

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHESAPEAKE BAY FOUNDATION, INC.,
a non-stock corporation, 6 Herndon Avenue,
Annapolis, Anne Arundel County, MD 21403,
BALTIMORE HARBOR WATERKEEPER, INC.,
a non-stock corporation, 4901 Springarden Drive,
Suite 3A, Baltimore City, Baltimore, MD 21209,
JOSEPH M. ANDERSON,
8344 Bear Creek Road, Dundalk,
Baltimore County, MD 21222,
ARTHUR W. and TINA L. COX,
8500 Cove Road, Dundalk,
Baltimore County, MD 21222,
REBECCA R. KOLBERG,
7605 Bay Street, Pasadena
Anne Arundel County, MD 21122,
WILTON F. STRONG,
8350 Bear Creek Drive, Dundalk,
Baltimore County, MD 21222,
and
JERRY N. and CONNIE R. TOMKO,
8216 Northview Road, Dundalk,
Baltimore County, MD 21218

Plaintiffs,

v.

SEVERSTAL SPARROWS POINT, LLC
a/k/a SEVERSTAL NORTH AMERICA
David A. Howard, General Manager,
1430 Sparrows Point Boulevard,
Sparrows Point, MD 21219,

ARCELORMITTAL USA INC.,
1 South Dearborn Street,
19th Floor,
Chicago, IL 60603-2302,

Defendants.

Case No.:

**Plaintiffs Demand
a Trial by Jury**

COMPLAINT

INTRODUCTION

1. The Chesapeake Bay Foundation, Inc. (“CBF”), the Baltimore Harbor Waterkeeper, Inc. (“Waterkeeper”), Joseph M. Anderson, Arthur (“Art”) W. and Tina L. Cox, Rebecca R. Kolberg, Wilton (“Will”) F. Strong, and Jerry N. and Connie R. Tomko, (hereinafter “Plaintiffs”) bring this action pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, *et seq.*; the Clean Water Act (“CWA”), 33 U.S.C. § 1251, *et seq.*; the Maryland Erosion and Sediment Control Regulations, COMAR § 26.17.01.01 *et seq.*; and corresponding laws of Maryland relating to solid and hazardous waste management and water pollution control as set forth in the Environment Article of the Maryland Code against Defendants Severstal Sparrows Point, LLC , a/k/a Severstal North America (“Severstal”) and ArcelorMittal USA Inc. (collectively “the Defendants”), for violations thereof. Plaintiffs seek declaratory and injunctive relief, penalties, and costs of litigation, including attorney fees and expert witness fees. Plaintiffs demand a trial by jury pursuant to Fed. R. Civ. P. 38.

2. As set forth more fully below, the Defendants are present and former owners and operators of the steel manufacturing and related facilities located on and adjacent to North Point Boulevard, Sparrows Point, Maryland, south of Baltimore (the “Sparrows Point Facilities” or the “Site”) where the violations which are the subject of this Complaint took place and continue to take place. They are successor owners and operators to Bethlehem Steel Corporation (“BSC”) the original owner and operator of the Sparrows Point Facilities.

3. The actions and failures to act by the Defendants, in violation of applicable laws, have led to the continued degradation of land, water, and air quality in the region surrounding the Sparrows Point Facilities, and the continued releases of harmful and hazardous substances to nearby waterways including the Patapsco River, Bear Creek, and Old Road Bay, all of which are tidal tributaries of the Chesapeake Bay. This in turn has harmed and continues to harm the area's natural resources and the aesthetic, cultural, economic, educational, health, quality of life, and recreational interests of the citizens of the region, including the Plaintiffs, and will continue to do so unless and until enjoined by this Court.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1355, 42 U.S.C. § 6972(a)(1) and (2) (RCRA) and 33 U.S.C. § 1365(a)(1) and (2) (CWA), and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in Maryland and the Sparrows Point Facilities are located in Maryland. Venue is also proper in this court pursuant to 42 U.S.C. § 6972(a) (RCRA) and 33 U.S.C. § 1365(c) (CWA).

6. On May 29, 2009, Plaintiffs provided written notice of intent to bring this action, as required by RCRA, CWA, and Maryland law to each of the defendants pursuant to the requirements of 33 U.S.C. §§ 1311, 1365(b)(1)(A); 42 U.S.C. §

6972(b)(2)(A); and Md. Code Nat. Res. § 1-505(b). The parties have been unable to resolve the claims stated below.

7. More than the requisite ninety days have passed since the Notice Letter was issued and this action may now go forward.

PARTIES

8. Defendant Severstal Sparrows Point LLC, a/k/a Severstal North America ("Severstal"), is a wholly owned subsidiary of a Russian Corporation, OAO Severstal, and is registered as a LLC in Delaware and is registered to do business in Maryland. Severstal is the current owner and operator of all or most of the Sparrows Point Facilities, which had for many years been owned and operated by BSC. Severstal is an "owner" and "operator" of the Sparrows Point Facilities, a hazardous waste treatment, storage, and disposal facility, within the meaning of 42 U.S.C. § 6925 and 40 C.F.R. § 260.10. Severstal is a "generator" of hazardous waste within the meaning of 40 C.F.R. § 260.10. Severstal is a "person" as defined at 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10 and 33 U.S.C. § 1362(5).

9. On or about May 7, 2008, Severstal acquired the Sparrows Point Facilities and all its assets and liabilities from Defendant ArcelorMittal. In doing so, Severstal became responsible for complying with all environmental laws pertaining to the operation and ownership of the facilities including current and past pollution emanating from the facilities.

