can be. With a new leadership team and nearly \$1.7 billion already invested in our Dearborn location, we are excited about what the future holds.

- 1,600 jobs created and 9,300 more supported
- Reduced used oil generation by 80 percent
- More than \$1 billion infused into Michigan economy
- Decreased particulate emissions by half with our furnace modernization

Ronald Kostyo,
Vice President and General Manager,
Severstal Dearborn



This email was sent to RashidaTalb@house.mi.gov

[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)

Severstal · 14661 Rotunda Drive, Dearborn, MI, United States · Dearborn, MI 48120 · USA



Koster, Katherine (DEQ)

From: Fiedler, Lynn (DEQ)
Sent: Friday, June 22, 2012 3:22 PM
To: Seidel, Teresa (DEQ); Mitchell, Mark (DEQ); Lamb, Jonathan (DEQ); McLemore, Wilhemina (DEQ); Koster, Katherine (DEQ)
Subject: FW: Severstal Dearborn
Attachments: image001.jpg; image002.png

Here's the email from MEDC that I responded to. I'll send that one to you also.

From: Susan Holben [holbens@michigan.org]
Sent: Friday, June 22, 2012 2:18 PM
To: Dolehanty, Mary Ann (DEQ)
Subject: FW: Severstal Dearborn

Can I get a summary on an application from Severstal Steel? Thanks a bunch!

From: Amy Banninga
Sent: Thursday, June 21, 2012 4:50 PM
To: Susan Holben
Subject: Severstal Dearborn

Susan—

Mike Finney and Governor Snyder attended a grand opening event at Severstal today, While he was there, Mike spoke with Sergei (I think local plant manager) who expressed some concerns on the air permitting process. We may not have all this exactly right, but this is what I took down:

- Severstal thinks DEQ may get EPA involved, and doesn't think that should be. They think they should be grandfathered (sounds similar to Guardian).
- This involvement will add cost and time
- Can DEQ do anything to help them make this more efficient?

Can you kick the tires over at DEQ to see where this stands? We need to know what the issue is, and have a reasonable response for the company. If there is something the DEQ can do to help the company comply, etc. we can help connect the players. We can get contact details from Mike if it gets to that point. At this point, we just need a better understanding of where things stand so we can communicate with the company.

Let me know if you have any qs and thanks for your help!

Amy Banninga
State Business Ombudsman
Michigan Economic Development Corporation
300 N. Washington Square | Lansing, MI 48913
Office: 517.241.2092 | Mobile: 989.292.0197 Mail to: banningaa1@michigan.org<<mailto:banningaa1@michigan.org>>
<http://www.michigan.org>
<http://www.michiganadvantage.org>

[cid:image001.jpg@01CD4FCD.B6923EA0]

[cid:image002.png@01CD4FCD.B6923EA0]<<http://www.facebook.com/MIAdvantage?ref=ts>><http://www.facebook.com/MIAdvantage>

[cid:image002.png@01CD4FCD.B6923EA0]<<http://www.facebook.com/PureMichigan.org>><http://www.facebook.com/PureMichigan.org>

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Amy Banninga

From: Valerie Hoag
Sent: Thursday, June 28, 2012 7:58 AM
To: Penny Launstein; Larry Gormezano
Cc: Amy Banninga
Subject: FW: contact details
Attachments: DISCUSSION POINTS FOR MDEQ COOPERATION (J1661133)ms1 (3).docx

Let's talk about how to handle this.

From: Amy Banninga
Sent: Tuesday, June 26, 2012 1:07 PM
To: Valerie Hoag
Subject: FW: contact details

More on Severstal. Are you or Larry going to follow up with Jerome? I didn't know how to respond to him.

From: Jennifer Nelson
Sent: Tuesday, June 26, 2012 9:41 AM
To: Amy Banninga
Subject: FW: contact details

fyi

From: Hilfinger, Steven (LARA) [<mailto:HilfingerS@michigan.gov>]
Sent: Tuesday, June 26, 2012 9:39 AM
To: Roberts, John (GOV); Jennifer Nelson
Subject: FW: contact details

Just FYI. I know Sergei through our sons who go to school together. I am sure you already have this and MEDC/MDEQ are following up, but just in case.

Steven H. Hilfinger
Chief Regulatory Officer
Director, Michigan Department of Licensing and Regulatory Affairs
Phone: (517) 373-6334
Fax: (517) 373-2129
hilfingers@michigan.gov
www.michigan.gov/lara



From: Kuznetsov, Sergei [<mailto:Sergei.Kuznetsov@severstalna.com>]
Sent: Monday, June 25, 2012 6:20 PM
To: Hilfinger, Steven (LARA)
Subject: contact details

Hello Steve – I hope you are doing well.

Sorry it took me some time to write you a note. We have had a busy couple of week that consumed a lot of my attention. Below are my details. My cell phone is 313-655-8401

On Thursday we briefly talked about our C blast furnace air permit issue with the Governor and Mike Finney. I can send you a one page on it – we would welcome any help to get the issue back to the state so we can finalize the permit. Please kindly let me know.

Best regards,

Sergei



Sergei A. Kuznetsov
Chief Executive Officer

Severstal North America
14661 Rotunda Drive
PO Box 1699
Dearborn, MI 48120-1699

T: (313) 317-1243
F: (313) 583-0273
Sergei.Kuznetsov@severstalna.com
www.severstalna.com

Acting more together

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Jerome Katz

From: Amy Banninga
Sent: Monday, June 25, 2012 10:57 AM
To: Jerome Katz
Cc: Larry Gormezano; Valerie Hoag; Susan Holben
Subject: FW: Severstal Environmental & Federal Loans
Attachments: RE: Severstal Follow-up; Severstal article; Severstal NOV_FOV6_15_12.pdf

Jerome—

I understand that you will be meeting with Severstal to check in and see how we can assist with their next expansion. Val asked me to share some background to help you prepare. Couple of things:

Environmental

- At Mike and Governor Snyder's visit to Severstal, Mike was asked if we could do anything to help with their environmental issues. They seemed to think that DEQ is unnecessarily involving EPA. The information below and attached paints a different picture.
- The ombudsman office cannot get involved once they are at this stage. From the tone of the emails, it sounds like DEQ has worked to help them be in compliance. I would encourage Severstal to continue to engage with DEQ staff and ask for their help in developing creative approaches that meet legal requirements.

Federal ATVM Loan

- ~~News accounts report that Severstal has reapplied for a federal loan.~~ They are asking for a \$320-million loan to produce lighter and stronger steel for automakers and suppliers, after their \$730-million loan request was rejected by DOE after the House Oversight Committee raised questions. VP Thomas Marchak said the company was encouraged to reapply by Michigan legislators.
- ~~DOE is encouraging investments in lightweight steel for the auto industry, but warned that the government is not interested in subsidizing projects that companies can do on their own.~~
- There are still more problems with this program. Fisker received one of the early ATVM loan awards. Fisker laid off 66 employees as it was running out of the \$193 million of the loan that DOE had already disbursed. The remainder of the loan was frozen in May 2011 because "Fisker has experienced some delays in its sales and production schedule." They are reportedly planning to cancel the manufacture of vehicles in the United States.
- Because of this scrutiny and potential for scandals, I don't think there will be any real decision making prior to the presidential election, but if they want assistance with this process, I think they should continue to engage delegation members. After the election, we can revisit this.

Hope this helps. Let me know if you want to discuss.

Amy

From: Susan Holben
Sent: Friday, June 22, 2012 3:29 PM
To: Amy Banninga
Subject: FW: Severstal

~~Severstal is clearly deep into the enforcement process and DEQ and with USEPA. We should not get involved. The attached documents provide some detail on the ongoing air quality violations.~~

From: Fiedler, Lynn (DEQ) [<mailto:FIEDLERL@michigan.gov>]
Sent: Friday, June 22, 2012 3:15 PM
To: Susan Holben

Cc: Hess, Tom (DEQ); Seidel, Teresa (DEQ); Dolehanty, Mary Ann (DEQ); Hellwig, Vince (DEQ)
Subject: Severstal

Hi Susan,

Our District staff has been working with this for several years to resolve ongoing violations and it has been in escalated enforcement for 2 years. We have been working on a revised permit for the facility and had gotten to the point of final draft conditions when the facility provided stack test data showing their manganese emissions at 3 times their current permit limit. Manganese levels in the area are elevated and are of concern.

There are three attachments to this email. The first two are recent emails from our district staff person, Jon Lamb, which include information regarding the most recent violations as well as pictures of the facility. I am unable to send you the video he references as it is too large for the email system. It is our understanding that the furnace was not operating the day of the Governor's visit.

The third item is the Notice of Violation that EPA has recently sent to the facility. There has been an EPA focus on steel mills.

I hope this information is helpful to you. Please contact me if you have any questions.

Lynn Fiedler
Assistant Division Chief
Air Quality Division
Department of Environmental Quality
517.373.7087

From the Company

Severstal North America / Talking Points

Environmental Permitting, Enforcement and Economic Development

- Environmental Permitting to authorize a \$1 billion investment to rebuild a large manufacturing facility is a very complex process.
- Initially, Severstal and the State of Michigan Department of Environmental Quality ("MDEQ") appeared to work very cooperatively on these environmental permits and any associated enforcement actions.
- Severstal understood that this was a component of a coordinated economic development program.
- Recent events suggest that the MDEQ has turned over associated state lead enforcement issues to the federal government.
- We understand that permit approvals and any associated compliance issues are, in the first instance, MDEQ lead items.
- ~~We have been informed by the MDEQ that earlier this year they referred the associated compliance issues to the federal government (U.S. EPA).~~
- This referral has significant impact on the timing of any approvals. Based on recent MDEQ comments, it is likely MDEQ will deny Severstal's corrected permit while EPA addresses enforcement. This could lead to imposition of additional regulatory requirements due to the passage of time. Those additional regulatory requirements are likely to result in reduced operating levels from those planned and originally permitted by MDEQ, which would lead to significantly increased operating costs; reduction in a number of jobs; and adverse effects on local revenue.
- Severstal has been and continues to be committed to work cooperatively with the State of Michigan on economic development and understands its obligation to do so in compliance with environmental law.
- CONCERN: Does the State of Michigan have a full commitment to coordinated economic development for the Dearborn area?
- REQUEST:
 - 1) ~~The State of Michigan fully coordinate its economic development activities for the expansion of this facility (including the issuance of a corrected C Furnace permit as soon as possible), and~~
 - 2) ~~The State of Michigan vigorously work to pull back, to State jurisdiction, all State lead items.~~

DEQ - operates under federal enforcement guidelines - which requires federal

Severstal

7/5/12

Joe Pala

DEQ

- Operates under federal enforcement guidelines which require notification of enforcement & other actions such as permitting
- 270 days to resolve, then EPA

Martin

Jim

Scott

David

EPA

- Focus on steel mills
- Complaints from env justice areas

Enforcement Action on Easting

- Compliance plan

Process/Project Plan
 - Commitments
 - Milestones/Mutual Assurances
 - Time line
 - Mutual commitment to getting this done
 - Address in successful management of a project

New Permits

- Need corrected permit for C Furnace
- Compliance ESP
- Severstal needs to provide evidence of progress to get DEQ to delay denial BUT - still have EPA issue

Call w/ Jim Sygo today

5/12
response
new
seems to
have led
DEQ's
course

2005 permitting began if thought they
2008 need for mods ided based on oper
until 6/8/12 collaboratory

State seems to have referred to EPA
at this point after inferring they would
hold

DEQ → EPA in Feb - ~~EPA~~ Severstal
learned this in June

Have
not yet
talked w/
Dan

Instead of continuing collab on permit
correction - denial & enforcement

DEQ has
secretion to
hold permit

Federal

State

Jim had
committed to
this

Capacity Enforcement

Permit Revisions &
Enforcement of
for Rebuild of C Oven

Extension
possible
I was not
enough - not
asked
questions
add time

7/3 letter DEQ → Severstal - withdraw or
DEQ will deny by 7/13

Mtg next Thurs - Jim & Vince

GET EMAIL FROM JOE MALAMBA

7/15/12

PER MANUW - LAST AIRTEL W/ DEQ - EVENTUALLY OK & TRACT W/IDE ON TRACK TO RESOLVE ISSUE

BELOW DMS - 2007 ENV PERMITTING PROCESS

2008-2009 GOVT TRIGGERED DATA THAN INDICATES BEFORE FDRUN W/RT BUILT

CURRENT - DEQ SAID THEY WOULD ADVISE ENVIRONMENT & PERMIT ISSUE THEN DEQ WOULD REFERRED TO EPA.

