

May 29, 2008

**Certified Mail**

New Steel International Inc  
Attn: Michael Apgar  
6730 Roosevelt Avenue  
Franklin, OH 45005

Re: Scioto County / City of Haverhill/ Green Township  
Grant of Section 401 Water Quality Certification (Minimal Degradation Alternative & application submitted 10/23/2007, and amended on January 2008, and February 7, 2008 and Isolated Level 3 Wetlands Permit)  
Project to construct a steel facility on approximately 800 acres including a steel finishing facility, a slag/scrap staging area, a power transfer station, process water and storm water retention ponds, a cooling facility, material storage areas, a process water intake caisson, fleeting facility, and associated roads and rail lines.  
ACOE Public Notice No. 2006-02257-OHR  
Ohio EPA ID No. 073246 (401) and 073247 (Isolated Level 3)

Ladies and Gentlemen:

The Director of Ohio Environmental Protection Agency hereby authorizes the above referenced project under one or both of the following authorities and is subject to the following modifications and/or conditions:

Section 401 Water Quality Certification

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, the Director of Ohio Environmental Protection Agency hereby certifies that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

Ohio Isolated Wetland Permit

Pursuant to Ohio Revised Code Chapter 6111 and Ohio Administrative Code Chapter 3745-1, and other applicable provisions of state law, the Director of Ohio Environmental Protection Agency hereby concludes that the above-referenced project will comply with the applicable provisions of Sections 6111.03 and 6111.04 of the Ohio Revised Code.

This authorization is specifically limited to a Section 401 Water Quality Certification and/or Ohio Isolated Wetlands Permit with respect to water pollution and does not relieve the applicant of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in Ginat Run watershed (05090103) as authorized by this Section 401 Water Quality Certification/Ohio Isolated Wetlands Permit is necessary. I have made this determination based upon the consideration of all public comments, and including the technical, social, and economic considerations concerning this application and its impact on waters of the state.

**I. ON-SITE WATER RESOURCES AND IMPACTS**

A. Site Setting: 800 acre site, approximately 600 acres of undeveloped agricultural land including 17.88 acres of wetlands and 10,804 feet of stream. Approximately 100 acres is forested  
 HUC (05090103-010-130) Ginat Creek /Run = Warmwater Habitat  
 Ohio River: Warmwater Habitat  
 Ohio River Mile: 643-644  
 Watershed Impairment Status and Causes of Impairment: Per the Ohio EPA 2006 Integrated Report Appendix C, Watershed Assessment Unit (WAU) Summaries, very little data have been collected in this watershed. A survey for this watershed is scheduled for 2009.

B. Streams

| Stream ID    | Type*<br>E, I, or P | QHEI/HHEI<br>Score* | Total<br>Length on<br>Site (lf) | Total<br>Length<br>Impacted<br>(lf) | Impact<br>Type                                | %<br>Avoided |
|--------------|---------------------|---------------------|---------------------------------|-------------------------------------|---|--------------|
| Ohio River** | P                   | 65 (QHEI)           | 5,708                           | 300                                 | Water Intakes, Docking and bank stabilization | 94.7%        |
| Ginat Run    | P                   | 70(QHEI)            | 5,018                           | 0                                   |   | 100%         |
| DD           | E                   | 54(HHEI)            | 78                              | 78                                  | Relocate on-site                              | 0%           |
| Totals       |                     |                     | 10,804                          | 378                                 |   | 96.5%        |

\* As provided by applicant

C. Wetlands

| Wetland ID | Isolated or Jurisdictional | Forested or Non-Forested | Category/ORAM | Total Acreage on Site | Total Acreage Impacted | % Avoided |
|------------|----------------------------|--------------------------|---------------|-----------------------|------------------------|-----------|
| A          | I                          | NF                       | 1/16          | 0.44                  | 0.44                   | 0%        |
| B          | J                          | NF                       | 1/23.5        | 0.49                  | 0.49                   | 0%        |