10. Defendant ArcelorMittal is headquartered in Luxemburg. Its corporate arm in the United States is ArcelorMittal USA, Inc. with offices at 1 South

Dearborn St., Chicago, Illinois. The corporation is registered in the state of Delaware. ArcelorMittal acquired the Sparrows Point facilities when Arcelor merged with Mittal Steel on or about June 26, 2006. In doing so, ArcelorMittal became responsible for complying with all environmental laws pertaining to the operation and ownership of the facilities including current and past pollution emanating from the facilities. ArcelorMittal was an “owner” and “operator” of the Sparrows Point Facilities, a hazardous waste treatment, storage, and disposal facility, within the meaning of 42 U.S.C. § 6925 and 40 C.F.R. § 260.10 during periods of time when violations alleged herein occurred. ArcelorMittal was a “generator” of hazardous waste within the meaning of 40 C.F.R. § 260.10 during periods of time when violations alleged herein occurred. ArcelorMittal is a “person” as defined at 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10 and 33 U.S.C. § 1362(5).

11. Mittal Steel acquired the Sparrows Point Facilities when it merged with or acquired International Steel Group (ISG) on or about April 5, 2005. In doing so, Mittal Steel became responsible for complying with all environmental laws pertaining to the operation and ownership of the facilities including current and past pollution emanating from the facilities. Upon information and belief, Mittal Steel is no longer a viable entity.

12. ISG Sparrows Point, LLC (“ISG”), acquired the Sparrows Point Facilities from BSC on or about April 30, 2003. ISG is no longer in business.

13. Plaintiff Chesapeake Bay Foundation, Inc. (“CBF”) is a 501(c)(3), non-stock, Maryland corporation with offices in, among other places, Annapolis,

Maryland; Harrisburg, Pennsylvania; Richmond, Virginia; and the District of Columbia. The CBF was founded over 40 years ago and is the largest conservation organization dedicated solely to protecting and restoring the Chesapeake Bay watershed and its tributaries. CBF brings this suit on its own behalf and on behalf of its approximately 235,800 members.

14. The CBF is the only independent organization dedicated solely to protecting and restoring the Bay and its tributary rivers. One of CBF's principal objectives is to improve water quality by reducing the amounts of pollutants discharged to the Bay and its tributaries. CBF operates numerous programs which are designed to protect and restore the quality of the Bay and its tributaries, including the Patapsco River, Bear Creek and other waters adjacent to the Sparrows Point Facilities and, in doing so, seeks to restore and maintain sustainable populations of crabs, fish, and oysters; thriving water-based and agricultural economies; and a clean and healthy ecosystem for our children and grandchildren. CBF's objectives and programs are also designed to reduce or eliminate the harm and threats of harm to human health and the environment caused by discharges of pollutants.

15. The CBF has approximately 170 staff members who work to "Save the Bay" through educational programs throughout the Chesapeake Bay Watershed, publications and information dissemination, and environmental restoration projects. The CBF has approximately 235,800 total members and nearly 12,000 active adult and student volunteers. Approximately 102,200 members of CBF reside in Maryland.

16. The CBF's education program regularly utilizes the waters surrounding the Site to teach ecology and the impact of human activities on the Bay and the Patapsco River. The CBF operates a 47 ft. work boat (the "*Snow Goose*") in the Patapsco River as part of its education program. Almost every school day during seven months of the year, the *Snow Goose* transports approximately 25 students and teachers from Baltimore Harbor down the Patapsco to the Chesapeake Bay. A hand trawl is used to scoop up organisms from the bottom of the river and oysters are dredged from an oyster bar surrounding Ft. Carroll adjacent to the Sparrows Point facility. Many of the oysters on the bar were planted by students with assistance from CBF. The *Snow Goose* is also equipped with a state of the art water quality monitoring device which the students use to test water in the Patapsco River near the Site. The quality of the water and sediment in the Patapsco River are important to CBF's education program.

17. CBF and its members have undertaken oyster restoration activities less than a mile from the Sparrows Point Facilities. CBF has an oyster "gardening" program that teaches members and students how to grow oysters in cages or floats. After about a year of growth, the oysters are returned to CBF. Using CBF equipment, staff transport and plant the oysters on the oyster bar surrounding Ft. Carroll which is located in the Patapsco River across from the Sparrows Point Facilities. Over a nine year period, CBF has planted over 130,000 oysters on the Ft. Carroll oyster bar. Good water quality free of harmful pollutants is important to the success of the oysters.

18. CBF members use the waters surrounding the Site for bird watching, boating, kayaking, sailing, fishing, crabbing, swimming, and other aesthetic and recreational pursuits. CBF and its members are harmed by the discharges of pollution to the air, soil, sediment and water from the Site.

19. The Defendants' failure to comply with RCRA, CWA, the Maryland Erosion and Sediment Control Act, and other relevant statutes and regulations noted herein, and Severstal's continuing discharges of harmful pollutants in violation thereof, harms water quality and natural resources within Bear Creek, the Patapsco River, and the Chesapeake Bay. These actions and violations harm CBF's ability to conduct these education and restoration programs and adversely impact CBF's ability to achieve the goals of the organization, including restoring and protecting the living resources and water quality of the Chesapeake Bay and its tributaries. In addition, these actions and violations adversely impact the aesthetic, economic, educational, recreational, and human health interests of CBF's members.

20. The Baltimore Harbor Waterkeeper ("Waterkeeper") is a non-stock, IRC § 501(c)(3) corporation organized under the laws of Maryland with an office at 4901 Springarden Drive, Baltimore, Maryland. Waterkeeper is a dedicated group of over 100 members whose mission is to protect and restore Baltimore Harbor and the greater Patapsco River and its tributaries through enforcement, fieldwork, and citizen action in order to make the river suitable for recreation, including fishing, crabbing and swimming, to improve public health, and to improve the health of the river ecosystem.

