

EXHIBIT 4

REPRESENTATIVE SAMPLE OF PUBLIC COMMENTS, INCLUDING COMMENTS REFERENCED IN U.S. RESPONSE TO COMMENTS

From: USDC IN/ND case 18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 2 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/6/2018 3:23:29 PM
Subject: 90-5-2-1-06476/2

Re DJ Ref No 90-5-2-1-06476/2

Dear Assistant Attorney General, US DOJ
Washington, D.C.

It is critically important to carefully assess the track record of pollution from US Steel and, most recently, the spills of Hexavalent Chromium into the Burns Harbor Waterway which flows into Lake Michigan. The state and local environmental testing and enforcement appear to fall very short of the needs of such egregious scenarios. Furthermore, the fact that US Steel asked authorities to delay the release of information about polluting Lake Michigan should result in punitive fines. Why has that not been the case?

The permitting of smaller discharges into Lake Michigan seems ill-advised considering the toxic nature of the heavy metal pollution and significant spills, such as the 902 lb. discharge approximately one year ago, should result in larger civil penalties in the Consent Decree. The long-term effects on the environment and public health should be more seriously considered, and US Steel should be held more accountable.

The self-reporting process currently in place is inadequate and should be replaced by independent, outside agency monitoring and testing for violations. Violations and suspected violations should be reported immediately without the 10-day grace period currently allowed. When violations occur, the municipalities which rely on Lake Michigan for drinking water should be immediately notified.

Lastly, the US Steel facility needs to be repaired to prevent further spills of chromium and other toxins into lakes and streams.

Thank you for taking these points into consideration as the Consent Decree is developed and approved.

Julie Peller
[REDACTED]

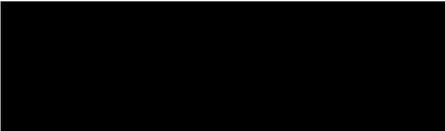
Rosenthal, Arnold

Elizabeth F. R. Gingerich

Attorney At Law

Member, Indiana State Bar Association
Associate Member,
Virginia Bar Association

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ENVIRONMENTAL
PROTECTION
AGENCY
U.S. DEPARTMENT OF JUSTICE



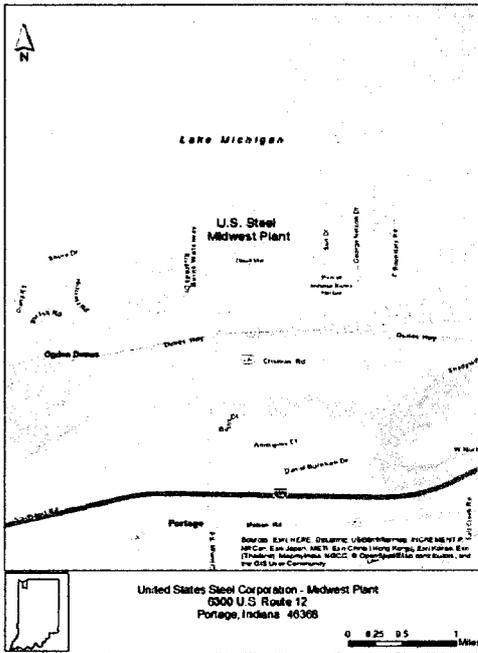
May 29, 2018

Assistant Attorney General
U.S. DOJ Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044- 7611

Re: United States et al v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2

To Whom It May Concern:

The proposed US/IN/USS Consent Decree (retrieved from: <https://www.justice.gov/enrd/consent-decree/file/1047896/download#Lodged%20Consent%20Decree>) in the **United States and State of Indiana v. U. S. Steel Corporation** (DOJ Case Number 90-5-2-1-06476/2), and proposed by the DOJ, EPA, IDEM, NPS, and other interconnective agencies, is nothing short of scurrilous, a potential miscarriage of justice, and contrary to the stated missions of the governmental agencies involved (keeping in mind the sheer timing of this proposed settlement – coincidentally close to the administration’s discussion of foreign steel tariffs).



To recap:

- On April 11, 2017, US Steel (USS) reported a discoloration due to discharge into the Burns Waterway, adjacent to USS’s Midwest Plant. The point of origin is only approximately 500 yards away from Lake Michigan. This was due to its massive leakage of hexavalent chromium (yes, the same highly toxic and carcinogenic substance that PG&E used and was featured in the movie “Erin Brockovich”);
- A total of four local beaches as well as the Indiana American Water public drinking water intake were closed due to this spill and remained closed until April 18, 2017.
- Several government entities brought suit against USS as a result of the spill, asserting violations of the Clean Water Act (CWA), CERCLA, USS NPDES

permits, and other environmental and reporting statutes and regulations.

Consent decree provisions: The remedies to be exacted are all premised on “good faith” and a beginning plan of action to clean-up; remediate the wastewater site; and implement prevention plans and personnel training. Specifically, the settlement paragraphs highlight:

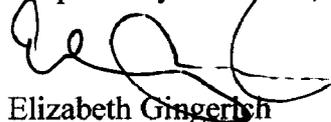
1. **Costs:** The cumulative amount is under \$900,000 and ONLY the reporting costs of the various agencies involved are covered. NO ATTORNEY FEES are being collected and **stipulated remedies/penalties** have been basically mollified under the use of a Force Majeure provision. Where are the **serious criminal charges and fines?**

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90-5-2-1-06476/2

2. **Punitives:** There aren't any – despite the fact of USS's (1) **underreporting** of the amount dumped (“leaked”)¹; (2) the **type of ultra-hazardous material** involved (3) the fact that there was a **second spill** that occurred in October of 2017,² with no reporting or testing conducted by the company; instead, USS asked for state environmental regulators to keep it secret³ according to newly released documents inadvertently, discovered by University of Chicago Law School students; and (4) **fraud** – although not specifically alleged by the relevant government entities, this can be demonstrated by the underreporting itself, the attempted coverup of the second spill; the various statements personally received by employees who knew that management had calculated the initial costs for violating the federal Clean Water Act since 2011, but choose to ignore same.
3. **Transferee Assumption of Liability:** In most environmental cases involving both past and current owners and operators, there is continuing **joint and several liability** that is not nullified once a liable business sells its assets to another entity. This should be made clear.
4. **Negligible Public Protection:** The NPS-Indiana Dunes director's only statement after the spill centered around the fact how fortunate the park was that the spill did not occur when the beaches were open – very little, if at all, outrage was expressed nor care given to those potentially exposed to the deadly hexavalent chromium.
5. **Covenant Not to Sue** by United States, State of Indiana, and USS obfuscates responsibilities. Specifically, “the United States and the State covenant not to sue or to take administrative action pursuant to Section 107 of CERCLA; 42 U.S.C. § 9607; Section 3 of SURPA, 54 U.S.C. § 100723; and IC 13-25-4-8(a)(3), against U. S. Steel for **past response costs as a result of the April 11, 2017 spill...**” I guess this should not be surprising from a government assaulting the environment with impunity via such department heads as Scott Pruitt, Ryan Zinke, and Rick Perry.

