

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA

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UNITED STATES OF AMERICA and	)	
the STATE OF INDIANA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No. 22-cv-26
CLEVELAND-CLIFFS BURNS	)	
HARBOR LLC and CLEVELAND-	)	
CLIFFS STEEL LLC,	)	
	)	
Defendants	)	
_____	)	

**MEMORANDUM IN SUPPORT OF GOVERNMENT PLAINTIFFS’  
MOTION TO ENTER CONSENT DECREE**

The United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), and the State of Indiana (“Indiana”), on behalf of the Indiana Department of Environmental Management (“IDEM”) (collectively “Government Plaintiffs” or “Governments”), jointly request that the Court approve, sign, and enter the proposed Consent Decree in this case (Attachment 1 to this Memorandum). If approved, the Consent Decree would resolve alleged violations under several environmental statutes relating to a steel manufacturing and finishing facility in Burns Harbor, Indiana (“Facility”) owned and operated by Cleveland-Cliffs Burns Harbor LLC and its corporate parent Cleveland-Cliffs Steel LLC (collectively, “Cleveland-Cliffs”). *See* Complaint [Dkt. 1]. The proposed Consent Decree would also resolve the claims of the citizen groups Environmental Law & Policy Center (“ELPC”) and Hoosier Environmental Council (“HEC”) (collectively, “Citizen Plaintiffs”) in *Environmental Law & Policy Center and*

*Hoosier Environmental Council v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, Case No. 19-cv-473 (N.D. Ind.).

The proposed Consent Decree would obligate Cleveland-Cliffs to take a number of measures to come into compliance with the law. In particular, the proposed Consent Decree requires the operation of ammonia and cyanide treatment systems; measures to improve pollution control system reliability; specific procedures for preventing violations during emergencies; and public notification in the event of certain exceedances. Defendants are also required to complete two Environmentally-Beneficial Projects, to be administered by the state of Indiana: (1) the donation of 127 acres of land abutting the Indiana Dunes National Park; and (2) a water sampling project to monitor and report on water quality at four locations in the East Branch of the Little Calumet River and Lake Michigan. Finally, under the proposed Consent Decree, Defendants would pay a civil penalty of \$3 million, split evenly between the United States and Indiana, and reimburse the Governments' response costs in responding to an August 2019 spill.

The U.S. Department of Justice gave notice of the proposed settlement in the Federal Register and solicited public comment during a 30-day period that commenced upon publication of the notice. *See* 87 Fed. Reg. 9,386 (Feb. 18, 2022). Only one comment was received. *See* Attachment 3 to this Memorandum (Comment from Town of Ogden Dunes). After lodging the proposed Consent Decree, the parties agreed to make two small edits to the Decree, to correct a technical provision and provide a clarification in an Appendix. Those edits are described in more detail below.

After careful review of the public comment, the United States, after consultation with Indiana, continues to believe that the Consent Decree is fair, reasonable, consistent with the underlying statutes, and in the public interest. Accordingly, the Governments respectfully

request entry of the proposed Consent Decree by this Court. Defendants have agreed to entry of the Consent Decree (CD ¶ 105), and both the Defendants and Citizen Plaintiffs support this motion.

## **I. BACKGROUND**

### **A. The Facility and the Alleged Violations**

As alleged in the Governments' Complaint, the Facility is one of the largest fully integrated steel mills in North America, located in Burns Harbor, Indiana, on Lake Michigan and directly adjacent to Indiana Dunes National Park.<sup>1</sup> Cleveland-Cliffs uses water for a number of steelmaking and pollution-control operations at the Facility. The Facility's National Pollutant Discharge Elimination System ("NPDES") permit, under the Clean Water Act ("CWA"), authorizes it to discharge treated wastewater, stormwater, and non-contact cooling water from the Facility's outfalls pursuant to enumerated conditions.