21. Waterkeeper's activities include protecting the rights and interests of residents in the Chesapeake Bay watershed, and in the Baltimore Harbor and Patapsco River and Bear Creek areas in particular, to clean water to swim in and to enjoy recreationally and aesthetically, and healthy fish and shellfish to eat, as well as the economic interests of residents in these natural resources. Since 2006, Waterkeeper has worked to protect and restore the Patapsco River and its tributaries and adjacent waters. Waterkeeper maintains a regular presence on the water, monitors water quality, and works to ensure compliance with environmental laws throughout the watershed as an advocate for the public trust resource that is the Patapsco River.

22. The Defendants' failure to comply with RCRA, the CWA, the Maryland Erosion and Sediment Control Act, and other relevant statutes and regulations noted herein, and Severstal's continuing discharges of harmful pollutants in violation thereof, harms water quality and natural resources within Bear Creek, the Patapsco River and the Chesapeake Bay. These actions and violations harm Waterkeeper's ability to protect the Patapsco River and adjacent waters and adversely impact the ability of Waterkeeper to achieve the goals of the organization. In addition, these actions and violations adversely impact the aesthetic, economic, educational, recreational, and human health interests of Waterkeeper's members.

23. Plaintiff Joseph Anderson is a member of CBF and lives on Bear Creek at 8344 Bear Creek Road, Dundalk, Maryland, 21222. Mr. Anderson has lived in the area all his life and has spent much of his free time on the water

boating and fishing. He owns a boat that he keeps at his dock on Bear Creek. He and his wife regularly use the boat to go fishing in the Patapsco River and the Chesapeake Bay. He used to swim in the creek but is afraid to do so now due to the pollution from the Sparrows Point facility. Mr. Anderson refuses to eat fish from the creek because he believes they have been contaminated by pollutants from the Sparrows Point Facilities. The failure of the Defendants to comply with federal and state environmental law and to address the discharges of pollutants from the facilities has impaired and continues to impair Mr. Anderson's aesthetic and recreational use and enjoyment of Bear Creek and the Patapsco River and presents an imminent and substantial endangerment to his health and the health of his family.

24. Art Cox and his wife Tina are members of CBF and own the Anchor Bay East Marina on Bear Creek, located at 8500 Cove Road in Dundalk, Maryland, just northwest of the Sparrows Point Facilities. The marina employs over thirty individuals who run the full-service marina, waterside restaurant, and ships store. Since 1987, the Cox family has worked to clean up and improve the property and surrounding waters. Their ability to earn a living depends on people coming to the marina for fishing, meals, and supplies relating to recreational and commercial use and enjoyment of the waters adjacent to the Site.

25. Bear Creek, the Patapsco River, and the Chesapeake Bay are important to the Coxes not only because their livelihood depends upon those waters being clean and safe but, because they regularly use these waters for recreation including boating and fishing. The failure of the Defendants to comply

with federal and state environmental laws and to address current and past pollution from the Sparrows Point Facilities has in the past and continues today to impair their aesthetic, commercial, and recreational use and enjoyment of these waters, has had a direct and adverse effect on their business and their ability to earn a living, and presents an imminent and substantial endangerment to their health.

26. Rebecca Kolberg is a member of CBF. She has lived at 7605 Bay Street in Pasadena, Maryland since 1996. Her property backs up to the Patapsco River almost directly across from the Sparrows Point Facilities. Air and water pollution from the Sparrows Point Facilities has come to be located on her property and presents a risk to her health. Pollutants discharged by the Defendants have adversely affected the quality of the water along her beach, and have polluted the beach itself, adversely affecting the value of her property and her ability to enjoy her property and engage in recreational activities in the area of the beach and adjacent waters. The failure of the Defendants to comply with federal and state environmental laws and to address the discharges of pollutants from the facilities has impaired and continues to impair Ms. Kolberg's use and enjoyment of her property and the Patapsco River and presents an imminent and substantial endangerment to her health and the health of her family.

27. Will Strong is a member of CBF and lives at 8350 Bear Creek Drive in Dundalk, Maryland. His property backs up to Bear Creek not far from the Patapsco River. Mr. Strong has lived at this address for over forty years. He has spent most of his life fishing, crabbing, and boating on Bear Creek and the

Patapsco River. He used to throw big crab feasts for family and friends with crabs from the creek but they no longer do that because they are afraid of the water quality due to pollution from the Facilities. Mr. Strong has swum in Bear Creek but is concerned about harm to his health from swimming there and no longer swims in the creek. He and his wife keep a boat on the creek but concerns about pollution from the Facilities impair his enjoyment for boating in the creek. Mr. Strong's biggest concern is the diminution in the value of his property due to pollution from the Facilities. He is upset about pollution in the creek happening in the first place but is even more upset that the pollution has continued. The failure of the Defendants to comply with federal and state environmental laws and to address the discharges of pollutants from the facilities has impaired and continues to impair Mr. Strong's aesthetic and recreational use and enjoyment of Bear Creek and the Patapsco River and his property, and presents an imminent and substantial endangerment to his health and the health of his family.

28. Jerry and Connie Tomko live at 8216 Northview Road, Dundalk, Maryland, adjacent to Bear Creek approximately one quarter of a mile from the Patapsco River and are members of CBF. They keep a boat on the creek for recreation and fishing, and occasionally swim from their pier. The Tomkos used to enjoy eating crabs caught from their pier but have stopped doing that due to fear of pollution from the Sparrows Point Facilities. In addition, they have to routinely wash their boat and house due to soot and dust from the Sparrows Point facility. The failure of the Defendants to comply with federal and state

environmental laws and to address the discharges of pollutants from the Sparrows Point Facilities has impaired and continues to impair Mr. and Mrs. Tomko's aesthetic and recreational use and enjoyment of Bear Creek and the Patapsco River and their property, and presents an imminent and substantial endangerment to their health and the health of their family.