ISSUE WAS REFERRED TO EPA BY DEQ - MARCH, 2012
SENSITIVE PART AT 6/1/12

DEQ SENT SENSITIVE PERMIT DENIAL 7/3/12

USED PERMIT ~~REVISION~~ & APPROVED

PERMITS THEY SAID THAT THEY WERE REFERRED TO EPA

OPERATION = FEDERAL

PERMITS = STATE DEQ

THEY USED NEW PERMIT

{ DENIAL OF PERMIT (7/3/12) - NOT THE SAME AS STATE DEQ - NO OTHER PERMIT }

THEY SAID THEY WERE SLOW 7/1/12 DEQ
JIM SHAW @ DEQ RE 7/3/12

USED RE PERMIT REVISION BASED W/ NEW DATA & AGREEMENT W/ DEQ

[DEQ W/OUT - DATA DIA]

THEY WANT STATE TO HAVE PERMIT SO SENSITIVE CAN WORK THROUGH ISSUES W/ DEQ TO ULTIMATELY GET PERMITS.

OTHER STEEL CO'S. HAVE SIMILAR ISSUES & THEY CAN REPAIR

ENFORCEMENT & PERMITTING - SAME AS FOR PLANT.

~~ELECTROSTATIC~~
~~ESP - ELECTROSTATIC~~
~~PRECIPITATOR~~

MIKE & AMY - SUBJECT TO DEB/TEPA - SEU. WILL HAVE COMMITMENT TO DO CONTINUOUS TESTING, REPAIR WHEN NEEDED TO ACCORDANCE TO MILESTONES.

AMY WILL CONTACT - JIM SIGO

MIKE WILL ^{CONTACT} A DAW WHAT

Amy Banninga

From: SDismukes@eckertseamans.com
Sent: Friday, July 6, 2012 10:16 AM
To: Amy Banninga
Cc: Michael Finney; Jerome Katz; jpalamara@karoubassociates.com; jearl@severstalna.com; mszymans@severstalna.com; DRockman@eckertseamans.com
Subject: Severstal: Thank you and follow up information
Attachments: 182-05CSeverstal.pdf; severstalplan02_10_12.pdf; severstalactionplan.PDF; DOC.PDF

Amy et al: We thank you for your time yesterday, for your attention and your offer to act as an impartial facilitator in working to keep Severstal's permitting effort moving forward with the MDEQ. As discussed, attached below for some background information are Severstal's February 10th letter, Severstal's June 19th action plan, Hellwig's July 3d permit application withdrawal/denial letter and U.S. EPA's recent NOV covering opacity and fallout issues. As to the Federal NOV we note that they could proceed to include permitting issues in any federal enforcement action without the need to include them in the NOV. We also note that the absence of the permit issues in the NOV does provide the MDEQ with a basis to retain any associated permit enforcement issues if they wanted to. Please keep us apprised of your efforts and if you need any additional information or conversation please call. Regards

Feb 10 letter to MDEQ
6/19 Severstal Action Plan

7/3 letter from Hellwing suggesting permit withdrawal/permit denial

U.S. EPA NOV

Scott R. Dismukes
Eckert Seamans Cherin & Mellott, LLC
U. S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219-2788
Telephone: 412.566.1998
Fax: 412.566.6099
Cell: 412.417.1279
e-mail: sdismukes@eckertseamans.com

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Severstal

7/12/12

Scott D
Jim E
Marty S
David

Opacity TRK Report 10 ideas
Manganese

Opacity - Maint a Modernizing
- Add'l measures beyond TRK Maint
- Gas conditioning
- Optimize load & flow balance
mid-Sept

Jim Sygo
Vince Howard

- More electronic controls
purchasing time mid-Oct
- 16 heat compliance tests

Amy

Manganese - must be in compliance by permit
- Voluntary release of data - "TRK data"
DEQ viewed as noncompliance
Co. is eval data - concern - not sure if represent
- Adding monitors - Retesting
- Final report
- Retesting using permit approved method - test results in question - a different method
- Severstal is prepared to address when data is avail

Avail Technology
lime injection on ESP
Baghouse

Enforcement Issues

- Disagree w/ netting & PSD
- Emissions not captured

98% in permit

EPA can take over on enforcement

Modeling

after 2 to days (primacy)

- IER modeling - not formal - meant to demonstrate no fence problems

ESP - Issues

- 8 channels 6/28 discovered stuck control - has replaced

Regressors - maint proced not followed

- last 2 ready on compliance 6 8hr tests

- They do have an O&M plan, it was not being followed

Permit Withdrawal

- extension to

Can DEQ take permit offline?

Will try to finalize by end of Oct - if EPA allows it.

EPA - federal NOV. need June / opacity & fallout
- will not let DEQ handle

Next Steps

Co

Schedule on Capacity

Manganese testing - early Aug? ^{wk of} 8/11

Get back in compliance

Review possible controls -
evaluate & contingency plan

DEQ

Will not deny permit

Vince consult staff

on permit offline (early next week)

Info on possible controls

Meet again in August ^{to eval} _{wk of 8/20} ^{Sched}

Rush to get back in compliance
so in compliance b4 EPA takes
action

Withdrawn - resets clock

and makes them subject to
subsequently added
regulators (they know there
will be issues)



July 13, 2012

Via Email

Jim J. Sygo, Deputy Director
G. Vinson Hellwig, Chief, Air Quality Division
Constitution Hall
525 West Allegan Street
PO Box 30473
Lansing, MI 48909

Subject: Severstal Dearborn, LLC

Dear Mr. Sygo and Mr. Hellwig:

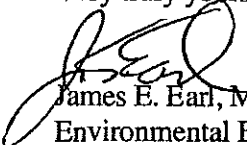
Thank you again for making the time to meet with us yesterday concerning the permitting and compliance issues at Severstal Dearborn, LLC. We appreciate the opportunity to speak with you directly on these very important issues.

As promised, we will be providing a firm schedule for the maintenance, repairs and optimization work discussed yesterday for our Basic Oxygen Furnace Electrostatic Precipitator. We are collecting commitments from vendors and suppliers and will provide that schedule by the end of next week, along with restating our commitment to an opacity demonstration test and anticipated dates for receipt of the stack test reports from the manganese stack testing being conducted this week and next.

We appreciate DEQ's commitment not to further seek withdrawal of the permit application at this time or to yet begin any process to deny the application, pending your discussions with DEQ's air permitting staff. We look forward to hearing the results of those discussions, and continue to hope that those discussions will concur with holding the permit application (i.e. taking it "off-line" as you described) pending Severstal's ongoing work to address DEQ's compliance concerns.

In accordance with Ms. Banninga's suggestion, we look forward to the opportunity for a follow-up meeting on these issues the week of August 20. Please let us know when you would like to schedule that meeting. Of course, please contact me with any questions or concerns over the interim, and we appreciate your willingness to allow us to similarly contact you.

Very truly yours,


James E. Earl, Manager
Environmental Engineering

Severstal Dearborn, LLC
14661 Rotunda Drive
P. O. Box 1699
Dearborn, MI 48120-1699

T: (313) 845-3217
F: (313) 337-9375
E: jim.earl@severstalna.com
www.severstalna.com

Severstal

11/8/12

Scott Drumhues, David

8:22 AM ~~10:00~~

Friday letter to Vince ~~on~~ on sched

- Most work done by beg of Oct
- Electronic controls + 2 who none Procurement
- Demonstration project 1st wk of Nov
- Will ask for extension if add'l problems found
- Public + Notice + Comment 2013
- * 7/31 Meetg w/ EPA

Vince doesn't think he can take it off line - doesn't apply unless new app - tried to convince them their concerns were not warranted (no new regs)

? EPA/DEQ - 270 days per MOU - policy, not legal requirement - why not leave it open? Scott says they were told it was a statutory requirement. Since Dec 2010 - 14-15 data requests from state

Is it uncomfortable / want / need
or an obligation for 270 days
resolution

Consent Decree - state in combo w/
permit - they will agree but

Why can't they hold permit off line
- What is states oblg
- Will we deny

Opacity concerns - when they referred
to ~~the~~ EPA in Feb - why did they
refer to EPA - timing is suspect

Was this used to slow down permit
process?

~~Clarify w/ DEQ~~

Deny? Or let this continue
- Why not @ off line / 270 days ^{statute v}
- How long will they continue ^{policy}

- Where are they headed for the State?
Clean Air Act gives

EPA auth to take
over after 270

Condition
Info progress
no
Backtrack?

Jim Sygo

- Vince staff upset - Jim met w/ them - to reassure District staff

- Jim's Commitment to Staff

- Timely manner on response

- Straight communication

Specific actions & due dates by end of October

- Does not agree w/ Scott that withdrawing the permit subjects them to add'l regs

	<u>Severstal</u>	<u>DEQ</u>
Sulfur Dioxide	Says they would be subject if re-apply	
Sulfur Particulate		

DEQ thinks they are grandfathered permanently

- if their netting assumptions can be achieved
- PSD

Time will call to discuss conditions
for moving forward

Times - verbal commitments to
Hold to times writing

of the world's order and the beyond

will be a part of the world

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Severstal

8/14/12

Scott
David

Maintenance Projects

- Added 2nd Shift to help keep w/ sched
- Confident this will fix opacity

Stack

Roof / Opacity Issue

- Hatch to evaluate B/F operations and raw material inputs (Mang Content)

since
- Lime
Model

Ambient Air - MG Air Monitors
- Is this of the same priority?
✓ Stack

Ambient

Stack Tests

- Prelim - data in - need analysis
- Electrostatic Precipitator Stack
- Ladle Refining Furnace
- Hope that repairs will put them in compliance - but won't know until done & next test November

Communication

- What will DEQ do w/ latest MG results?
- Weekly updates / conversations

! Manganese - DEQ Lime solution (injection)

! DEQ needs to demonstrate / build case Educate on why permit denial / withdrawal not a problem

Amy Banninga

From: SDismukes@eckertseamans.com
Sent: Tuesday, August 21, 2012 11:40 AM
To: Amy Banninga
Subject: Re: Severstal Meeting and Follow Up from Our Discussion

Amy. We are hoping you have availability for a telephone conversation this afternoon to further our discussion and prepare for tomorrow's meeting. Please let me know if, and when you are available for a call

From: Amy Banninga [banningaa1@michigan.org]
Sent: 08/20/2012 01:48 PM AST
To: Scott Dismukes; David Rockman
Subject: Severstal Meeting and Follow Up from Our Discussion

Scott and David--

I have had several conversations with DEQ as follow up to our discussion, and I think it's time for a change in direction. We all recognize that there are significant issues, but the statistics tell the story. Since July 23, 2010, there have been:

- 117 citizen complaints alleging fallout and opacity from various processes at the facility
- 76 on-site visits in addition to the routine surveillance conducted in the area, and
- Over 20 Violation Notices sent to the company.