The NPDES permit authorizes discharge via three external outfalls (Outfalls 001, 002, and 003). The permit also authorizes discharge via two internal outfalls (Outfalls 011 and 111), which carry water from Facility processes or operations and are combined with other waters or waste streams prior to ultimate discharge from an external outfall. Outfall 001, the main Facility outfall, discharges into the East Branch of the Little Calumet River, which flows into Lake Michigan. The flow to Outfall 001 includes treated wastewater from the Facility's wastewater treatment plant and the flow from a storm ditch, which is comprised of non-contact cooling water, storm water, and Lake Michigan water. Outfall 002 discharges to Lake Michigan

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<sup>1</sup> The Burns Harbor Facility was previously owned and operated by ArcelorMittal USA, LLC, and ArcelorMittal Burns Harbor, LLC ("AMBH"), including at the time of the August 2019 spill described below. Cleveland-Cliffs completed a full acquisition of ArcelorMittal USA, LLC, and all its subsidiaries, including AMBH, on December 9, 2020.

(specifically, the Burns Harbor waterbody). The discharge from Outfall 002 consists of noncontact cooling water and stormwater. Outfall 003 discharges to Lake Michigan and consists of backwash from the Facility's lake water pump station's traveling screens.

The Facility has two blast furnaces, C and D, which are used for smelting. Each furnace has a dust catcher and a wet scrubber to remove pollution from the blast furnace gas. Wet scrubbers are air pollution control devices for removing pollutants from industrial exhaust gases. At the Burns Harbor Facility, water is added to the dirty gas stream from the blast furnaces to collect the pollutants. The wet scrubber process generates wastewater that contains pollutants, including cyanide and ammonia. The scrubber wastewater is recycled and reused for the Facility's wet scrubber process through a "closed loop" system in the blast furnace gas water Recycle System.

In August 2019, the Facility (then owned and operated by ArcelorMittal) suffered a number of equipment and operational failures that led to several days of the Recycle System being inoperable. During this time, the Facility switched to using Lake Michigan water directly, without recycling the wastewater, a procedure known as using water on a "once-through" basis. The wet scrubber process requires large volumes of water, so once-through gas cleaning introduces thousands of gallons per minute of Lake Michigan water into the Recycle System, which quickly reaches capacity. When the Recycle System is full of water, the excess water overflows into the sewer system that directs the wastewater to the wastewater treatment plant, which discharges from Outfall 001 to the East Branch of the Little Calumet River and eventually Lake Michigan. Over the course of several days in August, the Facility sent millions of extra gallons of high-ammonia and high-cyanide water to the Outfall, leading to a number of permit violations and a fish kill in the river. This discharge also led the National Park Service and

Indiana to close the public beaches at Ogden Dunes and the Indiana Dunes National Park for seven days.

Upon becoming aware of the August 2019 incident, EPA and IDEM immediately began response actions and an investigation. The Governments also identified other permit violations at the Facility that had occurred since 2015, including violations of discharge limits for 2,3,7,8-tetrachlorodibenzofuran, whole effluent toxicity, temperature, ammonia, and oil and grease.

The Governments' Complaint alleges ten categories of claims under the CWA, the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The CERCLA and EPCRA claims relate to the Facility's failure to report the August 2019 cyanide and ammonia releases to the appropriate entities. The Complaint also seeks recovery of response costs incurred by EPA and IDEM, pursuant to Section 107 of CERCLA and Indiana Code § 13-25-6.

On October 4, 2019, ELPC and HEC sent a 60-day notice of intent to sue Cleveland-Cliffs (formerly ArcelorMittal), and on December 11, 2019, ELPC and HEC filed a complaint under the CWA citizen suit provisions. Case No. 19-cv-473 (N.D. Ind.).

#### **B. The Proposed Consent Decree**

The terms of the proposed Consent Decree were negotiated at arms-length over many months, with substantial give-and-take by experienced environmental lawyers and technical experts representing all parties. EPA and IDEM enforcement staff engaged with the Facility's then-owner ArcelorMittal about compliance issues in fall 2019, and the Governments' formal settlement negotiations with the company began in earnest in spring 2020 and continued while the Citizen Plaintiffs began their litigation with Defendants pursuant to the citizen suit. In 2021, the Governments and Cleveland-Cliffs reached out to the Citizen Plaintiffs to begin discussing

the possibility of an overall settlement that would also resolve the citizen suit case. This extensive negotiation process led to the Consent Decree filed with the Court.