29. The relief sought in this complaint will redress the harms alleged by the individual and organizational plaintiffs and the organizational plaintiffs' members.

STATUTORY AND REGULATORY BACKGROUND

The Resource Conservation and Recovery Act

30. The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, provides a comprehensive regulatory program for generators of hazardous waste and for the management, storage, treatment, and disposal of solid and hazardous waste. The hazardous waste management program is set forth in Subtitle III, RCRA sections 3001-3023, 42 U.S.C. §§ 6921-6939e. EPA's implementing regulations are set forth at 40 C.F.R. Parts 260-282.

31. RCRA Section 3001 and its implementing regulations require that anyone who generates, transports or otherwise manages hazardous waste (typically through treatment, storage or disposal) must determine whether or not the waste is "hazardous" based upon a comparison of the waste to a list of hazardous wastes published by EPA at 40 C.F.R. Part 261, or by applying one of four "waste characteristics" tests. If the waste is hazardous, it must be managed in accordance with the applicable hazardous waste regulations.

32. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requires each person owning or operating a hazardous waste treatment, storage, or disposal facility to have a permit and prohibits the treatment, storage, or disposal of hazardous waste except in accordance with a permit.

33. Pursuant to RCRA, EPA has established comprehensive regulatory standards applicable to generators and transporters of hazardous waste as well as the owners and operators of hazardous waste treatment, storage and disposal facilities (“TSDs”). Both the statute and the regulations prohibit disposal or other management of hazardous waste in a landfill or any other facility which does not have a RCRA permit. Financial responsibility requirements must also be met by the owner and operator of any TSD facility, including posting of a bond, trust fund, letter of credit, or other financial security at least equal to the estimated cost of closure and post-closure care for any land disposal facility. See RCRA sections 3004 and 3005; 40 C.F.R. Parts 264 and 270.

34. A state which establishes a hazardous waste management program with a scope that is equal to or greater than the federal program and whose provisions are at least as stringent may be authorized to implement the RCRA program. See RCRA section 3006 and 40 C.F.R. Part 271. Maryland is authorized by EPA to implement the base RCRA hazardous waste program. Maryland’s hazardous waste laws are set forth in Md. Code Envt. Title 7 and its implementing regulations are found at COMAR §§ 26.13.01 *et seq.* Maryland has incorporated by reference federal RCRA regulations into the Code of Maryland Regulations. COMAR § 26.13.01.05. The state has primary

responsibility for implementing and enforcing compliance with the regulations, but EPA retains concurrent enforcement authority and has primary authority for RCRA corrective action.

35. Where there are releases of hazardous waste or constituents to the environment, an authorized state or EPA may issue an order requiring investigation of any such release and, based on the results of the investigation, appropriate corrective action by the owner or operator to clean up and otherwise remediate the uncontrolled release. In particular, RCRA section 3008 authorizes EPA to issue administrative orders and corrective action orders to owners and/or operators of facilities from which there is or has been a release of hazardous waste into the environment, and impose other sanctions as appropriate. 42 U.S.C. § 6928. See also Md. Code Environment §§ 7-259, 7-262

36. RCRA provides that persons who violate the Act or regulations governed by the Act are liable for a civil penalty in an amount not to exceed \$25,000 for each day of each violation. 42 U.S.C. § 6928(g). This amount has been increased to \$37,500 per day of each violation. 40 C.F.R. § 19.4.

37. Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), provides that any person may commence a civil action against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition or order under RCRA, or whose handling of any solid or hazardous waste may present an imminent and substantial endangerment to health or the environment, and may seek an order compelling compliance, including corrective action where environmental releases of hazardous wastes or constituents have occurred, plus

the imposition of civil penalties and other relief. This complaint alleges that the Defendants have violated RCRA and are subject to a citizens suit.

The Clean Water Act

38. Under the CWA, 33 U.S.C. §§ 1251, *et seq.*, and in particular, section 301(a), 33 U.S.C. § 1311(a), the discharge of any pollutant to the nation's waters by any person is unlawful unless in compliance with a permit. The general permitting section for discharges from industrial or commercial facilities is section 402, 33 U.S.C. § 1342, which establishes the National Pollutant Discharge Elimination System ("NPDES").

39. In addition, under section 311 of the CWA, 33 U.S.C. § 1321, the discharge of oil or hazardous substances to the navigable waters of the United States in greater than "reportable quantities" is unlawful, must be reported, and must be cleaned up at the expense of the owner or operator of the facility or vessel from which there is such a release.

40. Maryland is authorized to issue NPDES permits and has issued NPDES permits for certain discharges from the Sparrows Point Facilities pursuant to the Clean Water Act and corresponding Maryland law. Maryland Environment Article, Title 9, Subtitle III (§ 9-323 and § 9-324); COMAR § 26.08.04.01; COMAR § 26.08.04.07; CWA § 402(b), 33 U.S.C. § 1342(b). MDE and EPA both have statutory authority to enforce compliance with that NPDES permit and to enforce compliance with other requirements of the CWA. MDE has statutory authority to enforce compliance with corresponding Maryland law.

41. Like RCRA, the CWA allows citizens to file suit against any person who is alleged to be in violation of an effluent standard or limitation. 33 U.S.C. § 1365(a)(1).

42. Also like RCRA, the CWA provides for the imposition of penalties and injunctive relief. 33 U.S.C. § 1319. The statutory civil penalty amount has been increased to \$37,500 per day of each violation. 40 C.F.R. § 19.4.