|        |   |      |        |       |       |        |
|--------|---|------|--------|-------|-------|--------|
| C      | I | NF   | 1/14   | 0.02  | 0.02  | 0%     |
| F      | J | NF   | 1/22.5 | 0.07  | 0.07  | 0%     |
| G      | J | NF   | 1/23   | 0.10  | 0.10  | 0%     |
| H      | I | NF   | 1/26   | 0.21  | 0.21  | 0%     |
| J      | I | F    | 2/40.5 | 1.26  | 1.26  | 0%     |
| J(2)   | I | NF   | 2/34.5 | 0.15  | 0.15  | 0%     |
| K      | J | F    | 3/69.5 | 4.5   | 0     | 100    |
| L      | I | NF   | 2/43   | 0.22  | 0     | 100    |
| M      | I | NF   | 2/32   | 3.09  | 3.09  | 0%     |
| N      | I | NF   | 1/27   | 1.78  | 1.55  | 13%    |
| O      | J | F    | 1/29   | 1.19  | 1.19  | 0%     |
| Q      | I | NF   | 1/17   | 0.19  | 0.19  | 0%     |
| R(1)   | I | F    | 2/53   | 0.14  | 0.02  | 86%    |
| R(2)   | I | NF   | 2/34   | 0.22  | 0.22  | 0%     |
| R(3)   | I | NF   | 2/52.5 | 0.25  | 0.25  | 0%     |
| R(4)   | J | NF   | 2/30.5 | 0.02  | 0.02  | 0%     |
| R(5)   | J | NF   | 2/36.5 | 0.07  | 0.07  | 0%     |
| R(6)   | I | NF   | 2/34   | 0.05  | 0.05  | 0%     |
| R(7)   | I | NF   | 2/34   | 0.05  | 0.05  | 0%     |
| S      | I | NF   | 1/27   | 1.40  | 1.40  | 0%     |
| T(1)   | J | F    | 2/34   | 0.20  | 0.2   | 0%     |
| T(2)*  | I | F    | 2/57   | 0.83  | 0.83  | 0%     |
| T(3)** | J | F    | 1/16.5 | 0.05  | 0.05  | 0%     |
| AA     | J | NF   | 2/45   | 0.24  | 0.24  | 0%     |
| BB     | J | F    | 2/52   | 0.37  | 0.37  | 0%     |
| CC     | I | F/NF | 2/47   | 0.49  | 0.49  | 0%     |
| Totals | - | -    | -      | 17.88 | 13.02 | 27.18% |

## II. GENERAL CONDITIONS

- A. All water resources and their buffers which are to be avoided shall be clearly indicated on site drawings and demarcated in the field with suitable materials, prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
- B. All water resources and their buffers which are to be avoided shall be adequately protected with suitable materials, including silt fencing if appropriate, prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
- C. Best Management Practices (BMPs) shall be utilized throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside of the project area.
- D. Temporary fill shall consist of suitable non-erodible material or shall be stabilized to prevent erosion.
- E. BMPs shall be utilized upon completion of this project, to ensure bank stability. This may include, but is not limited, to bank seeding.
- F. Procedures shall be developed and implemented to eliminate the possibility of spills and to control dust that may enter the waterway by runoff or point discharge.
- G. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project will be reported within 24 hours of occurrence to Ohio EPA for further evaluation.
- H. In temporary impact areas where trees have been removed to facilitate construction, they shall be replaced with appropriate native tree species.
- I. Construction activities at the site shall comply the conditions of Ohio EPA General Construction Storm Water Permit OHC00002 and Storm Water Pollution Prevention Plan. Stormwater basins on the site which have Extended Detention or Permanent Pool water quality features shall meet the design specifications in Ohio EPA Permit OHC000002. Stormwater basins on site which have water quality features ( Forebay, Aquatic Benches and Wetlands, Optimum Flow Length, Reverse Flow Pipe, Optimum Pool Depth, Shading and Buffer Plants, and Runoff Reuse) shall meet the design specifications contained in the Ohio Department of Natural Resources Rainwater and Land Development document, third edition, 2007, or successor document.