With the endemic graft and corruption exhibited by many of those whose duty it is to defend and protect the environment, this proposed Consent Decree represents just another example of inept and dangerous neglect. It should not be entered.

Respectfully submitted,



Elizabeth Gingerich

¹According to the *Chicago Post Tribune*, USS “initially reported that 346 pounds of chromium had poured out of a rusted pipe into the waterway, including 298 pounds of a highly toxic form of the metal known as hexavalent chromium. A month later the company filed another report that estimated substantially more hexavalent chromium ended up in the waterway — 920 pounds — but it dismissed the finding as an “absurd result” from a single water sample.

²As reported by the *Tribune* on December 17, 2017: “U.S. Steel did not monitor for a highly toxic form of chromium after a leak was discovered in late October at its Midwest plant.”

³The 56.7 pounds of chromium released in late October by the company's Midwest Plant was 89 percent higher than its water pollution permit allows over 24 hours, U.S. Steel revealed in a letter sent to the Indiana Department of Environmental Management. A review of online press releases shows neither state officials nor the U.S. Environmental Protection Agency informed the public about the latest miscue at the plant, part of a complex of steel mills that divides the Indiana Dunes National Lakeshore in Portage.

**Assistant Attorney General, U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611**

**RE: Comments on Proposed Consent Decree – United States et al v. United States Steel Corporation, D.J.
Ref. No. 90-5-2-1-06476/2**

June 5, 2018

To Whom It May Concern:

My name is Sue Lynch. I am a resident of Portage, Indiana and have lived in Porter County my entire life. I am currently a Councilperson At Large for the City of Portage, and have been for over 10 years. I am making this comment as a concerned citizen who lives approximately five miles from Lake Michigan. I have grave concerns with the continued impacts on the quality of the water in Lake Michigan and further believe we must do a better job at protecting the water supply for the hundreds of thousands of residents who rely on Lake Michigan for their drinking water. I am in total disagreement with the fines placed on US Steel in the Consent Decree. Once again EPA and IDEM, agencies paid for by the taxpayers, are pandering to the polluter rather than protecting the environment and addressing the many violations this company has incurred. Shame on you!!! A “watered down” Consent Decree will do nothing to prevent these kinds of incidents from happening in the future.

I totally agree with Save the Dunes Council regarding their feeling that additional action needs to be taken to address several items lacking in the Consent Decree. I personally believe that IDEM and EPA are partly responsible as they are woefully lacking in their ability to adequately monitor facilities that handle toxic chemicals. There is also a disconnect in communication between IDEM and EPA that needs to be corrected. These two agencies are taxed with protecting the environment and yet don’t seem to know what the other is doing.

As someone who has been actively involved in environmental issues for many years I believe we must stop the practice of putting profits before the environment. This spill should never have happened. It is because of a lack of adequate staff in monitoring, lack of proper training, failure to install the most current technology, and more focus on profits that resulted in the release of a highly toxic chemical into a water supply. Below are areas I feel the Consent Decree is lacking:

- U.S. Steel should be required to monitor all of their outfalls more frequently (especially where there is potential danger of toxic chemical releases entering the broader environment.) Will the daily sampling of hexavalent chromium continue indefinitely or

simply for a designated period of time? This should be spelled out more clearly in the Consent Decree.

- Notification of any toxic release should be immediately reported to the IDEM and EPA regulatory staff within 24 hours of the release, especially the release of a dangerous toxic chemical like hexavalent chromium. What use was EPCRA to the surrounding communities if the release was not reported in a timely fashion, which would have allowed them to take measures to protect their drinking water supply?
- Reports on exceedances, spills or problems to IDEM and EPA two times a year (March and Sept.) are not acceptable. Reports should be done quarterly, if not more frequently.
- U.S. Steel's equipment should be required to be tested, and replaced when showing wear, especially where there are seams and joints, no less than every six months. This should be mandatory where any toxic chemicals come into contact with this equipment. Inspections should be done by outside contractors.
- All U.S. Steel employees should be required to undergo continuous training, especially when they are working with any type of toxic materials. Proof of these training events needs to be submitted to IDEM and EPA within ten days of the training, to include date, time, type of training, where and a complete list of who attended the training. This should be a requirement of the Consent Decree.
- Policy and Procedures should continually be updated to reflect the current status of what is happening at the facility, especially where toxic chemicals are handled. Proof of these updates should be immediately provided to IDEM and EPA whenever there are any changes.
- The fines suggested in the Consent Decree do not fit the crime. If U.S. Steel's allowable limit is ½ lb. of hexavalent chromium a day and they released 902 lbs. this is substantially more than allowed and should result in significantly higher fines. The Clean Water Act policy obviously did not dictate what the true cost of the fines should be, rather they amounted to nothing more than a "slap on the wrist". The fines in the Consent Decree are unacceptable and should reflect with the Clean Water Act policies and fines associated with violations of their NPDES Permit.
- The Consent Decree does not address sampling/testing of beach sand, all aquatic life, or natural resources in and around the Burns Waterway and near the immediate spill area that could have been impacted by the hexavalent chromium spill. Any and all

restoration to the broader environment must be included in the Consent Decree and should be paid for by U.S. Steel.

- I have major concerns with “self-reporting”. An outside contractor should be conducting testing. IDEM and/or EPA should do periodic, spontaneous testing to make sure the numbers being reported are true and accurate? Testing costs should be paid by U.S. Steel.
- It is my understanding the hexavalent chromium was released from a seam malfunction in the pipe sending the contamination into a containment area that failed as well. Has the containment area been thoroughly decontaminated? I am not sure this area was even considered in the Consent Decree, if it was not it must be included in the clean-up.
- Parties such as the Town of Ogden Dunes and Save the Dunes Council were never a consideration when figuring the cost of penalties to be assessed. They should be allowed to submit costs associated to them as a result of the spill.

Thank you for allowing me the opportunity to present my comments regarding the proposed Consent Decree between the United States et al v. United States Steel Corporation.

Sue Lynch



Cc:

Save the Dunes Council

USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 9 of 259
Carol Fletcher [REDACTED] sent you a Personal Message automatically from knowwho.com
From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 9 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/10/2018 1:51:54 PM
Subject: Comment re United States et al v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2

Dear Environment and Natural Resources Division,

Dear Assistant Attorney General, Environment and Natural Resources Division,

I write to object to the proposed consent decree in this case and to express my concern over the adverse impacts to the health and well-being of residents and recreationalists in the vicinity of the U. S. Steel Portage facility caused by the company's egregious and repeated Clean Water Act violations. It is of critical importance that the proposed Consent Decree in United States et al v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2 be robust and stringent, ensuring U. S. Steel will once and for all stop its ongoing pattern of water quality violations.