FACTUAL BACKGROUND

The Sparrows Point Facilities and the Chesapeake Bay

43. The Chesapeake Bay is the largest estuary in the United States. The Chesapeake Bay watershed – the land area that contributes water to the Bay – covers 64,000 square miles from Cooperstown, New York to Virginia Beach, Virginia. Portions of the watershed are found in Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia.

44. The Chesapeake Bay and its tributaries are unique recreational, economic, cultural, and aesthetic resources. The Bay is home to numerous species of fish, shellfish and other aquatic animals, as well as birds and wildfowl and other wildlife. Seventeen million people live in the Chesapeake Bay watershed, and as recently as May 12, 2009, the President of the United States had declared the Bay to be a “national treasure.” Executive Order 13508, 74 Fed. Reg. 23099 (May 15, 2009).

45. The Sparrows Point Facilities are located on approximately 2300 acres of land in Sparrows Point, Maryland. The waters adjacent to the Sparrows Point Facilities, including the Patapsco River and Bear Creek, are tidal tributaries

to the Chesapeake Bay. Bear Creek is a tributary to the Patapsco River located just north of the Sparrows Point Facilities. See Exhibit A. Hundreds of people own homes and live along the shores of Bear Creek. Many of those homes have docks in Bear Creek. Some docks have swimming and diving platforms. People keep boats at these docks.

46. The original owner of the Sparrows Point Facilities, BSC, operated on the Site for more than 80 years, making iron and steel and building and demolishing ships. These operations generated hazardous wastes as defined by RCRA. 42 U.S.C. § 6903(5) and (6). Maryland law identifies these wastes as controlled hazardous substances. COMAR §§ 26.13.02.03 and 26.13.02.17; Md. Code Environment § 7-201.

47. As a result of these activities, large quantities of hazardous wastes and controlled hazardous substances were and continue to be disposed of, stored, and treated at numerous locations on the Site and in adjacent waterways. 42 U.S.C. § 6903(3), (33), (34). For example, high concentrations of carcinogens such as benzo(a)pyrene, benzo(a)anthracene, and benzo(b)fluoranthene, PCBs, and toxic metals such as arsenic, chromium, lead, mercury, and zinc have been found in soils and sediment on and off the Site. These pollutants are all classified as RCRA hazardous substances. 40 C.F.R. Part 261.

48. Concentrations of chromium, lead, and zinc exceeding a median effects range (a probable-effects range within which effects to aquatic organisms would frequently occur) have been found at several sites within Bear Creek. Concentrations of cadmium falling between a low effects range and a median

effects range (a probable-effects range within which effects to aquatic organisms would occasionally occur) have also been found in Bear Creek.

49. Naphthalene and benzene have been found in high concentrations under the surface of the site in a location known as the Coke Oven area. Naphthalene and benzene have contaminated groundwater on Coke Point and are flowing into the Patapsco River in concentrations equal to product grade. Naphthalene and benzene are both hazardous wastes and controlled hazardous substances. 40 C.F.R. §§ 261.31 and 261.32.

50. Groundwater beneath the Site is contaminated with high concentrations of toxic metals, petroleum by-products, and solvents. The groundwater flow is toward adjacent waterbodies, contributing toxic pollution to Bear Creek, the Patapsco River, and ultimately the Chesapeake Bay.

51. Historic and ongoing activities at Sparrows Point have resulted in extremely high concentrations of toxic trace metals and petroleum by-products in sediments of water bodies surrounding the Sparrows Point peninsula. These sediments are highly toxic to aquatic life. They also may represent a threat to people who fish and recreate in nearby Bear Creek and the Patapsco River.

52. In the late 1990s, EPA and MDE sued BSC for violations of RCRA, CWA and corresponding state law, which violations included illegal management and disposal of hazardous waste at the Site and uncontrolled releases of such substances to the surface and groundwaters at and adjacent to the Site

53. In 1997, the parties settled the case by executing a Consent Decree which was entered by this court on or about October 8, 1997, in a case entitled

United States of America and State of Maryland, Maryland Department of the Environment v. Bethlehem Steel Corporation, Civ. Action No. JFM-97-558 and - 559. That Consent Decree required BSC and any subsequent owner to correct the violations, perform the necessary studies to fully evaluate the site, and clean up the on and off site pollution, as more fully described below. The violations alleged herein were not resolved by the Consent Decree.

54. Hazardous wastes and controlled hazardous substances generated, disposed of, stored and treated at the Sparrow Point Facilities continue to leave the Site, including, among other things; benzene, naphthalene and other toxic chemicals. This pollution has led to the degradation of the water quality in Bear Creek, the Patapsco River, and Old Road Bay. Poor water quality and the consequential loss of crabs, fish and oysters has directly harmed and continues to harm not only commercial but also recreational fishing and crabbing.

Hazardous Wastes Located On And Off-site

55. Exposure to arsenic via inhalation of dust or fumes can result in gastrointestinal effects (nausea, diarrhea, abdominal pain) and central and peripheral nervous system disorders. Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage in humans. Inorganic arsenic exposure in humans, by the inhalation route, has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin

cancer and also to bladder, liver, and lung cancer. EPA has classified inorganic arsenic as a Group A human carcinogen.

56. Breathing very high levels of benzene can result in death, while high levels can cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Eating or drinking foods containing high levels of benzene can cause vomiting, irritation of the stomach, dizziness, sleepiness, convulsions, rapid heart rate, and death. The major effect of benzene from long-term exposure is on the blood. Benzene causes harmful effects on the bone marrow and can cause a decrease in red blood cells leading to anemia. It can also cause excessive bleeding and can affect the immune system, increasing the chance for infection. Long-term exposure to high levels of benzene in the air can cause leukemia, particularly acute myelogenous leukemia, often referred to as AML. This is a cancer of the blood forming organs. The Department of Health and Human Services (DHHS) has determined that benzene is a known carcinogen. The International Agency for Research on Cancer (IARC) and the EPA have determined that benzene is carcinogenic to humans.

