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DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

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MEMORANDUM
October 29, 2009

To: Robert Sullivan, Charles Corcoran, Rada Chamugathas
From: Allen Haynie
File no:
Copies to: Pacific Steel, Inc.
Subject: Pacific Steel, Inc. - Export of Material to Mexicali Steel Mill

As a result of our last conference call, we have assembled the following information and exhibits that we hope provide you with the additional information you have requested in order to make a determination whether Pacific Steel Inc. ("PSI") can transfer material from its facility located at 1700 Cleveland Avenue in National City ("Site") to a steel mill in Mexicali for use in the manufacturing process of steel. As we have indicated previously, PSI believes that transferring the material to Mexicali will allow it to complete its recycling of the material in a more expeditious fashion rather than continuing the on-site processing that it has been engaged in at the Site for a number of years.

1. Historical Use of the Site and Material Processing Activities

The Site is approximately 9.5 acres in size and consists of land owned by PSI and land PSI leases from the Burlington Northern Santa Fe Railroad ("BNSF"). The boundary of the land leased from BNSF ("BNSF Parcels") is designated as such on the attached Exhibit A. PSI began its scrap metal recovery operations at the Site in 1981, although the Site had been used for similar activities for approximately 30 years prior to that time. PSI initially used equipment to shred automobiles at the Site but sold that equipment in 1992 and ceased shredding automobiles at the Site. The majority of the Site on which the stockpiling of scrap metal occurred did not have any sort of concrete or asphalt base but rather was simply soil.

When PSI sold its shredding equipment, it discovered that it could consolidate its operations onto the property it owned and no longer needed to store scrap metal on the BNSF Parcels. In an effort to avoid unnecessary lease payments to BNSF, PSI began to relocate the then existing scrap metal stockpiles from the BNSF Parcels to the property that it owned. In doing so, PSI discovered that a substantial amount of metal at the bottom of the scrap metal

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stockpiles had been pushed into the soil. Because of its market value, PSI began manually to extract the scrap metal from the soil using a series of screens in approximately 1997. Although it was not difficult to extract the large pieces of metal from the soil through the use of screens, PSI discovered that there were large quantities of smaller pieces of scrap metal in the soil that also were valuable and needed to be recovered. PSI ultimately constructed a piece of custom equipment that was capable of extracting a higher percentage of the scrap metal that had been pushed down into the soil. In 1999, PSI began excavating the soil that contained scrap metal on the BNSF Parcels and processing that soil through the equipment it had constructed. The last phase of the processing involved the extraction of metal fines from the soil through the use of magnets.

In 2002, the California Department of Toxic Substances Control ("DTSC") responded to a complaint from a neighboring property owner concerning dust that he alleged had drifted onto his property. DTSC investigated the Site and PSI's scrap metal recovery operation and ordered PSI to stop using the equipment to processing the excavated soil and scrap metal. Absent such an order by DTSC, the scrap metal recovery operation would have continued. In 2004, DTSC and PSI entered into a Corrective Action Consent Agreement ("CACA") that required PSI to refrain from restarting the processing of the excavated soil and scrap metal until it obtained a permit to operate the equipment from DTSC. In 2006, PSI obtained the permit and began processing the excavated soil again and recovering the scrap metal that had been pushed in to the soil. For the past three years, PSI has been processing the excavated soil and recovering valuable scrap metal. Consistent with the CACA, once PSI has completed the first phase of processing all of the excavated soil, it intended to complete the second phase of processing using magnets to extract the remaining metal fines from the soil. Obviously, if DTSC were to approve of the transfer of the material to Mexicali for use in the manufacturing of steel, there would be no need for further processing of the excavated soil and scrap metal.

To date, PSI has completed the first phase of processing approximately 10,800 tons of excavated soil and scrap metal. Approximately 3,000 tons of excavated soil and scrap metal has yet to be processed using the equipment and approximately 5,250 tons of processed soil and scrap metal still needs to be run through the magnetic recovery process to extract the metal fines. The existing piles on the Site of both processed and unprocessed excavated soil and scrap metal are designated as Piles 1 through 8 on the attached Exhibit A and more detail concerning the origin and condition of each Pile is provided below.