Accordingly, the financial penalty must be significantly larger to be sufficient to punish U. S. Steel and ensure it complies in the future. As is, the proposed Consent Decree fails in this respect. The financial penalty does not reflect the seriousness of the violations at issue, where years of putting profits ahead of safety and the environment lead to a massive spill of carcinogenic chemicals into one of the world's most important bodies of freshwater. U. S. Steel should also invest part of a significantly larger penalty amount into a project or projects that benefit the local environment.

Additionally, the technical aspects of what U. S. Steel is obligated to do must be clearly and transparently spelled out and force the company to go beyond what it should have already been doing to comply with its permits and the laws. As is, too many of the crucial technical details are hidden from public view or delayed until plans are finalized later.

Finally, the U.S. EPA and Indiana Department of Environmental Management must commit to improving their oversight by, for example, conducting regular, comprehensive inspections.

Thank you for addressing these concerns and protecting the health of Lake Michigan and the people who live and recreate in the area.

Sincerely,

Carol Fletcher
[REDACTED]

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 10 of 259

To: ENRD, PUBCOMMENT-EES (ENRD)

Sent: 5/28/2018 12:00:25 PM

Subject: Comment regarding U.S. and the State of Indiana v. United States Steel Corporation

I'm am writing to comment on the case against U.S. Steel regarding their dumping of toxic waste into our public waterways and Lake Michigan in Portage Indiana. I believe that fining the corporation is not sufficient. The end goal is protecting our water and the public commons. A fine alone does not do that. Furthermore, I believe that US Steel cannot be trusted to do the testing of what they are dumping themselves. If anything, a third party should do that testing. However, I think the testing is wrong to begin with. I believe that US Steel should be stopped from dumping toxic waste into Burns Waterway and Lake Michigan altogether. It is against the Clean Water Act. However, they were given a permit to do the dumping. I think that the permit should be revoked. Hexavalent Chromium is known to be toxic and cause cancer. They should not be allowed to dump any amount of it into our public waters. The pipe that dumps into Burns Waterway should be shut off completely. I have heard that they used to put the waste into containers and it was shipped to be reclaimed. They should go back to doing that. Also, I think that instead of a fine, a deal should be worked out so that every time US Steel is found in violation of the Clean Water Act or Clean Air Act in the future, they should have to give up some of their land and turn it into National Lakeshore. Every time they car are caught dumping, they should have to give up 10 acres, starting on the lake font just east of Burns Waterway and move east. Also, maybe they should have to pay the health care expenses of anyone who gets cancer who is an American Water customer. American Water's water intake is nearby. It seems extremely stupid to me to allow a corporation to dump cancer causing toxic waste when you have the water intake for people's drinking water nearby. Also, I would like to state that I think that allowing them to dump the toxic waste, even if it's only a half-pound a day, is wrong. It will accumulate over time. This corporation shouldn't be allowed to push their costs onto the public and put the public's health at risk, as well as ruin the environment. They should have to dispose of the waste in a proper manner. And that manner does not include dumping it into our most valuable resource, Lake Michigan. Ask yourself, how long can you live without water? We are blessed that we have access to a large amount of fresh water. We should not take that for granted and spoil it. There are many places in the world that do not have access to clean water. Even here in the United States there are people who have to live off bottled water because their water supply was corrupted. This has happened in West Virginia and other places. In summary, I think the small fine being levied against US Steel is totally insufficient. It is also totally insufficient that they would be required and trusted to do their own monitoring for a short period of time. They have proven that they cannot be trusted. They have already had a violation since then. Also, the fact that they let their equipment fall into such disrepair is an indication that they cannot be trusted. This didn't happen overnight. This is an issue that has existed for many years. It needs to come to a stop. Revoke their permit from dumping toxic waste. Enforce the Clean Water Act. Furthermore, US Steel should be forced to address their constant air pollution as well.

Jonathan Miller



From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 11 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/6/2018 8:24:49 AM
Subject: Comment regarding United States et al v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2...

I live in Ogden Dunes, adjacent to US Steel. I am concerned for the quality of the water we drink daily from Lake Michigan. I note there has been very little said regarding the testing of water at the nearby American Water intake plant. I believe US Steel should be funding the full time monitoring of the intake water quality as an outcome of their violations. Examining the existing plans reveals large gaps in intervals between violations and giving notice. This could be shortened.

I am told it used to be that hexivalent chromium was not discharged, but rather contained and then taken away. Seeing how the current practice is questionable, perhaps going back to the old method is advisable.

Thank you for considering my comments, Roger Rhodes

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Roger Rhodes




June 5, 2018

Assistant Attorney General, U.S. DOJ—ENRD
P.O. Box 7611
Washington, D.C. 20044–7611

RE: Comments on Proposed Consent Decree— United States et al v. United States Steel Corporation, D.J.
Ref. No. 90–5–2–1–06476/2

Dear Sir/Madam:

Save the Dunes is an organization established in 1952 with a mission to preserve, protect and restore the Indiana dunes and all natural resources in Northwest Indiana’s Lake Michigan Watershed for an enhanced quality of life. Our members and supporters reside and recreate near the U.S. Steel Corporation – Midwest Plant in Portage, Indiana. Lake Michigan and our Indiana Dunes National Lakeshore are critical parts of our Region's identity, economic well-being, and quality of life. Furthermore, the degradation of Lake Michigan’s water quality directly affects the health of millions who rely upon its water to drink, cook, bathe, and irrigate crops. The protection of these resources is imperative to current and future generations who live, work, and play in Northwest Indiana.

Between April 10-12, 2017, U.S. Steel’s Midwest Plant released 902 pounds of hexavalent chromium to the Burns Waterway that flows into Lake Michigan 500 yards downstream. This spill of a carcinogenic chemical from the Midwest Plant was not the first nor the last violation of the federal Clean Water Act, 33 U.S.C. § 1311 (a), and of the National Pollution Discharge Elimination System (NPDES) Permit No. IN0000337. In fact, investigations by the U.S. Environmental Protection Agency (EPA) and Indiana Department of Environmental Management (IDEM) in response to the spill uncovered a history of repeat violations at the Midwest Plant. Since that time, a proposed settlement to bring the Midwest Plant into compliance has been outlined in the Consent Decree proposed to the United States District Court for the Northern District of Indiana in “United States and State of Indiana v. United States Steel Corporation, Civil Action,” D.J. Ref. No. 90–5–2–1–06476/2.