57. There are two forms of chromium in the environment, trivalent chromium (Cr III) and hexavalent chromium (Cr VI). The respiratory tract is the major target organ for chromium (III) and (VI) toxicity for acute (short-term) and chronic (long-term) inhalation exposures. Acute exposure to chromium (VI) can result in shortness of breath, coughing, and wheezing. Chronic exposure can lead to perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted

from chronic exposure. Human studies have clearly established that inhaled chromium (VI) is a human carcinogen, resulting in an increased risk of lung cancer.

58. Exposure to lead may produce encephalopathy, gastrointestinal effects, anemia, kidney damage, electrocardiographic abnormalities and permanent brain damage. Low-level exposure to lead has neuro-behavioral effects, may retard growth in fetuses and children, and may lead to elevation of blood pressure in middle-aged men. Lead accumulates in bone. Lead exposure in humans is commonly via inhalation and ingestion.

59. Exposure to mercury can lead to adverse neurological developmental effects in fetuses, infants, and young children. People are primarily exposed to mercury via inhalation or ingestion by eating fish or shellfish contaminated with mercury. Methylmercury exposure in the womb, which can result from a mother's consumption of fish and shellfish that contain methylmercury, can adversely affect a baby's growing brain and nervous system. Impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills have been seen in children exposed to methylmercury in the womb. In addition to these impairments, symptoms of methylmercury poisoning may include; impairment of the peripheral vision; disturbances in sensations ("pins and needles" feelings, usually in the hands, feet, and around the mouth); lack of coordination of movements; impairment of speech, hearing, walking; and muscle weakness.

60. Exposure to naphthalene can cause hemolytic anemia which leads to fatigue, lack of appetite, restlessness and pale skin. The U.S. Department of

Health and Human Services has concluded that naphthalene is reasonably anticipated to be a human carcinogen.

61. Oral ingestion of large doses of zinc, even for a short time, can cause stomach cramps, nausea, and vomiting. Taken longer, zinc can cause anemia and decrease the levels of your good cholesterol. Rats fed large amounts of zinc became infertile. The impact on human reproduction is unknown. Inhaling large amounts of zinc (as dusts or fumes) can cause a specific short-term disease called metal fume fever. The long-term effects of breathing high levels of zinc are unknown.

On-Site Landfills

62. The Defendants have in the past and Severstal continues to operate the Greys and Coke Point Landfills which are located on the Sparrows Point Facilities. These are unlined landfills in which massive amounts of hazardous wastes and solid wastes have been deposited for more than 80 years.

63. Pursuant to the Consent Decree, BSC developed a landfill compliance plan in July 1998. A closure plan was submitted in April 1999. However, both landfills remain operational and while construction of some perimeter stabilization and stormwater controls has occurred at Greys Landfill, no such work has been performed at the Coke Point Landfill.

64. The Defendants have in the past and, upon information and belief, Severstal continues to place hazardous waste into the landfills.

65. Groundwater flowing from the Site into the Patapsco River from Coke Point contains hazardous wastes generated, treated, stored, or disposed of on the Site by the Defendants.

66. Groundwater flowing from the Site into Bear Creek in the vicinity of Greys Landfill contains hazardous wastes generated, treated, stored, or disposed of on the Site by the Defendants.

67. Operations at the Sparrows Point Facilities discharged hazardous wastes into a ditch that runs across the plant site known as Tin Mill Canal. Rain water flowing off the site also enters the canal. These materials are now discharged through a permitted wastewater treatment facility that discharges into Bear Creek.

68. Those facilities that discharge into Tin Mill Canal include the hot strip mill, the cold sheet mill, the tin mill, and the chrome reduction plant.

69. BSC and all subsequent owners and operators of the Sparrows Point Facility including the Defendants have continuously discharged the following RCRA listed hazardous wastes into Tin Mill Canal; pickling rinse water (D002), electroplating wastes (F006), plating bath slurry (F007), plating bath sludge (F008), and spent pickle liquor (K062). Other hazardous substances and wastes have been found in and along Tin Mill Canal.

70. These hazardous wastes were comingled with other materials in Tin Mill Canal, and metals and organic compounds associated with these discharges of hazardous wastes have been detected in material dredged from the canal.

71. RCRA provides that solid wastes mixed with or derived from listed hazardous wastes or from their treatment or disposal are always hazardous wastes, unless and until delisted by EPA or an authorized state. No such delisting has occurred for these hazardous wastes.

72. Material containing RCRA hazardous waste has been dredged from Tin Mill Canal and placed in Greys Landfill.

73. Pursuant to the Consent Decree, a berm was constructed around the perimeter of Greys Landfill. When the berm was constructed, it covered over the area known as Knobby's Ditch which ran adjacent to the landfill.

74. Prior to being filled in, Knobby's Ditch contained hazardous waste. Moreover, the ditch provided a migration pathway for constituents associated with Greys Landfill to the adjacent Bear Creek.

75. Hazardous waste within Knobby's Ditch was not removed prior to the ditch being in-filled.

76. During the construction of the berm around Greys Landfill material from the landfill stabilization project slumped into Bear Creek. Hazardous waste located within the landfill was discharged into Bear Creek in violation of federal and state law.

77. The Coke Point Landfill is unlined and the Defendants have failed to install stormwater controls at Coke Point.

78. One side of the landfill borders the Patapsco River and there is no retaining wall between the landfill and the river. Hazardous material generated at the Sparrows Point Facilities has been disposed of in the Patapsco River.