The most recent notice of violation was issued August 14, in response to a complaint from residents concerning opacity of emissions. The majority of the complaints have come from Detroit's 48127 zip code, which is considered by EPA as an Environmental Justice area.

Before we talk about the major issues, I want to make sure that we all realize that Severstal has the authority to continue operations under their current permit, and the permits related to the expansion of facilities have recently been issued. Continuing operations are not impacted at this point.

As you know, DEQ asked EPA to keep enforcement authority with the state, but their request was denied. Based on DEQ's experience and conversations with EPA, they believe that EPA will take enforcement action in the near future. DEQ cannot issue a new permit until Severstal is able to work out a compliance plan with EPA. The action plan that Severstal has developed to address deferred maintenance and system upgrades should demonstrate progress and commitment and potentially achieve current permit limits. I recommend that Severstal concentrate on these technical items, as they may make it possible for them to avoid more expensive measures that could be prescribed through the EPA enforcement action. EPA is signaling a willingness to work cooperatively with Severstal, and Severstal's focus on improvement should contribute to a more cooperative (and shorter) enforcement process.

DEQ has worked cooperatively with the company through the re-permitting process, and remains committed to helping Severstal be a successful and environmentally sound operation. But DEQ must also uphold their responsibilities under the law. They cannot continue the permitting process until EPA is satisfied with Severstal's ability to meet their environmental commitments. DEQ's authority is established in Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451. The air permitting process is established in in Part 55, Air Pollution Control, including Rule 206 which requires the Department to act upon a permit application within 120 days of a complete application. To be complete, an applicant must provide all the information necessary to determine if the proposal will comply with federal and state air laws. Severstal's application was deemed technically complete on April 6, 2012, so DEQ is obligated to act upon this permit. Furthermore, Rule 207 states: " The department shall deny an application for a permit to install if, in the judgment of the department,(a) The equipment for which the permit is sought will not operate in compliance with the rules of the department or state law.(c) The equipment for which the permit is sought will violate the applicable

requirements of the clean air act as amended, 42 U.S.C. 7401 et seq...." Severstal's equipment has not operated in compliance with either the rules/laws of the State or the federal Clean Air Act. Eight Violation Notices related to the equipment to be re-permitted have been sent since the application itself was deemed technically complete. At this point, DEQ is mandated by Rule 207 to deny the application.

At our meeting on August 22, DEQ will once again request that Severstal withdraw their permit renewal application by August 29th. I hope that you will discuss this approach with your client. If they refuse to withdraw the application the DEQ will take steps to deny. They will do this for several reasons:

- The new test data submitted on Friday is still preliminary and subject to further review, but indicates manganese levels that are still well above permitted levels.
- This most recent test shows violations for additional pollutants. The reported exceedance of the lead emission limits may make Severstal subject to additional federal requirements as the National Ambient Air Quality Standard for lead was recently tightened.
- Denial of the permit requires a public hearing. The inconsistent results and violations information will become a matter of public record and reporting. Since Severstal is demonstrating their willingness to take corrective action, DEQ would like to help the company avoid this adverse attention.

Withdrawal of the current permit application will not preclude Severstal from submitting an application when the non-compliance issues are addressed to the satisfaction of EPA Region 5. The maintenance and other technical remedies to be implemented should make test results more consistent and make the permitting process fit well within the 180 day time frame allowed by state law.

Please help your client recognize that the major impediment to the permitting process is the requirement to address the compliance issues that are now under the jurisdiction of the EPA. They need to focus their efforts on clearing these issues as rapidly as is possible, as a new permit is not a realistic goal until resolved.

As a side issue, you had asked for information of the use of lime injection with an ESP. DEQ staff believes this could be a low cost means to address at least some portion of the manganese issue, and may serve to avoid a more expensive solution that could be prescribed in the compliance plan. There are multiple references to this application available, including:

http://www.ladco.org/about/general/Emissions_Meeting/Sloat_032510rev2.pdf

I wish I were able to see a different course, but I do not. I am open to your suggestions, but at this point, I see withdrawal of the permit application, and focus on addressing compliance issues as the most realistic and cost effective approach for your client.

Sincerely,

Amy

AMY BANNINGA

State Business Ombudsman
Michigan Economic Development Corporation
300 N. Washington Square | Lansing, MI 48913
Office: 517.241.2092 | Mobile: 989.292.0197
Mail to: banningaa1@michigan.org
<http://www.michigan.org>
<http://www.michiganadvantage.org>



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Jewett

8/21/12

Marty S 2009 Original Permit

- Jim Earl - Once issued
- Stack testing - unable to comply
- Mutual mistakes in development in limits on ESP will use DEQs mistakes in public hearing if denied

Scott D
David R - Correcting the permit - that is their goal
they cannot operate & comply

Joe P

Separate

- Opacity - problems began in 4/2012

EPA

Baghouse - is there an industry manganese related pot?
- was this a credible suggestion?
- Mercury & HCL - not Manganese

- ? - Why 120 days enforcement? Why? Discretion
- ? - What is lost in withdrawing permit? Correction

Inconsistency of Results - particularly most recent
Errors in original permit

EPA - Adverse public notice

DEQs role in delaying permit process

Communication (Review Severstal letter outlining)

- Timing of Reports
 - Content of Report $\left\{ \begin{array}{l} \text{In} \\ \text{Not} \end{array} \right.$
 - Follow up conversations
 - Beef up letter
 - Clarity, continuity
 - Commitment to response - deadlines
- (H) - Establish terms of our agreement + goals
- Reassessment point justified for continuity discretion

Agenda (Update on Severstal Progress & Discovery) ^{Stack test results - letter 8/20}

- Permit Corrections Process (Assessment of current process)

D2Q Denial
Severstal Counter

③ Communications

Demonstrate they are on a path to success - or ~~why~~ how ~~then~~ they justify ^{use of} discretion

(H) Goals (Opacity Yes
Manganese)
Lead) will comply - or will be part of corrective process for permit - will have data & consistent process

1500+ employees

8/22/2012

AGENDA

- 1. Severstal Progress Report
- 2. Assessment of Severstal/DEQ Process for Extended Permitting Period
 - a. DEQ Concerns
 - b. Severstal Concerns
 - c. Discussion of Potential to Continue Current Process
- 3. Clarifying Commitments & Communications

NOTES

- 1. Severstal Progress Report
- 2. Assessment of Severstal/DEQ Process for Extended Permitting Period
 - a. DEQ Concerns – there is no demonstration that work underway will result in adequate changes—so there is no justification for extension
 - b. Severstal Concerns – new regulations and other items that will apply to a new application
 - c. Discussion of Potential to Continue Current Process
- 3. Conditions for Extended Permitting Period

Need **Rationale for Continuance**
- 4. Clarifying Communications & Commitments

Assignments *which justifies, but also sets criteria for progress & continuation*

 - a. GOALS of Current Process – by November XX, these items will be addressed
 - i. Opacity – in compliance
 - ii. Manganese & Lead – in compliance, or at least with data and a consistent process to document acceptable revised limits and consistent methods to verify compliance on an ongoing basis
 - b. Plan as Outlined in 7/30/2012 Severstal Letter – is this complete and does it address our GOALS?
 - c. COMMITMENTS
 - i. Clarity *Explicit*
 - ii. Continuity with prior communications
 - iii. New issues and developments highlighted
 - iv. Misunderstandings discussed, not acted upon immediately
 - v. Clear requests for action, information, assistance
 - d. TIMING of Communications
 - i. Progress Reports from Severstal
 - ii. DEQ/Severstal discussion of results
 - iii. DEQ feedback on progress reports
 - e. Expected Elements of Progress Reports from Severstal
 - i. When available, test results performed using a consistent method

Army
8/21/2012

Original Revised

Task	Assigned To	Planned Completion	Status & Updates	Commitment Made
MI Air Toxics Modeling - Rule 225 Compliance				
1. Results Reported	Severstal	6/22/2012		6/19/2012
2. Feedback to Company	DEQ			
3. BOF Evaluation	Severstal	7/3/2012		6/19/2012
Manganese Emissions - BOF Lime Injection Concept Applicable to Mn, Steel Mill				
1. Technical Source ID	DEQ		Open - Requested 6/5, 6/19, 7/12, 7/20	6/19/2012
2. Evaluation	Severstal			
3. Determination of Effectiveness	Both			
Manganese Emissions - Ambient Air				
Fugitive Dust Controls				
1. Feedback on Proposed Approach	DEQ		<i>Culpability Analysis wk Labor Day</i>	6/19/2012
Raw Material Evaluation <i>(Mn & Pb)</i>	Severstal	9/30/2012		6/19 & 8/10/2012
Emissions Inventory	Severstal	8/31/2012		6/19/ & 8/10/2012
Scarfing Method Evaluation	Severstal			6/19/2012
Review Stack Emissions Control Technology	Severstal			8/10/2012
BOF ESP				
Maintenance & Repair	Severstal	9/30/2012	8/10 - On schedule, second shift added	7/20/2012
Flow Optimization	Severstal	9/30/2012		7/20/2012
Gas Conditioning	Severstal	9/30/2012	<i>RAM Plan Revisions (EPA)</i>	7/20/2012
Electronic Controls Tuning & Upgrade <i>(R2P)</i>	Severstal	10/31/2012	<i>Root Monitor Issues</i>	7/20/2012
Conduct Method 9 Visible Emission Tests, for a minimum of 16 hours and 16 heats	Severstal	11/9/2012		7/20/2012
BOF ESP Stack Tests using test methods required by 182-05B/182-05C				
1. Conducted	Severstal	7/13/2012		6/19 & 7/20/2012
2. Results Reported	Severstal	8/20/2012	8/10 - Out of compliance for Mn and Pb	7/20/2012
3. Feedback to Company	DEQ			
LEAF Stack Tests - Method?				
1. Conducted	Severstal	7/20/2012	Complete	6/19 & 7/20/2012
2. Results Reported	Severstal	8/20/2012	8/20 - Unable to report - anomalous data?	7/20/2012
3. Feedback to Company	DEQ			

Should test results of unapproved methods be submitted for DEQ eval, or subjected for discussion?

