

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF BIG RIVER)
STEEL, LLC)**

**DOCKET NO. 13-006-P
ORDER NO. 10**

ORDER

Pursuant to Arkansas Pollution Control and Ecology Commission Regulation 8.611 and Rule 26 of the Arkansas Rules of Civil Procedure and by agreement of all counsel for all parties hereto:

IT IS HEREBY ORDERED AS FOLLOWS:

1. This Protective Order shall govern the use of all designated non-public, confidential, and commercially and competitively sensitive information and documents, including all copies, excerpts, and summaries thereof, revealed or produced during the course of discovery in this proceeding by any person whether in response to a document request, interrogatory, deposition, subpoena, or otherwise, the disclosure of which in an unprotected manner would likely result in competitive or economic harm (hereinafter referred to as "Discovery Materials"). This Protective Order shall also govern all documents and other Discovery Materials produced during discovery by any non-parties, where either the non-party or a party to this litigation requests the protections provided by this Protective Order, provided that the Discovery Material so designated comports with all requirements of this Order. Nothing in this Protective Order prevents a party from releasing any of its material that it has designated as protected under this Protective Order from the protections of the Protective Order upon reasonable notice to the other party(ies). Further, the parties shall avoid blanket designations of Discovery Materials and will otherwise avoid unnecessarily subjecting Discovery Materials to the limitations of this Order.

2. Documents or information that are in the public domain prior to the date of this Protective Order, or which are placed in the public domain without breach of this Protective Order, shall not be entitled to protection under this Protective Order. In the event a party believes that documents must, by law, be disclosed to the public, the press, or a governmental authority asserting jurisdiction under a reasonable basis over such party and demanding production of such Discovery Materials by compulsory process, that party shall first submit a written notice of intent to produce to the party which produced such materials. The written notice shall reasonably identify the document(s) for which disclosure is sought and set forth with specificity the identity of the entity seeking disclosure. In the event the producing party objects to disclosure, it shall notify the other

party of its objection and, in order to protect the confidentiality of its materials, the producing party shall also have an opportunity to intervene, or otherwise assert an objection, in any proceedings in which disclosure is purportedly required. The burden shall remain on the producing party to object or otherwise take action with regard to the disclosure, and it shall be afforded a reasonable opportunity to do so.

3. In providing Discovery Materials, any person may designate as "Confidential" the whole or any part of any non-public, confidential Discovery Materials that generally include trade secret or other confidential commercial and competitively sensitive information which is not otherwise in the public domain, including but not limited to confidential third party information such as customer data. Discovery Materials that a person wishes to designate as "Confidential" shall be stamped with the legend "Confidential" on each page as to which confidentiality is claimed, or by so stating on the record during a deposition. If a party reasonably believes that a document contains both confidential and non-confidential materials, then the producing party shall make a good faith determination whether to designate only those portions thereof as confidential. If no reasonable determination can be timely made separating the confidential from the non-confidential, then the producing party may designate the entirety of the document as confidential.

4. Except as the Administrative Law Judge ("ALJ") may otherwise expressly direct, Discovery Materials designated as "Confidential" may be disclosed only to (a) the ALJ, including its personnel both within Chambers and the Commission Secretary of the Arkansas Pollution Control and Ecology Commission; (b) named parties in this proceeding and their employees or officers, but only to the extent their access to confidential Discovery Materials is reasonably necessary for purposes of preparation, pre-trial discovery and proceedings, trial, appeal, mediation, settlement, or administration of this litigation; (c) counsel of record for each party and to their partners, associates, paralegal assistants, office clerks, and secretaries working under their supervision; (d) outside experts, retained for consultation or for testimony; (e) witnesses being deposed under protective seal as provided herein; and (f) any actual or prospective witness in this litigation, except that such person may only be shown "Confidential" Discovery Materials during, or in preparation of his or her testimony, and only to the extent reasonably necessary for such preparation or testimony. Prior to disclosure to persons described in clause (d), counsel shall furnish a copy of this Protective Order to them and obtain the written certification of each such person to be

bound by the terms of this Protective Order, which written certification shall be in substantially the form shown on the attached Exhibit "A."