79. The Defendants have treated, stored, or disposed of hazardous waste into the landfill without a permit.

CLAIMS

Count I – On and Offsite Pollution From the Site Presents an Imminent and Substantial Endangerment to Human Health and the Environment In Violation of RCRA

80. Paragraphs 1 through 79 are realleged and set forth herein.

81. RCRA hazardous wastes have been found in Bear Creek and the Patapsco River. Those wastes include, among other things, benzene, chromium, lead, polycyclic aromatic hydrocarbons (PAHs), naphthalene, and zinc. These hazardous wastes have been and continue to be discharged into the environment from the Sparrows Point Facilities.

82. Because hazardous wastes have been and continue to be released into the environment they may present an imminent and substantial endangerment to human health in violation of RCRA. 42 U.S.C. § 6973.

83. Because hazardous wastes have been and continue to be released into the environment, they may present an imminent and substantial endangerment to the environment in violation of RCRA. 42 USC § 6973.

Count II - The Defendants Have Operated and Continue to Operate a Treatment, Storage, and Disposal Facility in Violation of RCRA

84. Paragraphs 1 through 83 are realleged and set forth herein.

85. RCRA prohibits the treatment, storage, or disposal of hazardous waste without a permit and requires proper record keeping with respect to such wastes. 42 U.S.C. § 6925; 40 C.F.R. Parts 262, 264 and 265.

86. The Defendants have generated, stored, and disposed of hazardous wastes at the Site without a permit, and defendant Severstal continues to do so.

87. The Defendants have taken hazardous waste initially disposed of in or near Tin Mill Canal and placed them in Greys Landfill without a RCRA permit and without complying with RCRA record keeping requirements and other RCRA requirements for TSD facilities.

88. The Defendants have operated one or more hazardous waste landfills at the Site without the required financial assurance, and defendant Severstal continues to do so.

90. Hazardous wastes in Knobby's Ditch, adjacent to Greys Landfill, have been recently covered over as part of the landfill stabilization project without a RCRA permit and were disposed of improperly.

91. Hazardous wastes have been and continue to be disposed of in the Coke Point Landfill and beyond by Defendants without a permit or proper records being maintained.

92. Hazardous wastes generated, treated, or stored at the Site have been and continue to be disposed of in Bear Creek and the Patapsco River without a permit by the Defendants.

93. Hazardous wastes and contaminants, including but not limited to benzene, chromium, naphthalene and zinc, have been released and continue to be released from the Site, but Defendants have failed and refused to take appropriate corrective action and have failed and refused to implement

preventive and protective measures to eliminate such releases as required by RCRA and its implementing regulations.

**Count III - The Defendants Have Violated
Applicable Maryland Hazardous Waste Laws.**

94. Paragraphs 1 through 93 are set forth and realleged herein.

95. The actions and omissions of the Defendants as described above in paragraphs 80 through 93 constitute violations of applicable laws of the state of Maryland relating to the handling and management of hazardous wastes and substances as set forth in Title 7 of the Maryland Environment Code and its implementing regulations at COMAR 26.13.01 *et seq.*

**Count IV - The Defendants Have Violated
The Clean Water Act Spill and Discharge Requirements.**

96. Paragraphs 1 through 93 are set forth and realleged herein.

97. Section 311(b) of the CWA prohibits the discharge of hazardous substances into the nation's water's or adjoining shorelines. 33 U.S.C. § 1321(b).

98. EPA has identified those substances considered hazardous and which may present an imminent and substantial endangerment to public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines and beaches. 33 U.S.C. § 1321(b)(2); 40 C.F.R. Part 116.4.

99. Hazardous substances so identified by EPA, including, but not limited to, benzene and naphthalene, have been discharged by the Defendants from the Site both into navigable waters of the United States and upon adjoining

shorelines in violation of the CWA in amounts exceeding reportable quantity standards. 40 C.F.R. § 117.3.

100. These discharges of hazardous substances have adversely affected and continue to adversely affect water quality in Bear Creek and the Patapsco River.

101. The discharges of these hazardous substances subject the owner, operator or person in charge of the Site, including Defendants, to civil penalties pursuant to 33 U.S.C. § 1321(b)(7).

102. In addition the Defendants, as owner and operators of the Site at the times of such releases, are obligated to clean up the discharges and mitigate any harm to the public health or welfare caused by such discharges, and are liable for the costs thereof. 33 U.S.C § 1321(c), (e) and (f).

103. In addition, Sections 301(a) and 402(a) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(a), provide that any discharge of pollutants to the navigable waters without a permit is illegal. The Defendants have not had, and do not have, a permit authorizing any of the discharges described above.

**Count V - The Defendants Have Violated Corresponding
Maryland Water Pollution Control Law.**

104. Paragraphs 1 through 103 are set forth and realleged herein.

106. The acts and omissions of Defendants described in Paragraphs 96 through 103 constitute violations of applicable Maryland Water Pollution Control law set forth in Title 9, Subtitle III of the Environment Code and its implementing regulations. COMAR §§ 26.08.01.01 *et seq.* COMAR § 26.08.04.01; COMAR § 26.08.04.07.

**Count VI - The Defendants Have Violated The
Terms Of Their Clean Water Act NPDES Permit.**

107. Paragraphs 1 through 106 are set forth and realleged herein.

108. ISG was issued a major NPDES permit in 1976, Permit No. MD 001201, which allowed certain specified discharges from specified point sources at the Site, subject to specific limitations on quantities and concentrations, and other requirements as set forth therein.

109. A revised permit was issued on March 1, 2001. This permit expired on February 28, 2006, but has been administratively extended. Defendant Severstal, as current owner/operator of the Sparrow Point Facilities, has succeeded to the rights and obligations of that NPDES permit.