Jenstal

8/22/12

Jane Morris
Marty
Jim E
Scott
David

Scott D / Status
- Correct existing permit
- Address compliance issues
TRK Works

3 of 8 compartments done
- continue to discover add'l issues

Wym F
Vince
Jim S
Amy

- 9 of 20 controls
- Repairs
- Gas flow conditioning underway

Stack Testy
- Prelim results, report underway Steel Sector Trust
1 mtg w/ EPA

BOF - discuss w/ EPA - O&M Plan Revis
work on revisions to O&M plan - Prelim
to EPA mid-Sept to amend current

Roof Monitor Issues

- TDK to examine - may be contrib to
emissions - in depth observ to
- could change BOF oper procedures

New Technology - still looking

LRF Stack - anomalous data
1 Bldg house appears OK - 2nd under inspect

DEQ staff invited to attend test - may not
be avail

DEQ Concerns

Vince
Jim

- no valid data -
 - revision of data = new permit
 - exceeded ~~limits~~ time frame

- too many uncertainties of where emissions will be

* In the time elapsed since original submit

- admin record built a will be public (2 yrs of Ding results)

- need solid app & backed w/ 1 set of solid data (not multiple iterations)

- too many inconclusive results

- need to address original permit

issues - Clarify why wrong -

need to establish logic/justification for revision

- defensible, durable

- Established compliance plan w/ EPA will make permit process more durable, defensible, etc.

* - Cannot issue permit w/out EPA enforcement schedule (Vince)

DEQ not

confident roll out/

netty's will be

allowed w/out

adequate controls

Severstal Concerns / Reasons to Continue

- History - Multiple sources covered by permit
- Correction of existing permit ← multiple errors
 - B thought condensers would not be issue - DEQ pointed out, Severstal did not revise (Timing of sharing of EPA report not clear)
 - S worked thru stack test probe w/ DEQ
 - DEQ reacted to ICR EPA results ending cooperation / revision process
 - As made to date are a track record of trying to comply / correct

Reasons * Restart of decision & baselining issues ^{lose progress toward agreement}

* New Requirements for State (grandfathering)

* Cannot comply w/ current permit

* Key Open Issues on Continuance
! - Not sure they can continue to operate - will authority continue if they are not pursuing a remedy / agreement?

* - Believe major EPA issue opacity - once resolved ~~EPA~~ DEQ can issue (Constr. Vice)

* - Or will they have to curtail production to where not econ feasible

Assign - Severstal document what led since that is that is of a man

Open Issues

- * ① Grandfathering (Δs since 4/20/2012)
admin complete ? Scott does not agree
- ② Authority to Continue to Operate
Open app demon to EPA process did request pursuing remedy
- ③ Author of DEQ to issue w/ open
EPA Enforcement
- ④ Admin Record Contain data issues
Incomplete / Inconsistent data
14 iterations
- ServStat - proves track record
of trying

- DEQ - liability
- inconsistent data
- new Pb & maintenance issues

- Jims
Idea - New app bringing in track record
of improvements & Δs
- w/draw → resubmit close together
 - "germane" history
 - Jim could discuss ^{w/ EPA} if this would
clarify authority to continue to oper
 - Vince says our open permit app does
not provide cover "settlement discussion"

DEQ Jim S

- Regulatory Grandfathering Analysis
- Meet to discuss
- If regulatory scheme not issue

9/12/12
9/14/12 ±
10 AM

- Then withdrawal & revised app w/ history

- Denial if cannot come to agreement

9/21/12
30 day notice ~~for~~
engineer's retirement

No EPA right now.

Fiedler, Lynn (DEQ)

From: Fiedler, Lynn (DEQ)
Sent: Wednesday, May 07, 2014 6:11 PM
To: Wurfel, Brad (DEQ); Seldel, Teresa (DEQ)
Cc: Dolehanty, Mary Ann (DEQ)
Subject: FW: Contact from EPA on Severstal Permit

From: Hellwig, Vince (DEQ)
Sent: Wednesday, May 07, 2014 5:37 PM
To: Sygo, Jim (DEQ); Fiedler, Lynn (DEQ); Dolehanty, Mary Ann (DEQ)
Subject: Contact from EPA on Severstal Permit

I had a call from George Czerniak today concerning the pending decision on the Severstal permit. Specifically the issue is how we will treat SO₂ in the permit and the EPA comment. I told George that since we were repermitting the source that we were going back to the attainment status of the original permit and the RCD would reflect this. George commented that they had been requested by Rep. Talib and another Rep. to take over the permitting for Severstal. Of course they have no authority to do so.

George said he wanted to give me a heads up that we may be at odds on this issue. This may be something we have to deal with in the near future.

Sent from my iPad

14-008887-AA
FILED IN MY OFFICE
WAYNE COUNTY CLERK
2/5/2015 3:13:50 PM
CATHY M. GARRETT

Attachment B

Transcript from September 10, 2014
hearing on Appellants' Objections to
Administrative Record or,
Alternatively, Motion to Direct
Appellee to File Complete
Administrative Record

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SOUTH DEARBORN ENVIRONMENTAL
IMPROVEMENT ASSOCIATION, INC., et al.,
Appellants,

-vs- Case No. 14 008 887 AA

MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY, et al.,
Appelles,

-vs-

SEVERSTAL DEARBORN, LLC.,
Intervening Appellee.

-----/

MOTION HEARING

Wednesday, September 10, 2014, Detroit, Michigan
BEFORE THE HONORABLE ROBERT ZIOLKOWSKI, CIRCUIT
JUDGE

APPEARANCES:

For the Appellants: CHRISTOPHER BZDOK (P53094)
Olson, Bzdok & Howard, P.C.
420 E. Front Street
Traverse City, MI 49686
(231) 946-0044

1 APPEARANCES: (CONT'D)

2 For the Appellants:

TRACY J. ANDREWS (P67467)

3

Law Office of Tracy Jane

4

Andrews, PLLC

5

317-B Lake Avenue

6

Traverse City, MI 49684

7

(231) 714-9402

8

STEPHANIE KARISNY (P76529)

9

4444 Second Avenue

10

Detroit, MI 48201

11

(586) 610-2059

12 For the Appellees:

NEIL D. GORDON (P56374)

13

Assistant Attorney General

14

P. O. Box 30755

15

Lansing, MI 48909

16

(517) 373-7540

17

WILLIAM SCHAEFER (P26495)

18

Driggers, Schultz & Herbst

19

2600 W. Big Beaver Road

20

Suite 550

21

Troy, MI 48084

22

(248) 649-6000

23

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APPEARANCES: (CONT'D)

For the Appellees: DAVID A. ROCKMAN (P78190)
 Eckert Seamans Cherin &
 Mellott, LLC
 U.S. Steel Tower
 600 Grant Street, 44th Floor
 Pittsburgh, PA 15219
 (412)

TABLE OF CONTENTS

WITNESSES:

(none)

EXHIBITS:

(none)

1

2

3

4

(Wednesday, September 10, 2014)

5

6

THE CLERK: Calling the case of Dearborn
Environmental Improvement Association

7

versus MDEQ, 14 008 887 AA.

8

9

THE COURT: All right, today is the date
set for hearing on a motion. Uhm, can I have
your appearances again?

10

11

12

13

MR. BZDOK: Christopher Bzdok on behalf of
the South Dearborn Environmental Improvement
Association.

14

15

MS. ANDREWS: Tracy Andrews for the South
Dearborn Environmental Improvement Association.

16

17

MS. KARISNY: Stephanie Karisny for DWEJ,
OUCSD and Sierra Club.

18

19

MR. GORDON: Neil Gordon, Assistant
Attorney General, Natural Resources and
Agriculture Division.

20

21

22

MR. SCHAEFER: William Schaefer appearing
on behalf of Severstal, L.L.C.

23

24

MR. ROCKMAN: And Dave Rockman for
Severstal.

25

THE COURT: All right. There's a motion

1 to expand the Record.

2 Do you want to argue?

3 MR. BZDOK: Yes, your Honor. May I use
4 the podium?

5 THE COURT: Fine.

6 MR. BZDOK: Thank you.

7 Judge, we're here today on our motion to
8 ensure that the Record is complete. By which I
9 mean it includes all of the documents that need
10 to be in the administrative Record under the
11 legal standard that applies. The legal
12 standard that applies is the Court rule, the
13 Record includes all documents, files, of the
14 agency, except for those that are omitted by
15 stipulation of the parties. It's all documents
16 of the agency. It's not documents that the
17 agency says that they rely on or says that they
18 considered or says that this person's looked
19 at, that person did not look at. All the
20 documents of the agency.

21 There is a, uhm, we're going to get into
22 some questions whether the agency considered
23 something or not. There's some cases,
24 plaintiff's cases that were cited. Those cases
25 are actually very good for us. I would welcome

1 a detailed discussion of those if we need to go
2 there.

3 They say things like, what is an
4 administrative Record. An administrative
5 Record is for the Court, for the convenience of
6 the Court and for the Court to be able to
7 adjudicate the facts and circumstances and
8 procedures that occurred in the agency below so
9 the Court can understand and the Court can make
10 decisions applying the applicable standards.

11 One of those standards which we have
12 talked about is a standard about improper
13 procedures. And specifically, that the parties
14 were materially prejudiced as a result of
15 unlawful procedures. And that goes to one of
16 the categories of documents that we have cited.
17 Really two categories of documents that we have
18 cited go to this issue of the procedures and
19 the Court cannot make a meaningful judicial
20 review of that without having those documents
21 in the records, the documents that we believe
22 do constitute unlawful procedures.

23 Essentially, there's two categories of
24 documents but they're related. One category
25 is, there were several times during this

1 process, it's been a long process, five, six,
2 year for us, but it really got hot in 2012 and
3 forward until this spring of 2014, there was a
4 time in that process, uhm, when the DEQ was on
5 the cusp of denying this permit. And that was
6 late June of 2012. And there is a document in
7 the Record where they had a meeting with
8 Severstal and more or less said this is
9 something we're going to do.

10 Severstal then sought and obtained
11 intervention in this matter from the Michigan
12 Economic Development Corporation. There was
13 some discussion with the head of the MDEC.
14 There was a discussion at the governor's office
15 and there was this intervening by MDEC. And
16 this is just one example of these documents.

17 There was a letter that was issued from
18 the person who was in charge of making the
19 final decision on this permit from the DEQ.
20 His name was Vincent Hedwig (phonetic). He's
21 the chief of the air quality division, and he
22 issued a letter to Severstal, I think, dated
23 July 3rd, it might have been dated July 5th, of
24 2012. It was a five or six page letter. We
25 quoted from it and cited it in our briefs which

1 gave all these reasons why the DEQ was
2 mandated, had no choice under the law but to
3 deny this permit. Then there was a meeting on
4 July 12th, notes in that meeting, that MDEC had
5 the DEQ to come to, and there's a letter which
6 is also in our exhibits, it's Exhibit 21, from
7 the head of Severstal Environmental Department.
8 It's July 13th. I apologize for all the dates.

9 So one week after DEQ issued a long letter
10 saying all the reasons it had to deny this
11 permit, there was a meeting on July 12 and the
12 notes of that meeting that was convened by MDEC
13 and had Severstal and DEQ added, one of our
14 proposed exhibits that need to be in the
15 Record. And then on the 13th, there was a
16 letter from Mr. Earl, the head of Severstal's
17 environmental department to Mr. Sibolt at the
18 DEQ, who's Mr. Hedwig's boss, he's the
19 director, saying, thank you for agreeing
20 yesterday not to deny our permit.