1. Compliance Requirements

The Consent Decree's injunctive relief is designed with three main components for addressing compliance issues at the Facility: (1) ensuring that the Recycle System is reliable and remains in operation, so a catastrophic failure of the System does not happen again; (2) measures for treatment and containment of pollutants, if somehow the Recycle System does fail again; and (3) various other measures for ensuring compliance during normal operations at the Facility.

During the early stages of the Governments' investigation, Defendants (then ArcelorMittal) completed a root cause failure analysis for the August 2019 incident. Cleveland-Cliffs implemented the report's recommended actions prior to the Consent Decree being finalized, and the Decree requires the company to maintain the key equipment and alarms. (CD ¶ 9). The Consent Decree also requires compliance with a Maintenance Plan, covering weekly (or more frequent) inspections of Recycle System instrumentation and mechanical/electrical equipment. If any issues are found, Cleveland-Cliffs is required to carry out corrective action to fix the problems. Taken together, these measures will significantly increase the reliability of the Recycle System. (CD ¶ 10 and Appendix 1).

The Consent Decree also requires Cleveland-Cliffs to treat pollution from its blast furnaces during normal operation of the Recycle System. For cyanide, Cleveland-Cliffs has made upgrades to its existing treatment system, and the Consent Decree requires operation of that system to treat Recycle System wastewater during periods of blast furnace shutdown, startup, and other times when cyanide levels might be higher. (CD ¶ 8.a). For ammonia, Cleveland-Cliffs has already implemented a pilot treatment system that has been effective in

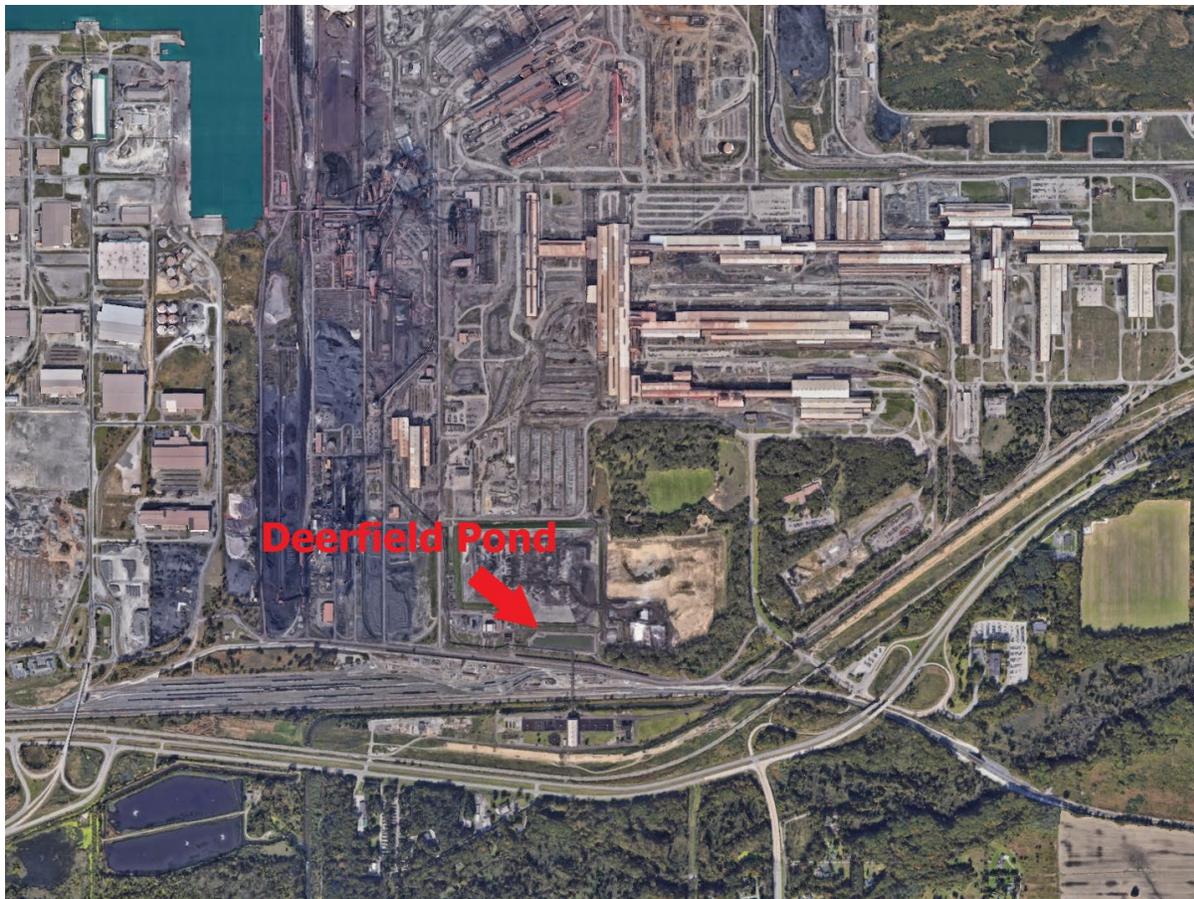
reducing ammonia from the blast furnace wastewater, as confirmed by EPA/IDEM inspections in 2021.<sup>2</sup> The Consent Decree requires operation of this pilot system during summer months until Cleveland-Cliffs designs and installs a permanent ammonia treatment system by May 31, 2025. (CD ¶ 8.b-8.c). The permanent ammonia system will address not only the Recycle System blowdown, but also the Reclamation Services Building wastewater, another significant source of ammonia at the Facility.