- J. Stormwater inspections shall be completed as required in Ohio EPA Permit OHC00002. Specifications for any necessary repairs and removal of sediment deposition shall be developed as needed in the Stormwater Pollution Prevention Plan for the site.
- K. Representatives from the Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of this water quality certification.
- L. In order to protect the Indiana bat from impacts from this development, the applicant shall not cut bat habitat trees between April 1st and September 30<sup>th</sup>.
- M. In the event that there is a conflict between the Section 401 and/or Isolated Wetlands permit application and the conditions within this water quality certification and/or isolated wetlands permit, the condition shall prevail unless Ohio EPA agrees, in writing, that the Section 401 and/or Isolated Wetlands permit application or other provision prevails.
- N. The applicant shall provide electronic maps of the development area and the mitigation area to Ohio EPA 401 section within 30 days of the date of this certification. JPEG, TIFF, PDF or BMP files are acceptable. When sending the electronic files, include the Ohio EPA ID Number and the Army Corps of Engineers Number (if applicable). If possible these electronic maps shall be GIS shape files or Geodatabase files. If this is not possible, the electronic maps shall be in another electronic format readable in GIS (GIF, TIF, etc). The electronic files shall be sent to the following e-mail address: [Mike.Smith@epa.state.oh.us](mailto:Mike.Smith@epa.state.oh.us)  
  
If the files are too large to send by e-mail, a disk containing the electronic files shall be mailed to the following address: Mike Smith, Ohio EPA, Division of Surface Water, PO Box 1049, Columbus, OH 43216-1049.
- O. Dredging operation shall not take place within 3000 foot upcurrent of municipal or industrial water supply intakes
- P. Prior to commencement of dredging operations, dredge operators must notify area water users, municipal and industrial, whose water quality may be affected by the dredge's turbidity plume and its associated contaminants.
- Q. Officials at the City of Portsmouth should be notified before beginning and completion of dredging activities within the Ohio River.

- R. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office at the following address:

Southeast District Office, 2195 Front Street, Logan, Ohio 43138.

### III. MITIGATION

- A. Description of Required Mitigation

1. Streams:

Create 234 linear feet of ephemeral stream channel

2. Wetlands:

- i. Preserve 5.09 acres of Wetlands K, including its' buffers on the project site.
- ii. Purchase 22.79 acres of Category 2 or 3 wetlands mitigation credits at the Red Stone Farm Wetland Mitigation Bank.

3. Riparian Buffers

Plant woody vegetation along at least 300 linear feet of stream located on the project site to offset riparian clearing on the Ohio River.

- B. Timing of Mitigation Requirements

The applicant shall complete the mitigation as proposed in the Section 401 application dated 11/03/2007, and amended on January 2008, and February 7, 2008. The mitigation monitoring period shall commence immediately following completion of mitigation construction and shall continue through a five-year monitoring period, except as provided for in part E, below.

1. Streams

Submit a schedule for the initiation and construction of the on-site stream reconstruction within 30 days from the issuance date of the U.S. Army Corps of Engineers Section 404 permit.

2. Wetlands

- i. For mitigation with a preservation component, within 60 days from the issuance date of the U.S. Army Corps of Engineers Section 404 Permit, the applicant shall submit to Ohio EPA an acceptable, notarized, recorded, and filed Conservation Easement or Environmental Covenant,) held by an organization meeting the requirements of section 5301.68 of the Ohio Revised Code. The Conservation Easement/ Environmental Covenant) shall protect, in perpetuity, Wetland K and its buffers and relocated Steam DD.
- ii. Acquisition of the wetland mitigation credits from the Red Stone Farm wetland mitigation bank shall be completed within 60 days from the effective date of the Section 404 permit issued by the U.S. Army Corps of Engineers.

3. Riparian Buffers

Within 60 days after the issuance of the U.S. Army Corps of Engineers Section 404 permit, submit a plan view showing the location of riparian buffers, species planting list, and details regarding the size of the plantings and planting methods.

**C. Monitoring/Reporting Requirements**

1. General Requirements:

**Monitoring Reports:** Annual reports containing the data listed in the appropriate subsections below shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the first full year following completion of mitigation construction. All subsequent reports shall be submitted by December 31<sup>st</sup> of each of the subsequent monitoring years.