21 So it's a letter from Severstal to the
22 division chief, the deputy head of the DEQ
23 saying thank you at this meeting yesterday,
24 where you agreed not to deny our permit. And
25 its not in the administrative Record that was

1 proposed by the DEQ.

2 And I don't know how it could be more
3 relevant to the permit, more necessary for this
4 Court's reviewing, meaningful judicial review
5 of, among other things, was this an arbitrary
6 and capricious situation, and also, were there
7 unlawful procedures that materially prejudiced
8 parties.

9 The parties that we represent, people who
10 live in this area, who breathe this air, that
11 these groups have as members, they didn't know
12 anything about this. They didn't know anything
13 about this until they got public comment in
14 March. Some of it is in the DEQ Record. Some
15 of it we were able to get our hands on and we
16 were trying to work to try to get something in
17 by the public comment, the 30 day public
18 comment deadline and I believe it was extended.

19 All of this stuff we were trying to get
20 our hands on. Some of it was in the Record.
21 We sued the MDEC under the Freedom of
22 Information Act. We got 1200 pages of
23 documents. Some of those documents which
24 memorialized these e-mails, these negotiations
25 as some of those came. We had no chance to put

1 it in the public comment Record, but it
2 documented what actually happened, meetings
3 with the decision maker of the DEQ and other
4 heads of the DEQ, Severstal, and the MDEC was
5 playing this sort of rocker (phonetic) role, is
6 the political sympathetic way to say it. All
7 of that stuff, memorializes and documents a
8 process that actually happened. This is the
9 process where the decisions were made that give
10 rise to the legal issues in this appeal.

11 Can you grandfather a permit? All right.
12 So the issue of permit in 2013, they issued a
13 permit in 2013 and said we are applying the
14 legal standards that were in effect in 2005,
15 and 2006. And that's going to be a big issue
16 in this appeal. The discussions of
17 grandfathered and whether that can be done or
18 needed to be done, those discussions were had
19 in these meetings.

20 There's a rule that's going to be a part
21 of this process. I gave you an excerpt from
22 the meeting of rule 207, where they were trying
23 to figure out, we've got equipment that
24 apparently doesn't work and it's violating
25 regularly, and we have a need to, uhm, uhm, we

1 can't give you a permit if your equipment
2 doesn't work and you can't get the equipment
3 fixed in time for our deadline to take action
4 on this permit. And Severstal doesn't want to
5 take away their application because they might
6 lose their grandfathering, so how are we going
7 to get around this? We're going to create this
8 agreement to get around this. And the legal
9 validity of this agreement and this way of sort
10 of going around rule 207, that's all, that's
11 all part of this, uhm, that was all discussed
12 at these meetings. That was all part of these
13 transactions as well as that extension or
14 tolling agreement.

15 These key decisions were being made by the
16 decision-makers in the meetings. You can't
17 have meaningful judicial review of those unless
18 we have all of the documents in for the Court
19 to see them.

20 We've done our best to try to put those in
21 front of you. Some of them, and this goes to
22 one of the other categories of related
23 documents. They're called gaps in the Record.
24 What we need partly out of this motion is the
25 order of the MDEQ to produce whatever was going

1 on in the executive office, documents, memos,
2 notes, e-mails, during the fall of 2012 and the
3 early winter of 2013 there was an email that
4 was quoted in our brief from an MDEQ staff
5 person. She's an enforcement person in the
6 Detroit office. There's an email to the
7 executive office saying, we know you're having
8 meetings. We know you're having conversations.
9 We the staff people don't know what you're
10 talking about. Here are my frustrations; here
11 is my perspective. It's not about adding to
12 the Record. That stuff should be in the
13 Record.

14 These are meetings. And negotiations.
15 This is the decision-making process. It's a
16 process, we don't think so. Is it a proper
17 process? We don't think so. But it's the
18 process that was used, or at least to verify if
19 it was the process that was used, we need
20 everything that dealt with these issues to be
21 part of the administrative Record.

22 Another category of documents that we have
23 asked to be placed into the Record and be
24 provided as many of them as we can, are notices
25 of violations. Notices of violation are, they

1 sort of look like letters; they look like
2 pleadings. But a notice of violation is when
3 somebody from these agencies, uhm, documents at
4 the cite via test results, via visits to the
5 cite, that there are violations of the permit,
6 violations of the clean air act, violations of
7 the state air law and rules or a combination of
8 all of those.

9 Severstal is a chronic violator. They
10 have scores and scores of these violations.
11 They have thousands of individual violations.
12 So what happens is the agency sends a notice of
13 violation and then Severstal sends some type of
14 a response and says, we agree with this; we
15 dispute this. Here's information you
16 requested.

17 Another category of document that we have
18 asked to be placed into the Record. DEQ sent
19 most of them. EPA sent a couple of them and
20 copied DEQ. So DEQ had them as well as because
21 they administer these laws of partnership. The
22 notices of violation, some of them are in the
23 Record. Some of them are not. Some of
24 Severstal's responses are in the Record and
25 some of them are not. A couple of key ones are

1 not in the Record. Uhm, one of the key ones is
2 from February of 2009, and it was where they
3 did testing of the stacks at Severstal. And
4 they said, we realize that we are saying now
5 that our emissions that were documented in
6 these tests are rather higher than we thought
7 they were and many of them are higher than we
8 allow. So DEQ sent them a notice of violation.
9 And Severstal sent a response. And that was
10 the beginning of the entire permit
11 negotiations. It was the benefit, and DEQ
12 noticed a violation. It's not in the Record.
13 They didn't put it in the Record. The
14 Severstal response is in the Record. There's
15 no rhyme or reason. There's no rational basis,
16 first of all, not including the notice that
17 started this whole process, and second of all,
18 including the Severstal response but not
19 responding to it.

20 Another notice of violation that is key is
21 an April 2014, and this is mentioned in our
22 brief and we provided as an Exhibit. This one
23 is very, very important. And the reason it is
24 important is because there are three DEQ rules
25 cited in our brief that specifically deal with

1 the question of, whether permits can be granted
2 to facilities that are not in compliance with
3 DEQ rules. And, a section of the clean air
4 act. And, one section of the clean air act,
5 which we cited in our brief, says in a non-
6 attainment area, non-attainment area is an area
7 that EPA has classified as too polluted to be
8 acceptable. An area that is so polluted it
9 needs to have less pollution to meet adequate
10 standards of health and safety.

11 In a non-attainment area, you cannot get a
12 permit unless your facilities are in
13 compliance.

14 There's a rule 207 that talks about, does
15 your equipment work. And when we get into the
16 appeal, when we get into this rule 207 issue in
17 the appeal, what, I believe, the other side is
18 gonna say is, well, we had this extension. The
19 legality of which is in question. We did some
20 repairs on a particular piece of equipment
21 called an electrostatic precipitator, PEP, and
22 based on those repairs it was in compliance.

23 April 2014, notice of violation has five
24 categories of violations for just that PEP,
25 just that single piece of equipment. And it

1 has 266 individual pollution violations, six
2 minute spans where the pollution was beyond
3 acceptable in April of 2014. Four months later
4 they granted the permit.

5 So when the Court has to do a meaningful
6 judicial review of whether rule 207 was
7 complied with and there was this massive set of
8 violations and a month later they issued the
9 permit, and this is long after these alleged
10 repairs were, the Court can't do that review,
11 we would submit, without having the notice of
12 violation and information about the violations
13 that this piece of equipment that occurred one
14 month before the permit was issued. We
15 couldn't put it in because it was five or six
16 something was closed.

17 So it's part of the Record, the
18 environmental people, they commented on the
19 permit, three different places. The meetings
20 that I talked about, over and over again,
21 they're talking about permitting and compliance
22 as the same.

23 The arguments in the brief from our
24 respected Counsel on the other side, said
25 permits are over here and compliance is over

1 here. That's not what the rule says. It's not
2 what the clean air act says.

3 Their enforcement people were making
4 comments. They were discussing at these high
5 level meetings, how do we deal with the
6 compliance issues in the context of this
7 permit.

8 The violations, initial violation, what
9 lead to the request to begin with. The idea
10 that we have a silo over here and we can limit
11 the Record to what's in this silo and forego
12 it. It's not what they did in practice. It's
13 not what's partially in the Record and
14 partially not and it's not supported by the
15 Court rule standards.

16 Uhm, another attempt that I want to
17 mention to you, that's missing from the Record,
18 are just a couple more, and then I would yield.
19 Is there's an MDEQ document in Exhibit A of our
20 proposal that's evaluating, uhm, a letter,
21 written by Mr. Goldsmith and Mr. Dumas
22 (phonetic) for Severstal, that was about this
23 regulatory grandfathered. Okay.

24 So, part of these MDEC meetings, uhm, was
25 an agreement that this person, MDEC, was in the

1 Record and said, one of the things we needed to
2 do is to send us this analysis of why Severstal
3 should be regulatory grandfathered.

4 And, they submitted that, September 12th,
5 I believe, of 2012. And then there's this
6 table that I got out of the DEQ file that
7 quickly goes over Severstal's arguments, and in
8 many cases disagrees with them. And also
9 discusses Abanal, A B A N A L, I think starting
10 on the second part. There's a long discussion.
11 That was an EPA decision about grandfathered.
12 And that's going to be important because that
13 belabor a decision, that DEQ was relying on was
14 reverse by the Ninth Circuit Court of Appeals
15 last month. So that decision and the analysis
16 of that decision and how does that relate to
17 regulatory grandfathering and what was the
18 agency's thought process, which is now blown
19 out of the water because that decision has been
20 completely reversed. The Ninth Circuit said,
21 you can't do regulatory grandfathering on a
22 case by case basis.

23 These are going to be substantive legal
24 issues and we need to present a clean Record of
25 how they were handled, what the thought process

1 was to this Court. So that needs to be in the
2 Record.

3 Finally, this extension agreement that I
4 mentioned. So, there was a rule in place at
5 the time that required permits to be decided on
6 a certain period of time. And I believe
7 that's -- in audible.

8 I believe it's 128 days. That's the time
9 we were dealing with, and they couldn't get
10 equipment repaired by then and they couldn't
11 reserve an EPA enforcement action so they
12 couldn't meet these standards about compliance.

13 So they entered into this agreement that
14 was mentioned by Mr. Gordon and Mr. Franton
15 (phonetic) and Mr. Dumas. This agreement was
16 described that basically said, we're going to
17 have a process and you're going to do various
18 repairs and at the end of that process, then
19 you're going to submit an application and then,
20 the official public permit will kick in. It
21 was a way to go around rule 207, to use their
22 words, and that would be these gentlemen, to go
23 around 207 and to deal with these timing issues
24 was this extension agreement. And we have the
25 extension agreement in the Record.

1 And the DEQ rules were admitted. But that
2 rule was not in place for Severstal. Uhm, but
3 there were drafts. There were e-mails about
4 the drafts of the extension agreement. That
5 all needs to be in the Record. That's not
6 privileged. It was a negotiations of a permit
7 process by arm's length parties. The MDEC
8 person was copied on this. It was waived
9 unless the MDEC is part of the MDEQ.

10 All of that needs to be in there. And
11 it's not privileged. So in summary, we need
12 the notice of violation documents, because
13 that's necessary for the complete Record. We
14 need the documents related to the involvement
15 in the meetings that were convened by MDEQ and
16 the complaints.