Importantly, the Consent Decree includes a number of measures to ensure that Cleveland-Cliffs can maintain CWA compliance during another emergency situation like the August 2019 incident. The Consent Decree requires once-through gas cleaning water to be held temporarily in a retention pond (“Deerfield Pond”), prior to discharge at the outfalls. (CD ¶ 12). Retention of the water in Deerfield Pond will provide the Facility additional time to fix the Recycle System and/or shut down the blast furnaces before sending the highly-polluted water to its outfalls. During any period of once-through gas cleaning and afterward, before Deerfield Pond is drained, the Consent Decree requires Cleveland-Cliffs to conduct additional monitoring/sampling, treat the Deerfield Pond water, and meter it slowly to the outfalls while staying within permit limits. (CD ¶¶ 12.c and 13).

In its comment on the Consent Decree, the Town of Ogden Dunes requested clarification about the location of the retention pond. Deerfield Pond is located on the Facility property, north of the wastewater treatment plant and the storm ditch (see map below).

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<sup>2</sup> EPA’s inspection reports are available at: <https://www.epa.gov/in/cleveland-cliffs-llc-burns-harbor-formerly-arcelormittal-burns-harbor-portage-indiana>.



Various other Consent Decree requirements improve operations and compliance at the Facility. The Consent Decree requires the completion of two outfall cross-contamination investigations, reports to the agencies for review and approval, and corrective action if any issues are found.<sup>3</sup> (CD ¶¶ 15-16). The Consent Decree requires completion of a toxicity reduction evaluation study, in accordance with the permit. (CD ¶ 18). Cleveland-Cliffs must improve its sampling and lab analysis practices, as well as remedy the communication failures and lack of mitigation that occurred during the August 2019 incident. (CD ¶¶ 20-25). Finally, the Consent

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<sup>3</sup> Cleveland-Cliffs submitted these reports to the Governments on January 26, 2022, and the Governments are currently undertaking the review and approval process outlined in the Consent Decree. (CD ¶¶ 37-40).

Decree includes several measures for public notification in the event of exceedances. First, it requires Cleveland-Cliffs to notify a list of entities when the Facility exceeds its cyanide permit limits, including Lake Michigan drinking water entities and several nearby towns. (CD ¶ 27). Cleveland-Cliffs also must comply with the CERCLA and EPCRA reporting requirements and the Indiana Spill Rule, which obligate reporting of certain hazardous spills to surface waters. (CD ¶ 28).