2. Information Concerning the Existing Piles at the Site

a. Pile 1. This pile is approximately 2,000 tons in weight and is comprised of soil and scrap metal that was excavated from the BNSF Parcel. Prior to being placed in Pile 1, the largest pieces of metal were extracted manually and placed on scrap metal piles located at the Site. DTSC sampled Pile 1 in 2002 and the resulting data is attached to this memorandum as Exhibit B. The only time Pile 1 has not been actively processed and scrap metal recovered and sold was during the time DTSC required PSI to stop until it obtained a permit for the processing equipment.

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b. Pile 2. This pile is approximately 5,000 tons in weight and consists of concrete and gravel that has been extracted during the processing of soil and scrap metal from Pile 1. The concrete and gravel ultimately will be used as fill material on the Site.

c. Pile 3. This pile is approximately 5,400 tons in weight and consists of material from Pile 1 that is in an interim processing condition. Unless the material is transferred to Mexicali, the material will be processed through the magnetic recovery system upon the completion of the processing of Pile 1.

d. Piles 4 through 6. These piles are approximately 8,000 tons in weight and consist of material from Pile 1 and are in an interim processing condition like Pile 3. These piles were in existence at the time DTSC inspected the Site and the processing equipment in 2002. The material consists of soil and metal fines and, unless transferred to Mexicali, will be processed through the magnetic recovery system upon the completion of the processing of Pile 1. DTSC sampled Piles 4 through 6 in 2003 and the resulting data is attached to this memorandum as Exhibit C.

e. Pile 7. This pile is approximately 400 tons in weight and consists of soil and scrap metal that was excavated from the BNSF Parcel. As is the case with Pile 1, the largest pieces of metal were manually extracted and placed on scrap metal piles located on the Site. Unless transferred to Mexicali, this pile will be processed through the equipment and magnetic recovery system upon the completion of the processing of Pile 1. Although no sampling was done of this pile, it is assumed to be similar in character to Pile 1.

f. Pile 8. This pile is approximately 100 tons in weight and consists of finished processed soil that was used to test the magnetic recovery process. This soil has not been sampled.

Although each of the piles is in a slightly different state of condition, PSI would like to place all of the soil and scrap metal from Pile 1 and Piles 3-8 into trucks and transfer it to its steel mill in Mexicali rather than continue to process it at the Site. If PSI were allowed to do this, it would be able to complete the excavation of the other areas of the Site and return the Site to productive use within a much accelerated time frame.

3. Unexcavated Areas of the Site

In addition to Piles 1-8 described above, there is an additional area of the Site where PSI knows that additional scrap metal can be recovered from the soil that again is the product of years and years of scrap metal stockpiles being located on soil which resulted in a substantial amount of scrap metal that was located at the bottom of the stockpiles being pushed into the soil. The approximate area of the future excavation is shown on the attached Exhibit A. Although it is difficult to calculate an exact amount of the material that PSI would like to excavate, based on the depth of the prior excavation the best estimate is approximately 13,000 tons of material.

Rather than use the existing process for this unexcavated soil and metal, PSI would like to place the material into trucks and transfer it directly to its steel mill in Mexicali.

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4. Summary of Metals Recovered to Date from Processing of Material

As of August 31, 2009, PSI has processed 10,799 tons of material through the initial phase of processing and recovered the following quantity of metals:

Ferrous Metals	786 tons (7%)
Non-Ferrous Metals	69 tons (1%)
Gravel	4,460 tons (41%)
Trash	248 tons (2%)
Soils and Fines (prior to magnetic process)	5,237 tons (48%)

The ferrous and non-ferrous metals that have been recovered were shipped out along with the other scrap metal bought and sold at the Site. The trash has been transported to Copper Mountain in Arizona as a California hazardous waste. The soils and fines, which are located within Piles 3 through 6, are waiting to be processed by the magnetic recovery system after Piles 1 and 7 have been processed.