17 They would talk to one side and then they
18 would take notes, right, and send an email to
19 the other side saying, DEQ says this, and then
20 they would relay this fact over here.

21 I mean, those communications are
22 communications between the permittee and the
23 agency, basically going through this conduit.
24 So whether the MDEQ actually makes DEQ notes,
25 they were an integral part of the process. All

1 of that material needs to be part of this
2 administrative Record.

3 And then we've got the gaps in the Record
4 in the executive office where staff people
5 didn't know what they were doing in the
6 meetings. And the meeting at that table about
7 the Abanal case, to have a complete Record, all
8 of that needs to be in here. And it all needs
9 to be vetted.

10 It may be that some of it ends up not
11 being permitted. It may end up some of it ends
12 up not being controlling, and and maybe some of
13 it is. It's necessary for a complete picture.
14 It's necessary for a meaningful judicial
15 review. The federal claims cases that they
16 cited in the brief, they say you need all the
17 documents necessary. And at this rate, the
18 Record is there. And in our case, it's not
19 just the documents of the agency that support
20 the position. It's all the documents. We need
21 all the documents, good, bad and ugly. They
22 need to present a complete picture of the
23 entire process so the Court can review, did
24 they meet the legal standards, what was the
25 decision making process, were there procedures

1 that prejudiced the parties that we represent,
2 and, uhm, were there arbitrary and capricious
3 actions and information going to deny, we can't
4 grant this part. All of that needs to come in.
5 We need a complete Record. This is going to be
6 a very significant review and we need to have
7 it.

8 THE COURT: I guess I'm missing a little
9 bit of the purpose of why you want the MDEC,
10 notes and correspondence and how it relates to
11 the legality or propriety of the procedure.

12 MR. BZDOK: Two answers to that. The
13 first answer to that is the fact and level and
14 nature of that involvement was improper. MDEC
15 does not have any statutory authorization or
16 any regulatory authorization to be involved in
17 permit proceedings. The DEQ doesn't. There's
18 nothing in the state law that says that DEQ
19 should review permits. They should do so in
20 conjunction or in consult in with the MDEC.

21 THE COURT: Is there something that says
22 they can't do that or what? Because that's the
23 issue. I'm trying to get a grasp, I'm having a
24 hard time getting my hands around the process
25 of what's happening here.

1 You know, it's been suggested it's really
2 sort of a non-adversarial type process. And,
3 that the, that the MDEQ, uhm, so, is the
4 purpose, then, to make every effort by the MDEQ
5 to grant these applications with the proviso or
6 the, with the satisfaction that the applicant
7 is in total compliance, is going to remain in
8 compliance? Or is it to create an obstacle to
9 the applicant? I guess I'm having a little bit
10 of a problem grasping what the, how this works.

11 MR. DZDOK: The DEQ is supposed to be
12 right down the middle. MDEQ has very specific
13 legal standards that are set out, and the
14 regulations and rules that they've adopted that
15 say this is how we're going to evaluate these.
16 You have to apply the facts, the data, the
17 circumstances, the situation to those standards
18 and make a decision.

19 THE COURT: I understand.

20 Let me hear about the observation of the
21 application and find out that the applicants,
22 look, we're going, our initial evaluation,
23 we're going to deny this permit because, uhm,
24 one of the smoke stacks is emitting particles
25 and one of the other boilers is too hot and

1 something else. Can they call Severstal and
2 say, we're going to deny this thing unless you
3 clean this up and give them an opportunity to
4 clean it up? And if Severstal cleans it up and
5 shows them that they're now in compliance, they
6 take a second look at it. Or do you just, you
7 in, make it sort of a jury trial, this is your
8 day in court. And you either prove your case
9 today or you go home?

10 I get the impression this is sort of an
11 ongoing process. Now, we've got other
12 influences here. How significant the influence
13 of the MEDC and the governor's office is, and
14 these other politicians and lobbyists and
15 everybody else. You know, can this influence,
16 even if the influence is strong, which it
17 probably is, if the governor calls you and
18 says, I want Severstal in business and I don't
19 want them out of business, don't they still
20 have to comply? No matter how much influence
21 is exerted on the MDEQ?

22 The governor might call them everyday and
23 say, hey, your job's on the line. I appointed
24 you. I don't know how that works, unless you
25 approve Severstal. But they still have to meet

1 their emissions standard.

2 MR. BZDOK: Severstal still has to meet
3 the emissions standards which they've not done.

4 THE COURT: That's another issue.

5 MR. BZDOK: And that's one of the things
6 we need all the violations.

7 THE COURT: I think you're on decent
8 footing there. But I'm not sure about the
9 notes and the internal memos of MEDC and MDEQ.

10 MR. BZDOK: And there's two answers to
11 that. One of your standards of review, was
12 their arbitrary and capricious decision-making,
13 and understanding whether there was arbitrary
14 and capricious decision-making, we have very
15 strong decisions by the MDEQ. It happened more
16 than once. And then we have subsequently
17 reversal and we have this involvement. And I
18 gave you one example in the July 23, 2012. And
19 we're talking not so much whether you agree
20 with us today. We're talking about, are we
21 going to have a Record that's complete enough
22 that all of that can be explained and discussed
23 and reviewed by you and vetted by you in making
24 the decision about were those reversals sound,
25 or were they arbitrary, or were they a product

1 of improper and unlawful procedures that
2 prejudice others which is another of your
3 standards of review.

4 And then again, we need you to have all
5 that information in order to brief it and
6 discuss it so that those decisions can be made.

7 I'm not asking you to agree with me today
8 by including that material in the Record that
9 that material is going to carry the day or
10 carry the outcome. I think it does have a
11 controlling impact on the outcome on some of
12 the principal issues in this appeal. There's
13 about five of them.

14 THE COURT: But if the extension was wrong
15 and violated the statute, what difference does
16 it make if some lobbyist called, or the MDEC
17 sat down with MDEQ. If it was wrong, it was
18 wrong. Similarly with the other decisions to
19 grant things because they weren't in compliance
20 at the time that the application was granted,
21 and then it's wrong, no matter what the
22 pressure was put to bear on the MDEQ.

23 MR. BZDOK: I think on some of the issues
24 that is an accurate observation.

25 THE COURT: I think you're on decent

1 footing there. But I'm not sure about the
2 notes and the, uhm, the internal memos of MDEC
3 and DEQ.

4 MR. BZDOK: And there's two answers to
5 that. One of your standards for review is, was
6 there arbitrary and capricious decision-making.
7 And understanding whether there was arbitrary
8 and capricious decision-making, we have very
9 strong, we have very strong decisions by DEQ.
10 It happened more than once, and then we have
11 subsequent reversal and we have this
12 involvement in between. And I gave you one
13 example, the July of 2012. And we're talking
14 not so much whether you agree with us today.
15 We're talking about are we going to have a
16 Record that's complete enough that all of that
17 condition be explained and discuss and reviewed
18 by you and vetted by you in making decision
19 about were those reversals sound, or were they
20 a product of improper, unlawful procedures that
21 prejudiced others, which is another of your
22 standards for review. And again, we need you
23 to have all that information in order to brief
24 it and to talk and to discuss it so that those
25 decisions can be made. I'm not asking you,

1 uhm, uhm, to agree with me today by including
2 that material in the the Record that that
3 material is going to carry the day or carry the
4 outcome. I think it does have a controlling
5 impact on the outcome on some of the principle
6 issues in this appeal. There's about five of
7 them.

8 THE COURT: Burt, if, if, the extension
9 was wrong and violated the statute, what
10 difference does it make if some lobbyist or the
11 MDEC sat down with them at a meeting. If it
12 was wrong, it was wrong. Similarly with the
13 other decisions. The decision to grant things,
14 because they weren't in compliance at the time
15 that the application was granted, then it's
16 wrong no matter what the pressure was put to
17 bear on the MDEQ .

18 MR. BZDOK: I think on some of the issues
19 that is an accurate observation. I think on
20 some other issues what you have to recall is
21 that these regulatory, some of these things are
22 very clear, there's very bright lines in the
23 rule. And some of this allows a certain
24 amount of judgment, a certain amount of
25 discretion. Rule 207, the one that says if the

1 equipment doesn't work, you can deny the
2 permit, it has some language it in about
3 whether sufficient information has been
4 submitted by the applicant to enable the
5 department to make reasonable judgment about
6 whether the equipment worked. So there's a
7 certain amount of judgment that can be
8 exercised. And when you have a Record where
9 the MDEQ exercised that judgment and came to a
10 conclusion and you have the intervention and
11 they exercise that judgment and came to the
12 opposite conclusion, whether it's July of 2012,
13 whether that's early winter of 2013, we need
14 the whole picture to know why that's happening.
15 And we need to make our case.

16 THE COURT: Don't they have to articulate
17 why they change their position? Isn't that
18 enough?

19 MR. BZDOK: There's not much articulation
20 in any of these details. A lot of what we have
21 been discussing today is information that was,
22 uhm, uhm, obtained by the appellants and their
23 professional representatives as opposed to
24 being, you know, DEQ provides certain
25 information when they notice for public

1 comment. And they provide certain information
2 when they issue the permit.

3 They say, here's a summary. Here's a
4 draft permit. And when they issue the permit,
5 here's the permit. Here's our responses to
6 public comments. Their level of response to
7 public comments is often called generic or
8 concise or cursory. And, and it doesn't
9 provide the full picture of what went on. And
10 these proceedings which decision-makers were
11 involved in negotiating the issue on this
12 appeal, they provide a fuller picture of what
13 was involved and without those, all you have is
14 sort of the sanitized version. All we have,
15 again, it's back to, it's not just the
16 documents the agency wants to present to the
17 Court for the review. It's the good, the bad,
18 and ugly of what happened. And that's what we
19 need, too and that's why we need those. All
20 right, thank you.

21 THE COURT: Response?

22 I'm sorry, are we all concurring with that
23 argument?

24 MS. ANDREWS: Yes, your Honor.

25 MS. KARISNY: Yes, your Honor.

1 MR. GORDON: Your Honor, Neil Gordon on
2 behalf of the respondent.

3 Your Honor, I'd like to address, what's
4 the correct legal basis for that motion to
5 expand the Record. This is a case. This is an
6 appeal from an administrative agency decision
7 where there was no contested case, and, so, the
8 Court rules in 7.100 et seq, lay out standards
9 that apply for proceedings in this case. And
10 it cross references the Appellate Court rules
11 in the Court of Appeals for a definition of the
12 Record in a case. And it says, for purposes of
13 this appeal. It's all in the context of this
14 appeal, the administrative Record is a document
15 of the agency. Mr. Bzdok would have you think
16 that it's all documents of the agency regarding
17 Severstal broadly, in particular with regard to
18 Severstal. Severstal has been in existence now
19 since 2003, if my memory serves, 2003, 2004.
20 There's a long history of permitting for this
21 facility. Inspections. Clearly, the records
22 is not all records of the agency that relate to
23 Severstal.

24 THE COURT: But that's what the rule says.

25 MR. GORDON: Well, its in the context of

1 an appeal. It's an appellate rule.