### 2. Environmentally-Beneficial Projects

The Consent Decree includes performance of two state-administered Environmentally-Beneficial Projects (“EBPs”). The first EBP requires Cleveland-Cliffs to donate 127 acres of land “abutting the Indiana Dunes National Park, as identified in Appendix 4 . . . to a qualified land trust organization for permanent conservation protection and for a use that has environmentally beneficial effects on the local community and environment.” (CD ¶ 47.a). Under the second EBP, throughout the summers of 2022 and 2023, Cleveland-Cliffs will perform weekly monitoring and report on ammonia and cyanide levels at two locations in the East Branch of the Little Calumet River and two locations in Lake Michigan. (CD ¶ 48.a-d). The sampling reports will be submitted to IDEM, ELPC, and HEC, and will also be posted online. (CD ¶ 48.e).

### 3. Payment of Response Costs and Civil Penalty

The proposed Consent Decree requires Cleveland-Cliffs to pay a \$3 million civil penalty, to be split evenly between the United States and Indiana. Cleveland-Cliffs will also fully reimburse the Governments’ emergency response costs: \$10,025.37 to the United States and \$37,650 to Indiana.

### **C. Public Comments**

The Town of Ogden Dunes submitted the only public comment on the Consent Decree. While noting that the settlement is “a very comprehensive and well-thought-out Consent Decree,” Ogden Dunes also provided certain recommendations for changes. Those recommendations included longer required periods for treatment systems and water sampling; the addition of Ogden Dunes Water Works Company to the public notification provisions; and additional detail about training and environmental goals. While the Governments appreciate these recommendations, the Town of Ogden Dunes’ comments do not disclose facts or considerations which lead the Governments to believe that the Consent Decree is improper, inappropriate, inadequate, or not in the public interest. This memorandum addresses many of the Town’s comments throughout and explains the Governments’ position that the Consent Decree should be approved and entered by the Court.

As mentioned above, the parties also made two small edits to the Consent Decree that was originally lodged with the Court. First, the parties corrected a technical description in Paragraph 9(a), which memorializes equipment and actions the company has already implemented. Instead of “[f]low restrictors to limit the flow of Lake Michigan water into the BFCWPS to 2,200 gpm,” the correct description is “[f]low restrictors to limit the flow of Lake Michigan water into the hot well and cold well each to 2,200 gpm.” This provision refers to the flow of Lake Michigan “makeup” water that can sometimes be added to the system to maintain hydraulic balance during normal operation. The parties also agreed to a corresponding clarification in Appendix 2 of the Consent Decree (Diversion Procedure Plan) to clarify that this “makeup” water flow would not be a factor during a potential emergency situation when the Recycle System is inoperable. The parties added the following clarifying sentence to Paragraph

3 of Appendix 2: “In addition, if a once-through event occurs, and if makeup water is being supplied through the cold or hot well makeup water lines, CCBH shall shut off that flow of makeup water.” For ease of reference, Attachment 2 to this memorandum is a redlined draft of the Consent Decree, showing these two edits. Attachment 1 to this memorandum is the clean copy of the Consent Decree that we request be signed and entered by the Court.

## II. ARGUMENT

This Court recently explained the standard of review for entering environmental consent decrees like this one:

Approval of a consent decree is a judicial act committed to the sound discretion of the district court. A district court reviews a consent decree to determine whether it is fair, adequate, reasonable, and consistent with applicable law. Of particular importance in that analysis is determining whether a proposed decree adequately protects and is consistent with the public interest.

In analyzing the decree before it, the Court should be aware of the policy favoring approval. Public policy strongly favors voluntary settlement of disputes without litigation. And that policy is particularly strong where a consent decree has been negotiated by the Department of Justice on behalf of a federal agency, like the EPA, which enjoys substantial expertise in the environmental field. But that deference to the Government’s judgment should by no means be a rubber stamp. Instead, the Court must conduct an individual evaluation based on the particular facts of the case but with caution not to substitute its judgment for that of the parties or engage in the type of detailed investigation that would be required if the parties were trying the case.