The applicant may include any additional information that it believes relevant for Ohio EPA's consideration.

**As-built Drawings:** At a minimum, the first, third, and fifth year annual reports shall contain current drawings no larger than 11" by 17" of the each of the mitigation streams, wetlands, and lakes.

**Photographs:** A representative observation point shall be selected in each plant community type in distinct mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

Applicant shall take photographs from these points annually for five years. Each color photo point shall be photo documented from the same position and angle during July of each monitoring year.

**3<sup>rd</sup> Year Site Visit:** The applicant shall arrange a mitigation meeting and mitigation site visit with Ohio EPA during the growing season after the third year report has been submitted. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the stream. The applicant is responsible for undertaking any reasonable modifications identified by Ohio EPA.

2. Streams:

**Quality Habitat Evaluation Index (QHEI)/Headwater Habitat Evaluation Index (HHEI)** scores using the most current version of that document available at the time the assessment is performed, shall be completed during years one, three and five.

**Physical Measurements** - A plan view, longitudinal profile along the thalweg, and at least one cross-section through a pool area and another through a riffle area is required for each mitigated stream. Additional cross sections may be required if necessary to accommodate significant variations in slope, entrenchment or other key morphological parameters.

Annual cross section measurement shall include bankfull depth, Bankfull width, cross sectional area, flood prone area width and bank height.

Stream profile information shall be collected once annually over a minimum distance of 30 bankfull widths. The stream profile segment will encompass the two permanent cross sections. Additional profiles may be required where significant differences in stream slope or other morphological parameters vary. Stream profile information shall include thalweg, water surface, and bankfull stage elevations over the measured reach. Lowest bank height elevations will also be collected where those differ significantly from bankfull stage.

Stream pattern measurements will be taken in the profile reach and will consist of meander wavelength, width, and radius of curvature measurements for a minimum of two meander bends.

Plan view measurements shall be those measurements necessary to determine sinuosity, meander length, belt width, radius of curvature, and meander arc length.

Longitudinal profile measurements shall be those measurements necessary to determine average water surface slope, riffle slope, pool slope, and riffle/pool or step/pool sequences.

Cross-sectional measurements shall include those measurements necessary to determine bankfull width, bankfull mean depth, bankfull maximum depth, flood prone area width, entrenchment ratio, and bankfull cross-sectional area.

#### **D. Performance Criteria**

1. Within five (5) years after completion of construction, the on-site mitigation stream shall develop a minimum HHEI of 50.
2. Within five (5) years from the completion of all riparian plantings, replanted areas shall have achieved a survivorship of at least 75 % of native woody riparian species.

#### **E. Contingency Plans**

1. If the mitigation areas are not performing as proposed by the end of the fifth year of post construction monitoring, the monitoring period may be extended and or the applicant may be required to revise the existing mitigation or seek out new or additional mitigation areas.
2. Ohio EPA may reduce or increase the number of years for which monitoring is required to be conducted based on the effectiveness of the mitigation.

### **IV. NOTIFICATIONS TO OHIO EPA**

All notifications, correspondence, and reports regarding this Section 401 Water Quality Certification and/or Isolated Wetlands Permit shall reference the following information:

New Steel International, Inc.  
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Applicant: New Steel International Inc  
Project: Havermill Steel Plant aka MMK Americas  
Ohio EPA ID#: 073246 (401) and 073247 (Isolated)

and shall be sent to:

Ohio EPA, Division of Surface Water, 401 Unit  
Lazarus Government Center  
50 West Town Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

Sincerely,

Chris Korleski  
Director

cc: Desiree Hann, U.S. Army Corps of Engineers, Huntington District  
Kevin Pierard, U.S. EPA, Region 5  
Mary Knapp, U.S. Fish & Wildlife Service  
Brian Mitch, ODNR, Division of Real Estate & Land Management  
Aaron Wolf, Ohio EPA Southeast District Contact  
Dave Snyder, Ohio Historical Preservation Office, 1982 Velma, Columbus, OH 43211  
Tom Harcarik, Ohio EPA, 401 Reviewer  
Mike Smith, Ohio EPA, Mitigation Coordinator