In 2008, approximately 122 tons of soil and fines were processed in order to test the magnetic recovery process. As part of that effort, approximately 31 tons of ferrous fines (or 25% of the 122 tons) were recovered and 92 tons (or 75% of the 122 tons) were placed in Pile 8 on the Site. PSI estimates that an additional 6% of ferrous fines remains in the soil in Pile 8 and cannot be extracted by the use of magnets although all of the fines would be recovered if the material were used to manufacture steel at the Mexicali steel mill.

Based on the above data, PSI is confident that approximately 22% of Piles 1 and 7 constitute ferrous metal that could be recovered during the manufacturing of steel at the Mexicali steel mill. PSI also is confident that approximately 30% of Piles 3 through 6 constitutes ferrous metal that could be recovered in Mexicali. Finally, PSI calculates that approximately 35% of the newly excavated soil and metal could be recovered during the manufacturing of steel at the steel mill in Mexicali. This latter percentage is higher than for Piles 1 and 7 because PSI would not be removing the large pieces of steel prior to loading the excavated material into trucks for transport as it did prior to placing excavated material into Piles 1 and 7.

5. Steel Mill Operations in Mexicali

We have previously provided information to you concerning the steel mill in Mexicali that is owned by PSI's parent corporation. We will repeat some of that information now just to make sure that it has not been forgotten, as well as provide you with some additional information that you requested.

PSI's parent company's steel mill is located in Mexicali, Mexico, which is approximately 22 miles south of the California border. The steel mill began operations in 1993 and includes one electric arc furnace utilizing water-cooled sidewalls and roof, a four-strand continuous caster, a walking beam reheating furnace, a SACK rolling mill, a Linde oxygen plant, and a water treatment plant. The steel mill has an annual installed capacity of 430,000 tons of steel billet and an annual capacity of finished product of 250,000 tons. Most of the billet produced at

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the steel mill is used by other steel manufacturing facilities owned by the parent company and located in Guadalajara and Apizaco, Mexico.

There is significant involvement of the same personnel at the PSI facility and the Mexicali steel mill. Fernando Solorzano, who is the President of PSI, also is the Manager of Operations of the Mexicali steel mill. He spends time each week at both of the facilities. In addition, Alejandro Villa is the President of the Mexicali steel mill and on the Board of Directors for PSI.

You asked us to determine if the Mexicali steel mill can use iron ore in addition to scrap metal to manufacture steel products. The personnel at the steel mill have informed us that in the 1990's they used iron ore as a substitute for scrap metal to manufacture steel. They do not use it on a regular basis because typically it costs more than scrap metal, particularly since the Mexicali steel mill is located close to the United States border where large amounts of scrap metal are generated and can be purchased at a reasonable price. In addition, the types of products normally produced at the steel mill do not require the use of the higher quality iron ore. Nevertheless, the Mexicali steel mill has used iron ore in the past and could use iron ore in the future to manufacture steel. In that sense, the Mexicali steel mill does qualify as a primary smelter.

The other positive aspect of the transfer of the material to the Mexicali steel mill is that the dust and slag that would be generated by the use of the material to manufacture steel would be used to produce additional marketable goods, including road base, and none of the material will be sent to a landfill in Mexico.

6. Applicable Regulatory Framework

We have discussed two different statutory frameworks that PSI believes support the allowed transfer of the material to the Mexicali steel mill.

a. California Health & Safety Code Section 25143.2(d)(5) or (6)

You recommend that PSI consider whether California Health & Safety Code Sections 25143.2(d)(5) or (6) might allow for the transport of the material to the Mexicali steel mill. Both Sections 25143.2(d)(5) and (6) provides that a non-RCRA hazardous waste that is managed in accordance with Section 25143.9 and is not excluded by Section 25143.2(e) through (h), is not considered a waste if it is used or reused "as an ingredient in an industrial process to make a product" or is as a "safe and effective substitute for commercial products," provided that the material is not a wastewater, discharges to the air by the allowed treatment of the material do not contain hazardous wastes and comply with air pollution control laws, and any treatment of the material is limited to the procedures specified in Sections 25143(d)(5)(C) or (6)(C).