Save the Dunes is aware that once a U.S. District Judge signs the proposed Consent Decree, it will become legally binding. We are also aware that the public has the right to comment on the proposed Consent Decree and to have these comments considered prior to it being signed. Now, more than ever, it is essential that the history of repeat violations of the Clean Water Act (CWA) at U.S. Steel’s Midwest Plant are brought to an end. As detailed below, Save the Dunes strongly recommends **six additional requirements** be included in the Consent Decree to adequately hold U.S. Steel accountable and to bring the Midwest Plant into compliance.



- 1) **Civil Penalties assessed in the Consent Decree must be increased to clearly account for all violations leading up to the April spill, so that the financial penalty adequately matches the magnitude of the harm done to Lake Michigan users, and to serve as a significant deterrent against future violations.**

As currently written in the Consent Decree, it is unclear how many violations were penalized and at what monetary level. Under CWA policy, U.S. Steel would be eligible for a maximum penalty of \$6.5 million for the violations leading up to and including the April 2017 spill. Full transparency in the calculation of civil penalties for each violation is essential for an effective review of this document and should be required by the Court before the proposed Consent Decree can be signed. Without this critical information, there is no way for the public or the Court to assess if the penalties adequately account for all violations or if they are a sufficient deterrent against future violations. Save the Dunes finds the proposed penalties inadequate and demands that higher financial penalty be assessed to match the magnitude of the harm done to Lake Michigan users and to serve as a significant deterrent against future violations

- 2) **Natural Resource Damage assessments that clearly outline the impacts and ongoing risks from hexavalent chromium need to be made public.**

Save the Dunes strongly recommends that the public be informed of the details regarding damages, restoration activities, and ongoing short- and long-term risks from the hexavalent chromium spill in April 2017. There are simply too many unanswered questions about the impacts from the spill to accept this exclusion from the Decree. Specifically, it is striking that the public has not been provided with information regarding where this cancer-causing toxin ended up following the spill or of the nature of its movement in Lake Michigan and the surrounding duneland environment. It is unacceptable that the public has not been informed about the levels of toxicity, persistence or ongoing risk to their health or their environment from continual release of this carcinogen at the Midwest Plant. Without this information, the Save the Dunes cannot be confident that the Consent Decree goes far enough to ensure that the natural environment is safe. With that being said, Save the Dunes does support penalties paid to the National Park Service for lost use of park areas at the sum of \$240,000. However, we request further specific information about the long-term impacts of hexavalent chromium in water and the development of supplemental environmental projects to further mitigate the damages as a result of U.S. Steel's repeated unlawful releases of toxic carcinogens in violation of their permit.



3) Inclusion of thirty-day deadlines for the U.S. EPA and IDEM to approve/disapprove plans and reports from U.S. Steel is critical for the implementation of compliance requirements.

As currently written, U.S. Steel has been given thirty days to respond to compliance requirements of the Consent Decree. However, there are no such deadlines required for the U.S. EPA or IDEM to submit comments and/or approve/disapprove plans submitted by U.S. Steel. Furthermore, there are no specific deadlines requiring IDEM to submit reports to the U.S. EPA in a timely manner. These fatal flaws in the Consent Decree threaten the ability of U.S. Steel to implement compliance requirements. For these reasons, Save the Dunes requests that specific deadlines be firmly established within the Consent Decree requiring the U.S. EPA and IDEM to submit comments and/or approve/disapprove of plans by U.S. Steel within thirty days of receipt.

4) U.S. Steel must host open meetings to engage the public on compliance progress as well as provide compliance documentation that corresponds to the submission of biannual reports to the U.S. EPA and IDEM.

Rebuilding public trust will not only require compliance but also transparency and improved communication of compliance actions. This can be achieved by making compliance information readily available for public review as well as increasing communication with the public in order to understand compliance progress to date. Accordingly, Save the Dunes requests that the Consent Decree require public notification when U.S. Steel submits plans and reports to the U.S. EPA and IDEM as well as notification of when the U.S. EPA and IDEM approves and/or disapproves of these plans and reports. Save the Dunes further requests that the Consent Decree specifically require public meetings convened by U.S. Steel operations and maintenance experts to correspond with the submission of their biannual reports on March and September 15th of each year.

5) U.S. Steel must convene biannual meetings (at minimum) with local emergency planning committees to evaluate the effectiveness of response coordination and ensure local contacts are up-to-date.

U.S. Steel must be willing and able to communicate openly with communities and members of the local emergency planning committees adjacent to their industrial operations, along with municipal, county and state government bodies who manage emergency responses to spills of hazardous materials, to assess the effectiveness of response coordination, strategize on coordination improvements, and to confirm that the correct persons of local emergency planning committees are engaged in response coordination. This is not only ethical, but it is imperative for rebuilding public trust and establishing a proactive, engaged company-culture committed to the region that provides the resources for their success.



- 6) **U.S. Steel must resubmit a more robust Operations and Maintenance Plan (O&M) and Preventive Maintenance Plan that has detailed input from U.S. Steelworkers Union representatives, hazardous materials safety experts, and is subject to public comment.**

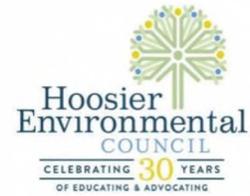
The initial Operations and Maintenance Plan (O&M) and Preventive Maintenance Plan submitted by U.S. Steel was found deficient by the U.S. EPA. The plans lack key operational procedures to help avoid or minimize the impact from spills and upset conditions at both the Chrome Treatment Plant and Final Treatment Plant; do not reference laboratory and field instruments for NPDES permit compliance monitoring; lack descriptions of preventative maintenance activities; do not describe how inspection, cleaning, and maintenance activities will be recorded; and do not include operations and preventative maintenance of any wastewater process monitoring system components installed to date. The plans also fail to describe training activities for the updated plans and whether or not consideration was given to additional monitoring mechanisms, such as an alarm that actively detects hexavalent chromium spills. The United Steelworks Union (USW) at both the local and international levels, along with hazardous materials safety experts, should be heavily involved in the development and implementation of a more robust O & M and Preventative Maintenance Plan that not only protects Lake Michigan, but also protects the U.S. Steelworkers. This plan should then be made available for public comment to determine adequacy.

For the reasons outlined above, Save the Dunes believes the proposed Consent Decree is inadequate and that additional requirements must be included in order to protect public health and the environment in Northwest Indiana. We appreciate the opportunity to engage in this public process and trust that our comments will be considered in full. Should any questions arise during the review of these comments, please contact the undersigned.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Natalie Johnson", with a long horizontal flourish extending to the right.