*United States, et. al., v. U.S. Steel Corp.*, Case No. 2:18-CV-127, 2021 WL 3884852 at \*6 (N.D. Ind. Aug. 30, 2021) (internal citations omitted).

### **A. The Consent Decree is Procedurally and Substantively Fair Because it Requires Defendants to Pay a Substantial Civil Penalty and Implement Significant Pollution Control Measures**

In assessing the “fairness” of a proposed Consent Decree, courts examine whether the decree is both procedurally and substantively fair. *United States v. Davis*, 261 F.3d 1, 23 (1st Cir. 2001); *United States v. BP Expl. & Oil Co.*, 167 F. Supp. 2d 1045, 1051 (N.D. Ind. 2001)

(citing *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 86-87 (1st Cir. 1990)). To determine whether a proposed settlement is procedurally and substantively fair, courts look to factors such as “the strength of plaintiff’s case, the good faith efforts of the negotiators, the opinions of counsel, and the possible risks involved in the litigation if the settlement is not approved.” *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991) (citation omitted).

1. *The Consent Decree is Procedurally Fair*

Generally speaking, courts find procedural fairness where the settlement was negotiated at arms-length among experienced counsel. *In re Tutu Water Wells CERCLA Litig.*, 326 F.3d 201, 207 (3d Cir. 2003). *See also U.S. Steel Corp.*, 2021 WL 3884852 at \*8 (N.D. Ind. Aug. 30, 2021). In this case, the Consent Decree is the result of good faith and contested, arms-length bargaining between the Government Plaintiffs, Defendants, and Citizen Plaintiffs over the course of a number of months, and thus meets the procedural fairness requirement. The Consent Decree reflects intensely-negotiated compromises by all parties. Additionally, all parties – including the Citizen Plaintiffs – were represented by experienced environmental attorneys and even used outside technical experts to assist in crafting the Consent Decree’s injunctive relief. This robust negotiation process demonstrates that the Consent Decree meets the procedural fairness requirement.

2. *The Consent Decree is Substantively Fair Because it Requires Defendants to Pay a Substantial Civil Penalty and Implement Significant Pollution Control Measures to Reduce Cyanide and Ammonia Pollution*

Courts look to a number of factors when evaluating the substantive fairness of a Consent Decree. “Those factors are: 1) a comparison of the strength of the plaintiff’s case with the extent of the settlement offer; 2) the likely complexity, length, and expense of litigation; 3) the amount

of opposition to the settlement among affected parties; 4) the opinion of counsel; and 5) the stage of the proceedings and amount of discovery already undertaken at the time of the settlement.”

*U.S. Steel Corp.*, 2021 WL 3884852 at \*8 (explaining that the first factor is most important); *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982).

In this case, the negotiated compromise reflects the Governments’ and Citizen Plaintiffs’ strong enforcement case, while also acknowledging the risks and costs of litigation. In particular, Defendants are required to pay a substantial civil penalty of \$3 million. In settling on this penalty, the United States and the State considered the statutory penalty factors under the CWA, EPCRA, and CERCLA, including the seriousness of the violations, the economic impact of the penalty on the business, the violator’s history of violations and good faith efforts to comply, and the economic benefit of noncompliance. *See* 33 U.S.C. § 1319(d).

“Civil penalties in environmental cases are not an exact science.” *U.S. Steel Corp.*, 2021 WL 3884852 at \*9. But in this case, the Government Plaintiffs applied EPA’s CWA Settlement Penalty Policy and the EPCRA/CERCLA Enforcement Response Policy, in addition to the CWA statutory penalty factors, in setting a civil penalty amount. While Defendants’ violations were certainly serious and harmful to the environment, Defendants have also made good faith efforts to comply and cooperate with the Governments and Citizen Plaintiffs in reaching a settlement. The Court should find that “the Government Plaintiffs, with their flexibility and expertise on these topics as well as their understandable decision to settle instead of pursue further litigation, [have] sufficiently justified [the civil penalty calculation] and weighted the relative strength of their case in arriving at a substantively fair amount.” *Id.* at 10.

In its public comment, the Town of Ogden Dunes suggests that civil penalties in environmental cases “are simply never high enough to deter future actions and incidents.”