(1) Non-RCRA Hazardous Waste. Based on sampling that has been done in the past, including one recent sample from Pile 7, PSI does not believe that the material it intends to transfer to Mexicali is a RCRA hazardous waste. Having said that, PSI understands that it will need to perform the necessary tests to confirm that and intends to submit a sampling program to

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DTSC once it has been given approval that the remainder of the regulatory requirements can be satisfied.

(2) Managed in Accordance with Section 25143.9. Section 25143.9 requires that if the material is held in containers or tanks, the containers or tanks must be labeled "Excluded Recyclable Material, the owner or operator of the business location where the material is located must have a business plan that meets the requirements of Section 25504, the material is stored and handled in accordance with all local ordinances and codes, and any material exported to a foreign country must meet the requirements of Section 25162.1.

(a) Containers. None of the material is being held in containers.

(b) Business Plan. PSI currently has a business plan it believes meets the requirements of Section 25504.

(c) Storage and Handling. Inasmuch as the material on the Site is being stored and handled consistent with the requirements of the CACA and a permit for the equipment that was approved by DTSC, PSI believes that it is meeting the storage and handling requirements of all local ordinances and codes.

(d) Export to Foreign Country. Section 25162.1 requires that the person exporting the material to a foreign country (a) notify DTSC in writing four weeks before the initial shipment; and (b) submit a copy of the shipping paper to DTSC within 90 days of each individual shipment. Prior to shipping any material to Mexicali, PSI will notify DTSC four weeks in advance and submit a copy of the shipping paper to DTSC within the 90-day period.

(3) Not Excluded by Section 25143.2(e)¹. Section 25143.2(e) includes a number of subsections, none of which appear to preclude PSI from transferring the material to Mexicali for use in the steel manufacturing process.

(a) RCRA Hazardous Waste Used in a Manner Constituting Disposal. As discussed above, PSI believes testing of the material will confirm that it is not a RCRA hazardous waste.

(b) Non-RCRA Hazardous Waste Used in a Manner Constituting Disposal. None of the material transferred to Mexicali would be disposed of but rather used to manufacture steel and other marketable products. The slag produced in the steel manufacturing process is ground up and sold as road base. The zinc dust also is used to manufacture additional marketable products. As a result, none of the use of the material would involve applying or placing the material on the land in a manner constituting disposal or using the material to

¹ We have not included a discussion of Section 25143.2(f) through (h) because they are not relevant to the question of whether the material at the Site can be transferred to Mexicali. Subsection (f) has to do with responding to requests for information and retaining records, subsection (g) is definitional, and subsection (h) applies to waste oils.

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produce products that are applied to or placed on the land. See Section 25143.2(e)(1); 22 Cal. Code Reg. 66261.2(d)(1).

(c) Burned for Energy Recovery or Used to Produce Fuel. Recycling the material in a steel mill would not involve burning the material for energy or fuel production.

(d) Accumulated Speculatively. This is the issue that you have identified as one of the most critical with respect to transferring the material to the Mexicali steel mill. PSI believes that that factual background concerning the material supports the conclusion that the material it would like to transfer to the Mexicali steel mill was not accumulated speculatively.

Earlier in this letter we outlined the source and history related to the material and how it has been handled on the Site. As you suggested in our most recent conference call, scrap metal typically is not considered a hazardous waste provided that it is not abandoned or discarded. PSI believes that all of the material it is processing on the Site should be viewed as part of an active stockpile of scrap metal that was purchased and then marketed at the Site. But for the fact that the scrap metal stockpiles were located on soil, PSI would not have had to make such a significant effort to recover all of the scrap metal it had purchased and stored on the BNSF Parcels for resale. The material that PSI is extracting from the soil is material it purchased that ended up on the bottom of the scrap metal stockpiles. When PSI relocated the scrap metal stockpiles from the BNSF Parcels to property it owned, it was anxious to transfer all of the scrap metal it had purchased, including the scrap metal that had been pushed down into the soil.