2 THE COURT: All the documents.

3 MR. GORDON: All the documents. And it
4 goes onto say.

5 THE COURT: Opinions, orders.

6 MR. GORDON: So it's in the context of
7 this particular proceeding.

8 So there are documents, related to
9 Severstal that DEQ possess that are clearly not
10 related in any way to this proceeding and that
11 doesn't belong in this Record. And then the
12 Courts have then gone on to expound on what are
13 the documents for an administrative record more
14 specifically. And as we lay out in our brief,
15 a complete administrative Record relates to all
16 the documents the agency actually considered in
17 renewing the permit application and issuing
18 this permit. They're not all the documents the
19 appellant would have considered when they were
20 reviewing the permit application, which is what
21 they would want you to do. Nor is it all the
22 documents that simply relate to Severstal's
23 operations. That is far too broad. The Court
24 rule is in the context of this proceeding, this
25 permit application. And as we lay out in our

1 brief, it's all the documents as the rules that
2 explained, that the agency actually considered
3 in reviewing that permit application.

4 So what did we have? DEQ has already
5 submitted the complete Record to the Court. It
6 has certified that it is complete. All the
7 documents that DEQ actually considered are in
8 the Record. And then the Supreme Court has
9 made it clear that in appeals like this one
10 where there is no contested case hearing,
11 judicial review is limited to that. That's the
12 2008 case of Michigan Association of Home
13 Builders versus the Director of the Department
14 of Economic Growth.

15 So, we have the legal standard here. It's
16 all the documents of the agency that it
17 considered in reviewing in issuing this permit.

18 Let me get to the category of documents
19 that Mr. Bzdok identified here. The first
20 category is the Michigan Development of
21 Environmental Quality's participation in some
22 of these meetings in the summer of 2012. He
23 says, we reviewed those documents. Those
24 documents that DEQ actually had in its
25 possession and considered are in the Record.

1 There are notes from DEQ of those meetings that
2 are other correspondence in relation to those
3 meetings. This position that there are
4 documents that MEDC staff drafted and kept in
5 their files, but didn't ever share with DEQ,
6 that some of those DEQ staff notes should be
7 added to that administrative Record is
8 incorrect. DEQ never saw those documents.
9 DEQ's documents that they generated of those
10 meetings are already in the Record. There's
11 nothing hidden going on here. There's nothing
12 hidden regarding any decisions that were made
13 as these meetings.

14 Perhaps the key decision in those meetings
15 was, DEQ is faced with a situation where it was
16 ready to issue a permit to Severstal.
17 Severstal shortly before DEQ is ready to
18 publish a draft came forward with new
19 information saying we have a major problem with
20 one of our key pieces of equipment. This
21 electrostatic precipitator has fallen into
22 major disrepair. It's needs to be fixed.

23 DEQ said, right now as this stage, you're
24 not able to meet these initial levels we were
25 proposing to give you that. Are we going to

1 do about that. And there is a 120 day time
2 period taken us from when the DEQ determines it
3 has all the information it needs to initial the
4 permit so when it has to make the decision on
5 the permit.

6 The DEQ, prior to receiving this
7 information believed it had all the information
8 it needed, the 120 day clock is ticking. In
9 the summer of 2012, Severstal comes up and
10 says, wait a minute, we can't meet these. DEQ
11 says, we may have to deny this permit.

12 Severstal meets with DEQ. They have
13 meetings. And the MDEQ participates in these
14 meetings. And MDEC's role in those meetings
15 was nothing improper at all. Severstal is one
16 of the largest employers of \Wayne\wane county.
17 It employs something in the range of 1500
18 people in that facility.

19 They're working to see if there's a way
20 the parties can get together and deny this
21 permit application, and instead, Severstal can
22 fix that piece of equipment and get all the
23 information it needs. Those discussions are
24 requested in the DEQ notes that are in the
25 Record, and there is this extension agreement

1 that I helped negotiate with Counsel for
2 Severstal to extend this 120 day period so that
3 they could submit all the information that DEQ
4 needed to fix that equipment, and then DEQ
5 could go ahead and review the permit
6 application anew. All of that is in the
7 Record.

8 These additional documents that DEQ never
9 possessed, never looked at, that they say
10 should be in the Record, according to the
11 Supreme Court and the Court rules, those
12 documents don't belong in the Record. DEQ
13 never even had them. And yet this file is
14 replete, their motion is replete with documents
15 that says, it doesn't matter. DEQ never had
16 them at all. They're part of the story and we
17 think it should be in the Record.

18 Well, that's not a legal standard as to
19 whether you have legal documents that simply
20 relate to what happened here. The
21 administrative Record, at both state level,
22 federal level, all administrative agencies,
23 what were the documents before the agency that
24 they reviewed, the good and the bad, whether or
25 not they should be in the Record. Here, there

1 are numerous documents in the records including
2 their comments of the DEQ to deny the permit.
3 I agree it should be all the documents that the
4 agency considered and that's actually what is
5 in the Record here.

6 THE COURT: What I'm having a problem
7 there with your argument is, in reading the
8 Court rule, and the appeal for the
9 administrative tribunal or agency, the Record
10 includes, all documents, filings, testimony,
11 orders of the tribunal, agency or officer. So,
12 now we've included testimony.

13 MR. GORDON: It's as if it's written in
14 the context of a contested case. I think the
15 drafters of the rule are contemplating that's
16 the context.

17 THE COURT: I appreciate it. But I'm
18 bound by the rule.

19 So what the suggestion here is that even
20 though the MDEQ may not have -- so what the
21 suggestion here is that even though, uhm, the
22 MDEQ may not have had these, MDEC documents,
23 there are references within those documents of
24 conversations which arguably is testimony that,
25 you know, how could somebody say they didn't

1 consider something when there's something in
2 their memo saying we just talked to this guy
3 about sending this, so that still may suggest
4 that they must have considered it.

5 MR. GORDON: No, the documents that they
6 identified with handwritten notes for some MDEC
7 official who works in another office building
8 up in Lansing. And they're saying these
9 documents, those documents that are in their
10 files should now be somehow part of MDEQ's
11 administrative Record. That is not, even if
12 you were to read this rule, just the words
13 where it says documents of the agency, the MDEC
14 handwritten notes are not documents of the
15 MDEQ. They are MDEC's. They have e-mails from
16 MDEC to Severstal. Those are not documents of
17 the DEQ. If you were to read just those words
18 alone, those documents are clearly not part of
19 this Record. And the purpose of this whole
20 rule is titled Record of appeal. It's in the
21 context of, what is the appeal. The appeal
22 here is this permit.

23 Let me get to another category of
24 documents. Severstal has a steel mill. DEQ
25 goes out and inspects that facility. From time

1 to time it identifies various compliance issues
2 and it may issue notices of violation. Over
3 the years, DEQ has issued several
4 notices of violation. The notices of violation
5 that are, goes, many of them have nothing to do
6 with their review, DEQ's review of this permit.
7 They go back years and years and years. The
8 documents, the violation that the DEQ actually
9 considered for purposes of this permit
10 application are in this Record. And the idea
11 that it should include other notices of the
12 violation is which the permitting engineer and
13 permit didn't actually show documents, they
14 don't belong in this Record.

15 THE COURT: What are the violation of
16 2014, about a month before?

17 MR. GORDON: The documents, the permitting
18 staff that DEQ evaluated for purposes of this
19 permit application, as we point out in our
20 brief, notices of violations. They are. And
21 the other documents, permit staff reviewed all
22 the information in their files. It went
23 through staff records of other officials within
24 the DEQ. Those documents that they considered
25 in evaluating this permit application are in

1 the Record.

2 What's not in the Record are a host of the
3 historic violations that weren't considered as
4 part of this permit application.

5 THE COURT: Well, I guess we ought to find
6 out. It's been suggested the 2014 violation is
7 in the Record.

8 MR. BZDOK: The April 2014 violation is
9 not in the Record.

10 THE COURT: Well, it either is or isn't.

11 MR. GORDON: If it's not in the Record,
12 it's because DEQ didn't review it.

13 THE COURT: Shouldn't they have? That
14 would make my job easy right now. I'll reverse
15 this whole damn thing and send it back.

16 MR. GORDON: If there's something that DEQ
17 overlooked and should have looked at, that's an
18 issue we'll get to when we get to the permits.

19 THE COURT: Well, the law says you can't
20 issue a permit if they're in violation and you
21 never even looked to see whether they're in
22 violation. That seems like kind of capricious
23 to me.

24 MR. GORDON: And we look forward to the
25 opportunity to brief that on the merits. But

1 here for the purposes of expanding the record
2 to include documents that DEQ didn't actually
3 consider, that's not what's supposed to happen.
4 If DEQ should have looked at documents and
5 looked at certain things, we will address that.
6 But to expand the record here to include
7 documents that they actually, in fact, didn't
8 evaluate is inappropriate.

9 Let me review one other document this
10 document number eight that's in the Record,
11 this table. Your Honor, there's a reason why
12 that document is not in the Record, because
13 it's not a DEQ document. This table with all
14 this discussion that Counsel goes on about the
15 Abanal decision and how important that is, DEQ
16 staff reviewed their motion, scoured their
17 records. That's not their document. That's an
18 MDEC document that they got from the FOIA
19 request. Their discussion that DEQ drafted
20 that document and improperly omitted it from
21 the Record, that's wrong.

22 And finally, these documents regarding the
23 extension agreement, extension agreement in the
24 final draft, the final version of the extension
25 agreement to expand this 120 day period to

1 process this permit application and for
2 Severstal to submit all the information DEQ
3 needs, that document goes in the Record.

4 And the position that every single
5 iterated draft that somehow needs to go back
6 between myself, that would be files from their
7 Counsel to opposing Counsel that they need
8 every single draft between lawyers to get into
9 the Record one final document that was signed
10 and is a relevant key document, it's already in
11 there.

12 THE COURT: All right.

13 MR. GORDON: Unless there are other
14 questions, I think that is everything I have.

15 THE COURT: Okay, anything else?

16 MR. SCHAEFER: Just briefly, your Honor.

17 While I agree with Brother Counsel with
18 regard to this, I think some of the argument's
19 gotten beyond what this motion involved.

20 Counsel for plaintiff got into a lot of the
21 substantive issues that I didn't think were
22 part of the motion for today and in talking
23 about those.

24 The real issue is whether the MDEQ has
25 submitted the entire Record and the DEQ brief

1 they have considered the confirmation that the
2 entire Record has been submitted to this Court.
3 The idea of expanding the Record, I think is
4 inappropriate for the arguments that Brother
5 Counsel made.

6 I think the Court should also be aware
7 that there were other matters pending by the
8 same brief law firm. One is in Federal Court
9 and there's another air pollution case, also.

10 So this is not going to be the be all and
11 end all of their efforts as it relates to this
12 facility. And as this Court is aware, I'm
13 pretty sure the Court is aware, the Severstal
14 facility, too, goes back to the 19 teens, and
15 it's been operating as a steel mill since about
16 1920, 1921. So it's got a long, long history.

17 There have been many, many modifications
18 and changes to it. Also indicated that I sense
19 the under current is that when the Michigan
20 Development Corporation somehow gets in and
21 makes comments with regard to the process of
22 the issuance of the permit, that there's
23 something wrong with that. As indicated, this
24 is one of the largest employers of Wayne
25 county. I think there's about 2000 employees

1 there. Most of them is a unionized work force
2 that's been there since the thirties, your
3 Honor.

4 THE COURT: Well, I appreciate that, but
5 we have to consider the health and welfare of
6 the folks that live in the neighborhood.