Natalie Johnson
Executive Director



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6 June, 2018

To the Assistant Attorney General
Environment and Natural Resources Division
US Department of Justice
pubcomment-ees.enrd@usdoj.gov

R.E. United States et al v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2

Dear Assistant Attorney General,

I am writing to convey the Hoosier Environmental Council's (HEC) comments on the Consent Decree for US Steel filed in US District Court for the Northern District of Indiana on April 2, 2018. HEC appreciates the opportunity to comment on this case.

Founded thirty-five years ago, the Hoosier Environmental Council (HEC) is the largest statewide environmental policy nonprofit organization in Indiana. HEC aims to advance solutions that are good for the environment and good for the economy.

The proposed Consent Decree sets down good basic principles, but it needs to be strengthened. There need to be stronger provisions for notification in a prompt and reliable manner in case of a future spill. The draft Operations and Maintenance Plan and Preventive Maintenance Plans need to be stronger. US Steel's Storm Water Pollution Prevention Plan should be revised and strengthened, in keeping with the deficiency noted in an Environmental Protection Agency (EPA) inspection. Finally, the civil penalty should be significantly higher, and the concerns of the local community should be addressed.

Notification

In the Indiana Department of Environmental Management (IDEM) inspection of April 20, 2017, “Spill notification was rated as unsatisfactory”¹. During the spill on April 11, 2017, US Steel notified IDEM but failed to notify downstream water users. The Consent Decree should be revised to improve notification and ensure that it is timely for the downstream water users if there are future events.

Section VIII, paragraph 20 of the Consent Decree stipulates that for events that “may pose an immediate threat to the public health or welfare or the environment, US Steel shall notify EPA, IDEM, and any other appropriate response entity, orally or electronically as soon as possible, but no later than 24 hours after US Steel first knew of the violation or event.”

HEC has two objections to this provision. First, for events that may pose an immediate threat to public health or the environment, notification within 24 hours is not adequate. US Steel is positioned where its releases can affect a public drinking water intake and several recreational beaches. As written, the notification provision could potentially allow 24 hours or more of contaminated drinking water or people swimming in contaminated water. Notification for such an event should occur as soon as possible and no later than one hour after a US Steel employee first finds the problem.

Second, HEC disagrees with allowing the notification to be electronic, since the way it is currently phrased could include email. During an event that could threaten public health or the environment, notification attempts must be pursued until an appropriate representative of the response entity has received and acknowledged the notification in real time, via either telephone, radio, or in person communication. Electronic communication which includes email has the potential to delay receipt of the notification until the recipient next checks their email. If an event occurred late on a Friday, the email might not be read until the following Monday.

O & M and Preventive Maintenance Plans

Section VI, Compliance Requirement, paragraph 10 of the Consent Decree stipulates that US Steel shall develop a comprehensive wastewater operation and maintenance plan, as well as a preventive maintenance program plan and submit them to the EPA and IDEM no later than April 15, 2018. This is in response to the IDEM inspection April 20, 2017, that found that “a proactive scheduling of maintenance activities and reports regarding maintenance activities are not consistently occurring”² and to the EPA inspections of April 12 and 20, 2017³, that likewise found problems with operations and maintenance.

The plans for operations and maintenance and for preventive maintenance are critical for preventing spills or other environmental harm in the future, as is complete and consistent implementation of those

¹ Indiana Department of Environmental Management (2 June, 2017). Letter to US Steel: Inspection summary and enforcement referral.

² *ibid*

³ As cited in the proposed Consent Decree

plans. However, the initial plan submitted by US Steel is weak and lacking in detail⁴. The plan needs to detail methods for inspecting equipment or structures; to link inspection results to repair and corrective actions; to provide clear maintenance recordkeeping requirements; and to detail how employee training will be provided to ensure the plan's implementation.

Storm Water Pollution Prevention Plan

The EPA inspections in April 2017, noted "deficiencies in the Storm Water Pollution Prevention Plan" but these are not addressed in the Consent Decree. The Consent Decree should require specific improvements in the plan to correct the deficiencies and give a deadline for completion and implementation of the revised plan.

Civil penalty

US Steel is required to pay civil penalties of \$300,621 each to the United States and to the State of Indiana. HEC requests that the Department of Justice and State of Indiana consider substantially increasing this amount given the serious nature of the events in April 2017, given US Steel's pattern of chronic violation over the last 5 years, and given US Steel's size and earnings.

US Steel had multiple serious deficiencies in operations, maintenance, monitoring, reporting and notification identified during the EPA and IDEM inspections in April 2017. The lack of appropriate maintenance led to the spill, and the lack of appropriate notification delayed the responses at the drinking water intake and public beaches. The material spilled is a potent carcinogen, and the toxicity must be taken into account in the penalty. The serious nature of this event warrants a more substantial penalty.

As bad as this event was, it was not US Steel's only environmental violation. The company has more than 50 unique permit violations over the last five years, some lasting days or weeks, and some even months⁵. The EPA inspection in April 2017 was consistent with this pattern of chronic violation. It found effluent limit exceedances, violations of narrative water quality standards, violations of monitoring and reporting, problems with operations and maintenance, and deficiencies in the Storm Water Pollution Prevention Plan. The Clean Water Act Penalty Policy and the January, 2018, amendment to the policy have formulas for calculating maximum penalties that would arrive at a total penalty for US Steel's violations in the last 5 years, including the April 2017 spill, exceeding \$6 million⁶. Next to this, the total civil penalty of \$600,000 is inappropriately small.

⁴ US Steel (April 13, 2018). United States Steel Corporation, Midwest Plant, Portage, Indiana: Wastewater Treatment O&M Manual and Preventative Maintenance Program Plan

⁵ National Parks Conservation Association (June 4, 2018). Comments, Proposed Consent Decree, *United States et al. v. United States Steel Corporation*, D.J. Ref. No. 90-5-2-1-06476/2

⁶ *ibid*

Only a penalty in keeping with the size of US Steel will be significant enough to serve as a deterrent to future violations. US Steel had net earnings of \$387 million in 2017⁷. A fine of \$600,000 is not in the right order of magnitude for a company with funds at that level. A fine this small could be perceived by the company as just a cost of doing business rather than a significant deterrent.

Also, the cost to US Steel of the penalty must be more than the cost of compliance and preventing spills. If penalties are less expensive than compliance, then continuing violation can be seen as a business decision that favors the bottom line.

Given all of these factors, HEC urges a more substantial civil penalty.

Local Concerns

US Steel has significant impacts on the surrounding Northern Indiana communities of Ogden Dunes, Gary, Dune Acres, Portage, and others. HEC supports the concerns and requests raised by the Town of Ogden Dunes in their comments on the Consent Decree. In particular, we second their requests for additional information with the questions posed in their comments and we support their requests for a supplemental environmental project, reimbursement to Ogden Dunes for expenses incurred due to the spill, and improved US Steel engagement with the local community, possibly through the Local Emergency Planning Committee⁸.