PSI engaged in a scrap metal recovery process for 5 years before DTSC required it to stop and obtain a permit for the equipment and handle the processed soil and scrap metal differently than PSI had in the past. During that entire 5-year period, PSI was recovering the scrap metal that had been pushed into the soil and selling it on the open market or shipping it to the Mexicali steel mill for use in steel manufacturing. No accumulation of excavated soil and scrap metal at the Site occurred until DTSC stopped the processing of the soil and scrap metal and required PSI to operate consistent with the requirements of the CACA. As soon as DTSC allowed PSI to continue with the processing of the soil and scrap metal, PSI once again began to process the material and sell the recovered scrap metal or transfer it to the Mexicali steel mill.

PSI is proposing to accelerate the recovery of the scrap metal and increase the percentage of scrap metal recovered from the material by transporting it directly to the Mexicali steel mill. As a result, Pacific Steel believes that it has not been accumulating any material in a speculative fashion but rather has been actively recycling the material at the Site and such recycling efforts would now simply be shifted to another location.

(e) Determined to be Inherently Wastelike Pursuant to Adopted Regulations. The state regulations define only two categories of inherently waste-like materials: (1) Hazardous Waste Nos. F020, F021, F022, F023, F026 and F028; and (2) certain secondary materials fed to a halogen acid furnace. 22 Cal. Code Reg. § 66261.2(e). Pacific Steel's material does not fall under either of these categories.

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(f) Etchants, Stripping Solutions and Plating Solutions. PSI's material is not a used or spent etchant, stripping solution or plating solution.

(g) Used Oil. PSI's material is not used oil and does not fall under this category.

(4) Used or Reused as an Ingredient in an Industrial Process to Make a Product or as a Safe and Effective Substitute for Commercial Products. The Mexicali steel mill uses scrap metal as a component of the steel manufacturing process. PSI proposes to transport the existing piles on the Site that contain soil and scrap metal and additional material from the Site that has yet to be excavated that also contain soil and scrap metal for use as a substitute for the scrap metal typically used in the steel manufacturing process. Based on the information provided earlier in the letter, which indicates an average of 30% recovery of metal from the material, the Mexicali steel mill anticipates using approximately 3 times the volume of the transported material in place of the traditional scrap metal that it uses as a component of the steel manufacturing process. There will be an increase in the volume of slag and zinc dust resulting from the introduction of the material in place of the more traditional scrap metal, but both of those byproducts also are recycled and used to produce additional marketable products. As a result, PSI believes that the existing Pile 1 and Piles 3-8 and the unexcavated material qualify both as an ingredient in an industrial process to make a product, in this case steel, and as a safe and effective substitute of the commercial product, in this case scrap metal, used at the Mexicali steel mill to manufacture steel.

(5) Not a Wastewater. PSI's material is not a wastewater.

(6) Discharges to the Air. The Mexicali steel mill fully complies with the air pollution control laws of Mexico and there will be no discharges to the air that contain a hazardous waste.

(7) Treatment of the Material. PSI does not propose to treat the material in any fashion but rather simply load it into trucks and transport it to Mexicali. If the treatment limitations in Sections 25143(d)(5)(C) and (6)(C) were considered to apply to the material that already has been excavated and processed to different stages, there still would not be a problem. Sections 25143(d)(5)(C) and (6)(C) allows treatment that includes "filtering, screening, sorting, sieving, grinding, physical or gravity separation without the addition of external heat or any chemicals, ph adjustment, and viscosity adjustment." None of the processing of the soil and scrap metal that PSI has done at the Site violates any of these limitations.

b. California Health & Safety Code Section 25143.2((d)(3)

PSI also believes that California Health & Safety Code Section 25143.2(d)(3) allows for the transport of the material to the Mexicali steel mill as a recyclable material "transported between locations operated by the same person." As indicated above, PSI and the Mexicali steel mill are owned by the same company. Personnel at PSI also work at the Mexicali steel mill, including the President of PSI. As a result, PSI believes that transferring the material from the Site to Mexicali would qualify as a transport between "locations operated by the same

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person.” The additional requirements for this category of an excluded recyclable material are the same as those discussed for Section 251432(d)(6) or (7) above.