Attachment 3 at p. 2. In this case, the Consent Decree includes not only an appropriate civil penalty but also stipulated penalties for failing to comply with the requirements of the compliance measures of the proposed Decree. Defendants are also required to reimburse the Governments for their costs incurred in responding to the August 2019 ammonia and cyanide incident. The stipulated penalty amounts and response costs reimbursement both “contribute to the [D]ecree’s substantive fairness.” *U.S. Steel Corp.*, 2021 WL 3884852 at \*10.<sup>4</sup>

Finally, the extensive injunctive relief required by the Consent Decree reflects the strength of the case against the Defendants and the substantive fairness of the Decree. Defendants are agreeing to implement new and permanent treatment systems for addressing ammonia and cyanide pollution, vastly increase the reliability of the Facility’s wastewater systems, and respond quickly and effectively to maintain compliance during any future emergency situations.

**B. The Consent Decree is Reasonable, Consistent with the Goals of the Environmental Statutes, and in the Public Interest**

The reasonableness of a consent decree is basically “a question of technical adequacy, primarily concerned with the probable effectiveness of proposed remedial responses.” *Cannons Eng’g*, 899 F.2d at 89-90; *see also Akzo Coatings*, 949 F.2d at 1436. Here, the proposed Consent Decree is reasonable because it includes stringent and detailed requirements related to pollution control, operation and maintenance of the Facility, and monitoring and reporting requirements, which will accomplish the goal of reducing pollution and protecting the environment. *See*

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<sup>4</sup> As the Town of Ogden Dunes notes, the proposed Consent Decree does not cover any potential natural resource damages claims the Governments may have against Defendants under CERCLA. Any potential natural resource damages claims would be addressed through a separate process.

*United States v. Comunidades Unidas Contra La Contaminacion*, 204 F.3d 275, 281 (1st Cir. 2000) (citing *United States v. District of Columbia*, 933 F. Supp. 42, 50-51 (D.D.C. 1996)); *U.S. Steel Corp.*, 2021 WL 3884852 at \*12 (finding the consent decree’s “reasonableness and adequacy . . . clear through its technical requirements”). The Consent Decree also includes provisions mandating training of employees on facility communication and mitigation of environmental impacts. (CD ¶¶ 24-26).

The Consent Decree requires Defendants to operate both a cyanide treatment system and an ammonia treatment system. For ammonia, Defendants must continue to operate a pilot ammonia removal system from June 1 through September 15 of each year. The Facility began operation of the system in 2021, and it has been effective at reducing ammonia concentrations in the blast furnace blowdown. By May 31, 2025, Defendants will be required to implement a new, permanent ammonia removal system, after Government review and approval of the plans. These new pollution control measures will promote compliance and significantly reduce water pollution in the receiving waters.<sup>5</sup>

The Consent Decree is also consistent with the goals of the relevant environmental statutes. The overarching goal of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The revised Consent Decree furthers the objectives of the CWA by requiring Defendants to conduct additional

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<sup>5</sup> The Town of Ogden Dunes suggests that the pilot ammonia treatment system should operate an additional month, starting Memorial Day each year. This additional operation is not necessary under the Consent Decree because the Facility’s NPDES permit limits for ammonia vary by month, and the limits are significantly lower during the summer months. Also, the required permanent system will address not only the Recycle System blowdown, but also the Reclamation Services Building wastewater, another significant source of ammonia at the Facility. Defendants are required to seek approval of an operation and maintenance plan for the new system by November 30, 2024 (CD ¶ 8.c).

sampling, monitoring, maintenance, and pollution reduction that will help prevent future spills and promote overall compliance with the CWA and the Facility’s NPDES permit. In addition to the CWA, the Consent Decree furthers the goals of CERCLA and EPCRA by “ensur[ing that] accurate, reliable information on the presence and release of toxic chemicals is compiled and made available at a reasonably localized level.” *U.S. Steel Corp.*, 2021 WL 3884852 at \*15 (citing *Citizens for a Better Environment v. Steel Co.*, 90 F.3d 1237, 1239 (7th Cir. 1996)).