The Hoosier environmental Council appreciates the opportunity to submit comments on the proposed Consent Decree. We hope that the US Department of Justice and the State of Indiana will give serious consideration to the requests detailed above.

Sincerely,



Indra N. Frank, MD, MPH
Director of Environmental Health and Water Policy
Hoosier Environmental Council

⁷ <https://globenewswire.com/news-release/2018/01/31/1329718/0/en/United-States-Steel-Corporation-Reports-Fourth-Quarter-and-Full-Year-2017-Results.html>

⁸ Ogden Dunes (June 5, 2018). Comments on Proposed Consent Decree - United States et al. v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2

From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 20 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/6/2018 8:47:57 AM
Subject: D.J. Ref. No. 90-5-2-1-06476/2

Assistant Attorney General

U.S. DOJ—ENRD

P.O. Box 7611

Washington, D.C. 20044-7611

RE: Comments on Proposed Consent Decree – United States et al v. United States Steel Corporation,
D.J. Ref. No. 90-5-2-1-06476/2

Dear Sir/Madam:

- The consent decree falls short of my expectations, especially considering the impacts the April 11 spill had on my ability to enjoy the Ogden Dunes beach and to trust that our drinking water was safe.
- The penalties and damages outlined in the Consent Decree should be significantly higher. U.S. Steel not only dumped this dangerous substance into a tributary to a Great Lake, but also violated their National Pollutant Discharge Elimination System (NPDES) permit more than 50 times, according to the Complaint made by the Justice Department, EPA and IDEM.
- It's disappointing that the Town of Ogden Dunes was not compensated in the Consent Decree for loss of use of the beach as well as time spent by officials and police officers making sure our residents and drinking water were safe.
- I must be assured that the water and sand are safe. EPA, DOJ and IDEM could have done a better job interfacing with our community to help us understand damages incurred to the natural resources. Currently that information is not clear in neither the Consent Decree nor the Complaint document.
- The idea that U.S. Steel is even allowed to dump hexavalent chromium into Burns Ditch daily is repugnant and completely unnecessary. U.S. Steel should be required to find a way to remove this substance from the waste stream. My neighbors and family are being unnecessarily exposed to this toxic substance, among others.
- It's my understanding that the town was not adequately notified regarding any of the three hexavalent chromium spills last year. Please make sure notification requirements that must be implemented by U.S. Steel fully meet the needs of our community.

Violations and exceedances at U.S. Steel went on too long before IDEM and EPA finally took action. It will take a lot of work to restore my faith in your ability to hold up the tenets of the Clean Water Act.

[USDC IN/ND case 2:18-cv-00127-TLS-JEM, document 47-5 filed 11/20/19, page 21 of 259](#)

Please give my comments serious consideration.

Sincerely,

Aldona Pleirys



June 5, 2018

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, D.C. 20044–7611

RE: Comments on Proposed Consent Decree – United States et al v. United States Steel Corporation, D.J.
Ref. No. 90–5–2–1–06476/2

Dear Sir/Madam:

On behalf of the Town of Ogden Dunes, Indiana, I am pleased to submit the following comments on the proposed Consent Decree that attempts to resolve Clean Water Act and Emergency and Community Right-to-Know Act violations by United States (U.S.) Steel Corporation. We believe the Consent Decree falls short of town and resident expectations. To that end, we request consideration of the following statements and require answers to questions that have arisen during discussions with our residents. There are also several comments regarding the Complaint.

As we have stressed in previous communications with EPA and the State of Indiana, the Town of Ogden Dunes, which has approximately 1, 225 residents, is an affected party in that the town lies less than ½-mile west of the U.S. Steel Midwest Plant. Our residents enjoy one mile of lakefront, and the water intake for the original source of our drinking water, Indiana-American Water, lies just off-shore from Ogden Dunes. The Ogden Dunes beach had to be closed during the April 2017 spill of hexavalent chromium, and Indiana-American Water had to redirect our water supply from Gary during the April 2017 spill of hexavalent chromium.

Penalties and Damages

Because Lake Michigan, a priceless resource, was harmed, we assert that monetary damages related to loss of use and impacts to natural resources, as well as the civil penalties, as currently written in the Consent Decree, are inadequate. It also remains unclear to us whether the penalties assessed considered all violations dating back 2009. With the civil penalty totaling approximately \$600,000, the federal civil penalty was around ½ that amount, with the rest being directed to the state of Indiana. We believe the federal civil penalty should have been significantly higher.

The Consent Decree allows EPA, NOAA and NPS to be reimbursed for costs incurred for responding to the April 11, 2017 incident, as well as compensatory damages related to loss of use of the beach. The Town of Ogden Dunes should also have been provided with compensatory damages for loss of beach use as well as response costs. Ogden Dunes Town Council and Environmental Advisory Board members, as well as Ogden Dunes Water Works board members, spent many hours on the response, both monitoring developments and keeping residents safe. We also used police resources to shut down the beach, and Ogden Dunes Water Works had to ensure that our water supply was safe (Ogden Dunes Waterworks distributes water acquired from Indiana-American Water Co.). If you require documentation of these expenses, please let us know.

115 Hillcrest Road, Ogden Dunes, IN 46368
Phone: 219.762.4125 www.ogdendunes.in.gov

Natural Resource Damages (NRD)

Our residents need to be assured that the water and sand are safe. Natural resource damages are noted several times in the Consent Decree and the Complaint document several times, but exactly the nature of the damages was not addressed in either document. Clarification is needed on several fronts:

- How was the injury to natural resources determined and quantified?
- Is there any need for restoration or remedial actions rather than just recovering response costs and assessing penalties for loss of use of the resource?
- Has there been any actual adverse change or impairment caused to the natural resource as the result of the discharge?
- How was the dollar value of the lost services derived?

These questions must be answered before the Consent Decree is put into effect or finalized.

We are extremely disappointed that a Supplemental Environmental Project (SEP) was not included in the final settlement that could have addressed natural resource impacts. In previous communications to EPA and IDEM, we suggested the provision of clean sand as a SEP. If no restoration actions are planned, there does not seem to be any concerted effort to repair the natural resources impacted. Providing clean sand would be one way of repairing the natural resource.

Operations and Maintenance Plan (O&M) and Preventive Maintenance

We are pleased to see that our concerns noted in previous communications regarding shoddy operations and lack of maintenance were addressed in the Complaint and the Consent Decree. However, the town still requires further assurance that all systems are designed to handle such corrosive materials. Perhaps system design should be certified by an outside engineering contractor.

In addition, on page 14 of the Consent Decree (actual Page 14, not the .pdf page), U.S. Steel is required to develop a comprehensive Wastewater O&M Plan. While draft plans available on IDEM's website mention training several times, having training required as part of the Consent Decree would be a much more effective way of making sure training is completed. This requirement would strengthen U.S. Steel's ability to effectively operationalize the O&M plan and well as the Preventive Maintenance Plan.