7 MR. SCHAEFER: And that's why we have the
8 Michigan Environmental Quality starting in 2006
9 and 2007. And the Department of Environmental
10 Quality thoroughly vetted this for that long
11 period of time. The records submitted to this
12 Court is in excess of 2000 pages of documents.

13 To wrap up, your Honor, Judge, I would
14 also reiterate the case we cited in our brief
15 and that was referenced by Counsel for the
16 administrative agencies, the Michigan
17 Association of Home Builders versus The
18 Director of Department of Labor and Economic
19 Growth. They said, there is no provision in
20 the statute regarding whether the trial Court
21 can expand the Record for purposes of the
22 review at the trial court level or by remanding
23 the matter to the agency. That was a Michigan
24 Supreme Court decision, in June of 2008. That
25 was signed, it was, uhm, uhm, signed off by

1 Justice Taylor, Cavanaugh, Kelly, Corrigan,
2 Young and Markman. And Justice Weaver also
3 agreed with it. So I think we have a process
4 in place. The process was followed, what
5 Counsel for the plaintiff wants to do is change
6 the entire process and say, we want to take
7 over the job of the Department of Environmental
8 Quality rather than let them go do their job.
9 The process is what the process is and the
10 Supreme Court has said, that is the process
11 that we followed. The administrative agency
12 submits the Record. That's the Record. We
13 have other avenues if they want to do it. They
14 have a lawsuit pending in Federal Court before
15 Judge Rosen and we have our lawsuit here in
16 Michigan. So they're going to have plenty of
17 opportunities to put whatever Record they want
18 to put to deal with operation of Severstal's
19 facility. But in this process what we're here
20 for today, is simply should they be allowed to
21 amend and as to what the duly authorized
22 administrative agency has done and certified
23 that they've done is we've given the Court the
24 records as attached as Exhibit One.

25 And as certified by that representative of

1 the Department of Environmental Quality. This
2 is the entire Record. This is what we relied
3 upon. They want to come in and second guess it
4 and make themselves some kind of super
5 administrative agency and I don't think that's
6 appropriate and I don't think that the Michigan
7 Home Builders case allows that process.

8 Thank you, your Honor.

9 THE COURT: There's information here in
10 the file that is not certified in the Record.
11 That suggests that things were considered that
12 are outside of what has been submitted as a
13 Record of this case. That was some of the
14 correspondence back and forth between the MDEC
15 and the MDEC. Well, we met. Thank you
16 forgiving us the extension. Thank you for not
17 denying our application, but what happened at
18 the meetings. I mean, I guess I have a little
19 bit of a problem trying to get, trying to
20 relate this to a bench trial and we talked a
21 little bit about it in chambers.

22 If I'm sitting as the trier of fact in a
23 bench trial, I can't have a litigant sitting
24 there or a lobbyist sitting in my chambers
25 talking to me or blowing in my ear telling me

1 this is what we want to do. Maybe the other
2 side ought to have been in here.

3 MR. SCHAEFER: That's a good point. You
4 asked whether this is like a trial, where you
5 have your day in Court, and you put up or shut
6 up. Or is this a process. The idea behind
7 this process is, to have to seek to have the
8 steel mill operation in compliance with the
9 various air quality.

10 THE COURT: But the process ought to be
11 the entire process. What part did the MDEC
12 play in this? I mean, we've got correspondence
13 saying, yeah, we were talking to these folks.
14 Well what, was the input?

15 MR. SCHAEFER: And there's plenty of
16 information within it. What the plaintiff
17 wants to do is second guess what the
18 administrative agency did and what they're
19 statutorily required to do.

20 THE COURT: They can do that, if it's
21 arbitrary and capricious. If they can show
22 that.

23 MR. SCHAEFER: Well, your Honor, now
24 they're asking this Court to make a decision on
25 arbitrary and capricious based upon an

1 assertion that the Record is arbitrary and
2 capricious. The issue is --

3 THE COURT: Well, I would say it's not
4 complete. In order for me to make a decision
5 whether something is arbitrary and capricious
6 and how they influence and whether they
7 influence the MDEQ to make an about face from a
8 denial to an acceptance within a couple month
9 period of time when you're sitting there with
10 apparently an existing violation that one month
11 before the acceptance of the application or the
12 approval of the application without any support
13 for why we did it. I'm getting interested in
14 this case. It piqued my curiosity.

15 MR. SCHAEFER: I understand that, your
16 Honor. But we do have the transmittal of the
17 administrative records to the Circuit Court by
18 the MDEQ and we have a Home Builders
19 Association case that says, that says what it
20 says.

21 THE COURT: All right. Well, why am I not
22 bound by the Home Builders case?

23 MR. BZDOK: You're not bound by the Home
24 Builders case. Let me try that again.

25 MR. SCHAEFER: Thank you, your Honor.

1 THE COURT: I thought you were done. Are
2 you done?

3 MR. SCHAEFER: I'm all done, your Honor.

4 THE COURT: I know you said you were done
5 before. And then I asked you a question.

6 MR. BZDOK: Home Builders was the Court of
7 Appeals saying the Trial Court did a review of
8 an agency determination and you had the Court
9 of Appeals decision that remanded it to the
10 trial Court to extend the Record, to expand the
11 Record. And the Supreme Court said the Court
12 of Appeals on remand to the trial Court can't
13 expand the Record that was before the agency.
14 Here we're trying to get a complete Record of
15 what went on in the agency. So the Home
16 Builders case is in opposite. Any other
17 questions?

18 THE COURT: I still have some concern
19 about the MDEC notes, especially the notes that
20 aren't in the file. That's still a little
21 troubling.

22 As far as the notice of violations, I
23 think that should be in the Record.

24 MR. BZDOK: Thank you.

25 THE COURT: Because if they weren't

1 considered, for whatever reason, then we ought
2 to know what was there.

3 MR. BZDOK: And that can be.

4 You are being presented with a very rosy
5 picture of what went on. Well, the DEQ, and
6 that MDEC has some interest, so of course they
7 should be at the table.

8 THE COURT: Let me just interrupt you. I
9 guess one of the problems in addressing the
10 decision IS that I don't know anything else
11 about the case. You guys have probably been
12 working with this case a long time so you know
13 all the ins and outs. And so I'm trying to
14 figure out why this is somehow relevant and
15 really what, is there something that's been
16 submitted so far that I can read to kind of
17 enlighten me a little bit on this, on your
18 suggested need for this information to complete
19 a Record?

20 MR. BZDOK: Well, I would point you to our
21 brief in support of this objection as to the
22 Record and motion for completing the Record,
23 that section specifically. I would point out
24 that traditionally, what you have in a review
25 of an agency, other than the contested case is

1 you have an agency. And the agency has
2 documents and files. And the agency may have
3 some dealings directly with the permit
4 applicant or may not and they may have some
5 issues regarding the fairness or impartiality
6 or they may not and you have a public comment
7 period where everybody else finds out about it
8 and everybody else can hustle and try to weigh
9 in the best that they can. This is an
10 extraordinary situation because you had this
11 other entity that was so deeply involved.
12 Should they have been involved? We do not
13 believe they should have been, but they were
14 involved. They were talking to one side,
15 communicating one side's position to the other
16 side. They were doing that in e-mails. They
17 were having those discussions. They were
18 memorializing what was discussed at those
19 meetings. They shouldn't have been there, but
20 they were, and so now --

21 THE COURT: And those are the exhibits
22 that you attached.

23 MR. BZDOK: Those are the exhibits that we
24 attached.

25 THE COURT: I'm going to grant your

1 motions on the violations.

2 MR. BZDOK: Thank you.

3 THE COURT: And the Exhibit Eight, that's
4 in the Record. And the, uhm, I guess I'm not
5 sure about these discussions on extending the
6 120 day period on the statute of limitation.

7 What is it you're asking there.

8 MR. BZDOK: The drafts of the extension
9 agreements and the e-mails.

10 THE COURT: Why do you need all this?
11 You've got the last one.

12 To understand what was Severstal's
13 position on the legal position and what was the
14 DEQ's position.

15 THE COURT: Well, I'm giving you Exhibit
16 Eight. I think that's enough. I don't think
17 we need all those drafts. And I'll take under
18 advisement your, uhm, request of these notes
19 and, uhm, and the MDEC notes, specifically what
20 exhibits are those that you're looking for.

21 MR. BDZOK: We have the list of the
22 documents with the exhibits.

23 Thank you.

24 THE COURT: And the Exhibit Eight, that's
25 in. And, uhm, I guess I'm not sure about these

1 discussions on extending the 120 days period on
2 the effect of the statute of limitations. What
3 is it that you're requesting there?

4 MR. BZDOK: The drafts of the expansion
5 agreement and e-mails.

6 THE COURT: Why do you need all this?

7 MR. BZDOK: To understand what was
8 Severstal's position on the legal issues, what
9 was the DEQ's position on that.

10 THE COURT: Well, I'm giving you Exhibit
11 Eight. I think that's enough. I don't think
12 we need all those drafts.

13 MR. BZDOK: Okay.

14 THE COURT: And I'll take under advisement
15 your request of these notes and, uhm, and the
16 MDEC notes. Specifically what exhibits are
17 those you're looking for?

18 MR. BZDOK: The, uhm, the objections to --
19 the cover document, the cover pleadings which
20 are called objections has the list of the
21 documents with the exhibits. So we are
22 specifically on Exhibits Four through, Four to
23 31.

24 THE COURT: You didn't cut that down.

25 MR. BZDOK: What they've been calling MDEC

1 meeting notes, are the notes of meetings.

2 THE COURT: Okay. I'll take a look at
3 them. I'll try to get something else.

4 MR. GORDON: Your Honor, could I ask for
5 clarification. On the notices of violations,
6 they identified a particular note of violation
7 of April of 2014.

8 Is that the violation?

9 THE COURT: Well, I was going to give him
10 all of them. I don't know how far back we're
11 going.

12 MR. GORDON: Well, they have an Exhibit
13 One that goes back to 2010.

14 THE COURT: That's what I was looking at.
15 So, you can, we'll expand the Record to include
16 those. I don't think you need to go back.

17 MR. BZDOK: I was incorrect in my listing
18 of exhibits. It's four through seven, which we
19 call the gaps in the Record, and they involved
20 the MDEC, and then it is, uhm, uhm, 12 through
21 31.

22 THE COURT: All right.

23 MR. BZDOK: The middle there is Exhibit
24 Eight, which you already allowed, and the
25 extension agreement. Which you've denied.

1 THE COURT: All right. Very good.

2 MR. BZDOK: Thank you, your Honor.

3 MR. GORDON: Your Honor, you'll be issuing
4 an order.

5 THE COURT: Yeah, I'll try to get
6 something out by the end of next week.

7 MR. BZDOK: Thank you very much.

8 MR. GORDON: Thank you, your Honor.

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11 (Record closed)

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STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

I certify that this transcript, consisting of
55 pages, is a true, accurate and correct transcript
of the proceedings and/or testimony held in the
above-entitled cause on Wednesday,
September 10, 2014.

November 18, 2014

(DATE)

Donna K. Sherman

Donna K. Sherman, CSR# 2691
OFFICIAL COURT REPORTER
REGISTERED PROFESSIONAL REPORTER
(313) 967-3321