5. A party or producing non-party may further designate "Confidential" Discovery Materials as being for "Attorneys' Eyes Only" if such materials involve business methods or processes, customer information, strategic plans, financial information, propriety technologies, or any information that could otherwise provide a competitive advantage with respect to the party's business operations, policies, and/or practices. All Discovery Materials designated as "Attorneys' Eyes Only" shall be treated as "Confidential," except that the persons identified in paragraphs 4(b), 4(e), and 4(f) shall not be permitted access to it except upon the prior written consent of the designating party or order of the ALJ.

6. A party or producing non-party may further designate "Attorneys' Eyes Only" information as being for "Attorneys' Inspection Only" if such information involves the utmost of competitive and commercially sensitive information. All items designated as "Attorneys' Inspection Only" shall be treated as "Attorneys' Eyes Only" except that the producing party or non-party shall make such materials available for inspection at the offices of the producing party or non-party's counsel (or other agreed-upon location) upon receipt of reasonable advance notice and during normal business hours. Only counsel of record and testifying and designated experts may review items designated as "Attorneys' Inspection Only." No one shall have the opportunity to copy or otherwise remove from the inspection location any Discovery Materials marked "Attorneys' Inspection Only" except the designating party. As necessary, the parties shall work cooperatively and in good faith to allow access to these materials, including periods that may be outside of normal business in the event the party seeking such access would be unduly prejudiced.

7. If a party reasonably believes that a document contains both "Confidential" and non-confidential materials, "Attorneys' Eyes Only" and non-AEO materials, or "Attorneys' Inspection Only" and non-AIO materials, then the producing party shall make a good faith determination whether to designate only those pages or portions warranting protection. If no such determination can be timely made, then the producing party may designate the entirety of the document.

8. A party may object in writing to any "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only" designation at any time within a reasonable time prior to the anticipated use of such document(s). All objections must be served on all counsel of record. Any party may submit a response to the objection within seven (7) days of service of the objection. Said

response must be served on all counsel of record. If the parties cannot resolve the matter among themselves in accordance with local court rules, any party may file appropriate pleadings with the ALJ, and request that the ALJ enter an Order resolving the disputed issues based upon the objections and/or responses. Pending resolution of a dispute concerning the applicability of this Order to a document, the document at issue will be deemed to be protected as designated pursuant to the Protective Order.

9. All Discovery Materials that have been designated as "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only," and all information derived therefrom, such as extracts, summaries, memoranda, and correspondence quoting from such documents, may be used only for the purposes of this action and any appeal(s) therefrom.

10. Any person having knowledge or possession of any "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only" material obtained through discovery in this matter shall not disclose such material, its contents or any portion or summary thereof to any person, except as otherwise permitted by this Protective Order.

11. Upon termination of this proceeding, all copies of "Confidential" or "Attorneys' Eyes Only" Discovery Materials shall be destroyed or returned to the producing party within seventy-five (75) days of the final Commission order terminating this docket. In addition, all extracts, tabulations and compilations containing portions of protected Discovery Materials, and all computerized formats thereof and indices thereto, in any form whatever, shall be destroyed by the party that prepared them within the same time frame. Thereafter, counsel shall certify in writing that the obligations set out in this paragraph have been satisfied. Nothing herein shall require the return or destruction of Discovery Materials not designated as "Confidential" or "Attorneys' Eyes Only" filed with the ADEQ or the Arkansas Pollution Control and Ecology Commission as part of the permitting process and forming a part of the permitting record in accordance with governing law.

12. If "Confidential" or "Attorneys' Eyes Only" Discovery Materials are marked as a deposition exhibit, such exhibit shall be filed under seal. If testimony respecting such Discovery Materials is elicited at a deposition, counsel for any party may request that portion of the transcript be treated in accordance with the appropriate confidentiality designation. The request shall be made contemporaneously at the deposition if possible. However, the designation shall be deemed timely if made at or within the timeframe for the submission of errata by the deponent under the Arkansas

Rules of Civil Procedure without regard to whether the right to read and sign was waived by the deponent. If such a request is made, the portion of the transcript that is designated as "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only," together with any exhibits so designated, shall be so treated and, if requested, filed under seal, if it is filed in the record. The parties agree that for convenience, if any deposition is also recorded by video means and any portion of the testimony is designated as "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only," then the entirety of the video record of the deposition shall be so treated.