Hexavalent chromium is extremely toxic. Ideally, managers at U.S. Steel Midwest would never willfully exceed permit limitations for this substance. Could some sort of alarm or continuous monitoring system be placed on the outfalls that would automatically notify workers when an exceedance has occurred?

Water Monitoring, Sampling and Testing

Page 3 of the Consent Decree states that EPA had concerns about monitoring, and yet monitoring is not adequately addressed in the CD. Process monitoring is addressed in detail, however monitoring of toxicity is not addressed to our satisfaction. The Complaint states that bioassay tests on model organisms are conducted to monitor the toxicity of the discharge from Outfall 004. These tests are to be conducted quarterly, under their NPDES permit. We believe quarterly monitoring should be ramped up to monthly monitoring.

Page 16 of the Consent Decree addresses wastewater process monitoring. Training on how to do the monitoring should be expressly required. On Page 17 U.S. Steel is required to conduct daily testing of total and hexavalent chromium at Outfalls 104 and 204. We would also like to see monthly testing on the beach.

Progress Reports

On Page 20 it is stated that:

U. S. Steel shall submit a semi-annual progress report no later than March 15 and September 15 of each year, with the first semi-annual report due on the first March 15 or September 15 that occurs more than ninety (90) Days after the Effective Date.

Does that mean that the next semi-annual progress report will not be submitted until September 2018? Will that progress report be made public? These kinds of questions need to be answered before this Consent Decree is put into effect.

Notification to EPA/IDEM of Violation

On Page 21, the Consent Decree states:

In addition to the other reports required by this Decree, if U. S. Steel violates any requirement of this Decree or its NPDES Permit, in addition to complying with the notification requirements in its NPDES Permit, U. S. Steel shall notify the EPA and IDEM of such violation and its likely duration in writing within ten (10) working days of the day U. S. Steel first becomes aware of the violation (emphasis added), with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation.

Ten days is an excessive delay. Could that be shortened to five working days?

Emergency Planning and Community Right-to-Know Act (EPCRA)

Page 13 of the Consent Decree states that U.S. Steel Midwest sent an EPCRA Written Report on February 2, 2018 concerning the spill "to the appropriate State Emergency Response Commission and the Local Emergency Planning Committee." Why was this report sent nearly a year after the spill when it is supposed to be sent immediately after the release? The Complaint does not adequately address why this failed to be done.

We believe that EPCRA is also not adequately attended to in the Consent Decree or Appendix B: Midwest Spill Evaluation and External Reporting Requirements. More specifically, the Consent Decree and Appendix B should address ways in which a community like Ogden Dunes can be more engaged in understanding whether U.S. Steel Midwest is adequately meeting requirements of the Consent Decree. Until the terms of the Consent Decree are satisfied, U.S. Steel Midwest should be required to periodically update the Local Emergency Planning Committee.

Notifications to EPA

Notification requirements described on Page 21 are also problematic. Currently it states:

Whenever any violation of this Consent Decree or of any applicable permit or any other event affecting U. S. Steel's performance under this Decree, any of which may pose an immediate threat to the public health or welfare or the environment, U. S. Steel shall notify EPA, IDEM, and any other appropriate response entity, orally or electronically (emphasis added) as soon as possible, but no later than 24 hours after U. S. Steel first knew of the violation or event. If a message has to be left, the response entity should be contacted electronically only as a back-up.

Electronic notifications aren't always read immediately and should never be viewed as a first line of response. It is our opinion that EPCRA requires that initial notification shall be made by telephone, radio or in person. It does not appear to cover "electronic notifications." Also, Appendix B, .pdf Page 58 of the Consent Decree, lists the phone numbers of entities that should be contacted should there be a spill with notification requirements. The list should address the position affiliated with the phone number so that the phone list can be properly updated as new officials are appointed within the town.

Appendix B does not include instructions regarding what must be reported during notifications to the various entities. EPCRA requires that:

"Emergency notification must include the following details: The name of the chemical released any indications whether the substance is extremely hazardous; estimated quantity of the release substance; time and duration of the release; whether the release occurred in air, water or land. Any known or anticipated acute or chronic health risks associated with the emergency, and where necessary, requisite advice on medical attention for exposed individuals; proper precautions, such as evacuation or sheltering in place; and name and telephone number of contact person." (<https://environmentallaw.uslegal.com/federal-laws/emergency-planning-and-community-right-to-know-act/>) Also Title 40: Protection of Environment, PART 355—EMERGENCY PLANNING AND NOTIFICATION.

Length of the CD

It appears that the CD will be in effect for the 24 months. This is not long enough to make sure that the Environmental Management System (EMS) and its associated standard operating procedures are running smoothly.

The Complaint makes it evident that U.S. Steel Midwest has demonstrated a pattern of disregard for reporting requirements outlined in their NPDES permit. We hope that the Consent Decree will get U.S. Steel Midwest's EMS back on track to protect Lake Michigan, our residents and their families.

After learning of all the violations that have occurred going back to 2009, it is disappointing that compliance deteriorated along with the infrastructure. We find this alarming. To help restore public trust in U.S. Steel Midwest, the U.S. Environmental Protection Agency, and the Indiana Department of Environmental Management, we hope that you will give serious consideration to our comments and will address our questions. If you have any questions, please contact the Chair of our Environmental Advisory Board, Susan MiHalo, at smihal763@comcast.net or via telephone at 219-921-3975.

Thank you for your consideration.

Sincerely,



Scott Lehmann
President, Ogden Dunes Town Council

From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 26 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/5/2018 12:12:54 PM
Subject: D.J. Ref. No. 90-5-2-1-06476/2

Assistant Attorney General

U.S. DOJ—ENRD

P.O. Box 7611

Washington, D.C. 20044-7611

RE: Comments on Proposed Consent Decree – United States et al v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-06476/2

Dear Sir/Madam:

U.S. Steel's habitual releases of hexavalent chromium threatens the drinking water safety and damages the recreational beaches of the Town of Ogden Dunes, surrounding lake front communities, and IN State and US Federal parks.

U.S. Steel's Midwest Plant Facility's repeated releases (April 11, 2017, et. al.) of the hazardous chemical hexavalent chromium into Burns Ditch demonstrates failure of current systems for testing and storing waste. Consequently, the final Consent Decree needs to stipulate the U.S. Steel:

- **Install a secondary liquid storage pond to contain plant effluent until tests confirm that hexavalent chromium was removed from the waste stream.**
- **Compensate the Town of Ogden Dunes for \$200,000 loss of use of the beach as well as time spent by officials and police officers making sure Ogden Dunes residents and drinking water were safe.**
- **Pay \$2,000,000 in penalties and damages for many violations of its National Pollutant Discharge Elimination System (NPDES) permit, and failure to adequately notified the Town of Ogden Dunes of hexavalent chromium releases.**

The above stipulations are necessary to safeguard Ogden Dune, surrounding lake front communities, and IN State and US Federal parks drinking water and beaches.