110. Based on EPA Environmental Compliance History Online database inquiries, investigation of NPDES Discharge Monitoring Reports, and review of published federal and state data, Defendants have violated and continue to violate their NPDES permit for the Sparrows Point facility.

111. The NPDES permit violations committed by Defendant ArcelorMittal from 2005 through 2008, include but are not limited to:

a) Chlorine concentration violations at discharge point 012 in the 2nd, 3rd, and 4th quarters of 2005, the 1st, 2nd, 3rd, and 4th quarters of 2006, the 1st, 2nd, and 3rd quarters of 2007, and the 1st quarter of 2008;

b) Chlorine concentration violations at discharge point 014 in the 2nd, 3rd, and 4th quarters of 2005, the 1st, 2nd, 3rd, and 4th quarters of 2006, and the 1st, 2nd, and 3rd quarters of 2007;

c) Chlorine concentration violations at discharge point 017 in the 2nd, 3rd, and 4th quarters of 2005, the 1st, 2nd, 3rd, and 4th quarters of 2006, and the 1st, 2nd, and 3rd quarters of 2007;

d) Chromium concentration violations at discharge point 114 in the 4th quarters of 2005 and 2007;

e) Cyanide concentration violations at discharge points 101 and 014 in the 1st, 2nd, 3rd, and 4th quarters of 2006, and 1st, 2nd and 3rd quarters of 2007;

f) pH concentration violations at discharge point 014 in the 3rd and 4th quarters of 2005, 2nd and 3rd quarters of 2006 and the 1st and 4th quarters of 2007;

g) pH concentration violations at discharge point 017 in the 3rd quarter of 2006;

h) pH concentration violations at discharge point 101 in the 3rd quarter of 2005, and the 1st and 3rd quarters of 2007;

i) Phenol quantity violations at discharge point 101 in the 3rd quarters of 2005 and 2006; and,

j) Zinc quantity violations at discharge point 101 in the 2nd and 4th quarters of 2005

112. Severstal has and continues to violate its NPDES permit. Those violations include but are not limited to:

a) pH concentration violations at discharge point 101 in the 2nd quarter of 2008;

b) Phenol quantity violations at discharge point 101 in the 2nd quarter of 2008;

c) pH concentration violation at discharge point 001 in the 2nd quarter of 2009;

d) pH concentration violation at discharge point 012 in the 2nd quarter of 2009;

e) Chlorine concentration violation at discharge point 014 in the 1st quarter of 2010;

f) pH concentration violations at discharge point 014 in the 3rd and 4th quarters of 2009 and the 1st quarter of 2010;

g) Oil and grease concentration violations at discharge point 021 in the 2nd quarter of 2009; and,

h) Phenol concentration violation at discharge point 101 in the 3rd quarter of 2009.

113. Defendants are liable for civil penalties of up to \$37,500 per violation. 33 U.S.C. § 1319; 40 C.F.R. § 19.4.

**Count VII: The Defendants Have Violated Maryland's
Erosion and Sediment Control Laws.**

114. Paragraphs 1 through 113 are set forth and realleged herein.

115. Erosion and sediment controls are required pursuant to the Maryland Environment Code Title 4, Subtitle I and COMAR Title 26.17.01.01 *et seq.*

116. No erosion or sediment control features have been installed along the shoreline of the Sparrows Point facility.

117. Southern portions of the Sparrows Point peninsula shoreline, specifically Coke Point, contain many acres of unstabilized, landfilled slag piles, uncontrolled fill, hazardous waste, and other materials with no containment or barriers to prevent the migration of sediment and stormwater runoff into surrounding waterways.

118. The Defendants have and Severstal continues to discharge stormwater off site via known outfalls and other sources.

119. Sediment and material disposed of on land by the Defendants have in the past and continue to wash into adjoining waterways by surface water runoff in violation of state law.

120. The Defendants have failed to control stormwater and sediment leaving the site, in violation of applicable Maryland law. COMAR §§ 26.17.02, *et seq.*

RELIEF REQUESTED

WHEREFORE, Plaintiffs request the following relief:

1. A ruling from the Court that the Defendants have violated the statutes and regulations identified above.
2. A permanent injunction ordering the Defendants to immediately undertake emergency response actions to stop hazardous wastes from leaving the Sparrows Point Facilities and entering the adjacent waters.
3. A permanent injunction ordering the Defendants to immediately undertake risk assessment in the waters surrounding the site to determine if

hazardous wastes and substances found there present a risk to human health or the environment.

4. A permanent injunction ordering the Defendants to remove and remediate off-site contamination resulting from releases of hazardous wastes and substances from the Sparrows Point Facilities.

5. Impose appropriate civil penalties on the Defendants for their violations of RCRA, the CWA, and corresponding Maryland laws.

6. A permanent injunction ordering Severstal to take immediate action to comply with all erosion and sediment control laws.

7. A permanent injunction ordering the Defendants to take immediate action to stop stormwater from discharging directly into the waters surrounding the Sparrows Point Facilities.

8. Grant Plaintiffs an award of costs and fees for this litigation.

9. Provide such other relief as is necessary and appropriate.

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CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

Exhibit A

Sparrow's Point
Baltimore, Maryland

- Overview/Base
Area's of Interest:
- 1—Grey's Landfill
 - 2—Humphrey's Impoundment
 - 3—Tin Mill Canal
 - 4—Finishing Mills
 - 5—Coke Point Landfill

- Other:
- 1—Neighboring communities
 - 2—Out fall
 - 3—Shipyard
 - 4—Coke Ovens
 - 5—Coke Landfill
 - 6—Piles of Slag