13. If "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only" Discovery Materials are filed with the ALJ in connection with a motion or otherwise, they shall be filed under seal unless the ALJ determines that the Discovery Materials shall not be filed under seal.

14. Any "Confidential" or "Attorneys' Eyes Only" Discovery Materials which are designated by any party to be introduced at the hearing in this matter may be offered into evidence unless the person who produced or originally generated the Discovery Materials obtains an appropriate protective order from the ALJ. The person who produced or originally generated such Discovery Materials must be given adequate notice and a sufficient opportunity to seek such a protective order. This notice requirement shall be deemed satisfied if the party who produced or generated such materials is notified in writing by the receiving party at any time up until two weeks prior to the hearing that such materials may be utilized at the hearing of this matter or if such materials are designated as a hearing exhibit in any pre-hearing order or pleading fairly apprising the producing party that the materials will be offered into evidence.


15. Any inadvertent or unintentional disclosure of "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only" Discovery Materials will not be construed as a waiver, in whole or in part, of any party's claims of protection either as to the specific information inadvertently or unintentionally disclosed or as to any other material disclosed prior or after that date. This Protective Order does not in any way deprive any party of its right to contest another party's claims to protection for such information.

16. The execution of the Protective Order shall not in any way detract from the right of a party to object to the production of documents or information on other grounds. Nothing contained in this Order shall: (a) operate as an admission by any party that any particular Discovery Materials are, or are not, either protected as stated herein or admissible in evidence in this action; or (b)

prejudice in any way the right of any party to seek, by way of consent of all parties or by application to the ALJ, (i) to have information not covered by this Order treated as "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only" Discovery Materials within the meaning of this Order; (ii) additional protection for specific Discovery Materials; or (iii) relief from the provisions of this Order with respect to specific items or categories of Discovery Materials.

17. Nothing contained in this Protective Order shall preclude any party from moving at any time for a modification of any provision of this Protective Order. Upon application of a party to deem Discovery Materials to be excluded from this Protective Order, the party producing the Discovery Materials and claiming the protection hereof shall bear the burden of proving that such documents or materials are entitled to protection against disclosure under Arkansas Pollution Control and Ecology Commission Regulation 8.611 and Rule 26 of the Arkansas Rules of Civil Procedure as if this Protective Order had not been entered.

C. Mc Cook, Arkansas this 18th day of Dec., 2013.


JUDGE, ADMINISTRATIVE LAW

Jointly submitted by:

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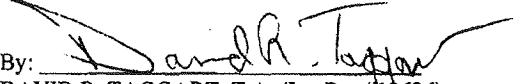
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EXHIBIT A

**CERTIFICATION CONCERNING RESTRICTED
DOCUMENTS OR INFORMATION COVERED BY A PROTECTIVE ORDER**

I, the undersigned, hereby acknowledge that I have read the attached Protective Order in the lawsuit "*In the Matter of Big River Steel, LLC, Permit No. 2305-AOP-R0*" Docket No. 13-006-P, before the Arkansas Pollution Control and Ecology Commission, and I agree to be bound by it. I understand that any documents or information designated "Confidential," "Attorneys' Eyes Only," or "Attorneys' Inspection Only" shall not be disclosed to anyone or used for any purpose except as expressly allowed by the Protective Order or by the subsequent order of the ALJ. I further understand that the use of any such documents or information in any manner contrary to the provisions of the Protective Order may subject me to sanctions of the ALJ for contempt.

Signature

Printed Name

Date

SWORN TO AND SUBSCRIBED

BEFORE ME, THIS ____ DAY

OF _____, 201_.

NOTARY PUBLIC