Defendants are required to report all qualifying releases of hazardous substances to the appropriate governmental emergency planning and response entities, (CD ¶ 28), as well as report cyanide exceedances to additional local entities.

Finally, the proposed Consent Decree is squarely in the public interest. The Decree’s detailed reporting provisions require Defendants to report semi-annually all work performed and progress made towards implementing the requirements of the Decree, any significant problems encountered or anticipated, and all non-compliance with any of the compliance provisions of the Decree. These reports, as well as certain other submissions pursuant to the Consent Decree, will be posted to IDEM’s Virtual Filing Cabinet, available at <https://vfc.idem.in.gov/> and accessible to the public.<sup>6</sup>

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<sup>6</sup> Ogden Dunes provides two comments on the reporting and notification provisions of the Consent Decree. First, it requests that Ogden Dunes Water Works Company be added to the public notification list. That is not necessary because the Town of Ogden Dunes itself is already listed and will receive notice, allowing it to respond accordingly and inform other entities if necessary. Second, the Town requests a copy of the outfall reports required under the Decree. The reports are publicly available via IDEM’s Virtual Filing Cabinet, Document Numbers 83294587, 83294588, and 83294590. All Facility-related documents can be found using NPDES ID Number IN0000175 in the Virtual Filing Cabinet’s search field. EPA has also posted copies of the Consent Decree reports at its website, <https://www.epa.gov/in/cleveland-cliffs-llc-burns-harbor-formerly-arcelormittal-burns-harbor-portage-indiana>.

The public will also benefit from two state-administered Environmentally-Beneficial Projects. The community will directly benefit from the donation of 127 acres of land abutting Indiana Dunes National Park “for permanent conservation protection and for a use that has environmentally beneficial effects on the local community and environment.” (CD ¶ 47.a). And EBP 2, Water Quality Sampling, requires Defendants to sample and report on cyanide and ammonia levels, ensuring that the public, the Citizen Plaintiffs, and the relevant government agencies will be kept informed of important water quality data. (CD ¶ 48). These EBPs, as well as the Consent Decree’s public reporting provisions, are “squarely in the public interest” and support entry of the Decree. *See U.S. Steel Corp.*, 2021 WL 3884852 at \*16.

### III. CONCLUSION

For the foregoing reasons, the proposed Consent Decree is fair, reasonable, consistent with the goals of the environmental statutes, and in the public interest. Therefore, the Governments respectfully request that the Court approve, sign, and enter the proposed Consent Decree.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

s/ Nicholas McDaniel  
NICHOLAS MCDANIEL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Telephone: 202-514-0096  
[Nicholas.A.McDaniel@usdoj.gov](mailto:Nicholas.A.McDaniel@usdoj.gov)

CLIFFORD D. JOHNSON  
United States Attorney

WAYNE T. AULT  
Assistant United States Attorney  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
Telephone: 219-937-5500  
Telecopy: 219-852-2770

FOR THE STATE OF INDIANA:

s/ Meredith McCutcheon  
Meredith McCutcheon  
Attorney No. 32391-49  
Deputy Attorney General  
OFFICE OF THE INDIANA ATTORNEY GENERAL TODD  
ROKITA  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, IN 46204-2770  
Telephone: (317) 233-9357  
Fax: (317) 232-7979  
Email: Meredith.McCutcheon@atg.in.gov

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2022, the foregoing Memorandum in Support of Government Plaintiffs' Motion to Enter Consent Decree was filed electronically and notice of this filing will be automatically sent to counsel of record on the ECF system. A copy of the foregoing Memorandum in Support of Government Plaintiffs' Motion to Enter Consent Decree was also sent by electronic mail to the following counsel:

Counsel for Cleveland-Cliffs:

Byron Taylor  
Sidley Austin LLP  
312-853-4717  
bftaylor@sidley.com

Counsel for ELPC and HEC

Howard Learner  
Executive Director  
Environmental Law & Policy Center  
312-673-6500  
HLearner@elpc.org

s/Nicholas McDaniel  
NICHOLAS MCDANIEL