Very truly,

George Rieger

Ogden Dunes resident

From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 27 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/5/2018 6:01:08 AM
Subject: DJ Ref No 90-5-2-1-06476/2

Department of Justice,

The fine in the Consent Decree with US Steel is too small. The steel mills know the fines for polluting are less than the cost to solve the problem so they continue to pollute. Shame on management at US Steel for not replacing the leaky pipes as soon as they were discovered. Does US Steel management have no pride in their work ? Their families drink the water that they are polluting with chromium. The Consent Decree should have hefty daily fines until the repairs to the pipes are made. The Consent Decree should have a schedule for how often the pipes will be replaced in the future, US Steel should have this worked into their capital improvement budget, and the Department of Justice should report to the public that the pipes have been maintained in the decades to come. Indiana should have no tolerance for violations of the Clean Water Act. Lake Michigan is too precious a resource to allow Steel Mills to pollute the water. Julia Hoham

Sent from my iPhone



INDIANA DIVISION

June 4th, 2018

Assistant Attorney General, US DOJ- ENRD
PO Box 7611
Washington, DC 20044-7611

Ref. # 90-5-2-1-06476/2

Please enter the following comments into the record for the draft consent decree between the United States, et al, and the US Steel Corporation regarding their repeated spills of very dangerous materials at their Portage, Indiana facility in 2017.

The Izaak Walton League of America was founded by 54 anglers in Chicago in 1922 because of their concern over water pollution and the destruction of our natural resources. It is sad that 95 years later we are still fighting the same fights.

The draft Consent Decree is the result of multiple spills of hexavalent chromium in addition to the two that were made public in 2017.

We would like to see the following items be made part of the final USS Consent Decree.

- IDEM needs a higher and more protective permit standard for chromium and hexavalent chromium (Cr(VI)).
- Future permits need to include residual sludge materials and how it is treated.
- There should be an additional penalty to USS for local, land conservation efforts and it should be 3 times the civil penalties because of repeat violations.
- USS should create an oversight committee akin to the advisory committee at Gary Works.
- USS should provide more training to any employees involved in the treatment of Cr(VI.)
- USS should be fined for attempting to bypass the EPA for the October 2017 leak.
- IDEM has to be held accountable for colluding with USS to not notify the EPA.
- The USS Midwest should be reengineered to prevent future spills of Cr(VI) and other hazardous materials being released directly to our air and water.

- USS needs to have instrumentation that alarms incidents to more than a single, local area. This should include automatic electronic notification to management and safety officers to improve safety, response times, and required notifications.
- We request they be given a maximum of 24 hours to verbally report any future permit violations to both the IDEM and the USEPA.
- USS needs to fund and participate in long term research of the impact of its emissions and effluents on the health of the Burns Waterway and Lake Michigan.
- Finally, there should be public notification process that includes mandatory notification of all the municipalities that get their water from Lake Michigan or the utilities that use it.

Thank you,

A handwritten signature in black ink, appearing to read 'Keith Halper', with a long horizontal flourish extending to the right.

Keith Halper, President
Indiana Division
Izaak Walton League of America
19 166th St.
Calumet City, IL 60409

From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 30 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/3/2018 8:58:57 AM
Subject: Indiana Lakeshore and USSteel

Public Comments:

At what point does one cut off a rascal?

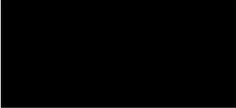
Given USSteel's history as a polluter and government obfuscator, I'd say "Off with their heads!", but of course, it's the families of the workers that suffer and the communities that count on their share of the spoils.

Let's get creative here; let's take the penalty in steel products; perhaps beams for a new recreational center, roll steel for government vehicles, let's put the steel on display as a constant reminder of the damage that can be done by workers and corporate personnel who fail to live up to the standards of a free society.

Make it hurt, but make it last.

Thanks for the opportunity to express my opinion.

Best Regards,

Barry Halgrimson




PORTER COUNTY CHAPTER

June 4th, 2018

Assistant Attorney General, US DOJ- ENRD
PO Box 7611
Washington, DC 20044-7611

Re: Porter County Chapter of the Izaak Walton League of America Comments on proposed Consent Decree between United States, et al vs. US Steel.

Ref. # 90-5-2-1-06476/2

Sirs and/or Madams,

Please enter the following comments into the record for the draft consent decree between the United States, et al, and the US Steel Corporation regarding their repeated spills of very dangerous materials at their Portage, Indiana facility over the last several years.

The first comment we offer is that Lake Michigan is listed by the Indiana Department of Environmental Management (IDEM) as one of the states "Outstanding State Resource Waters."

Indiana Code provides that "a new or increased discharge of a pollutant or pollutant parameter into ... an outstanding state resource water ... shall not cause a significant lowering of water quality in the outstanding state resource water."

This is from the first paragraph on IDEM's Indiana's Lake Michigan Programs web page;

IDEM implements a number of programs that support the protection and restoration of Lake Michigan and its ecosystem. Chief among these is the Lake Michigan Lakewide Action and Management Plan (LAMP) Program. The goal of this program is to work with federal, state, and local partners to restore and protect the integrity of the entire Lake Michigan ecosystem. The LAMP tracks the status of the Lake Michigan ecosystem by answering 12 subgoal questions, such as:

- Can we swim in the water?
- Can we drink the water?
- Are habitats healthy, naturally diverse, and sufficient to sustain viable biological communities?

Sadly, the opinion of the Porter County Chapter of the Izaak Walton League of America is the answer to each of these questions is, "Not as much as we would like."

We are very alarmed to have learned of additional spills of hexavalent chromium in addition to the two that were made public in 2017.

Our identity, our economy, and our quality of life in northwest Indiana all depend on the health of Lake Michigan. We need all the industries on the lake to be more responsible and we need committed and adequately funded public agencies to assure their being more responsible.

We request the following items be made part of the final USS Consent Decree.

IDEM needs a higher and more protective permit standard for chromium and hexavalent chromium (Cr(VI)). The permits need to include if the processes used that generates these waste generates any residual sludge material and how it is treated or disposed.

We request an additional penalty to USS to pay for local, on-the-ground, conservation efforts to help restore the lake and its water quality. It should be 3 times the civil penalties because of repeat violations and the intentional bypass of the notification of USEPA and the public.

USS should host a public meeting to explain the incidents and create a citizens oversight committee akin to the Cite Committee of USS Gary Works to keep the public advised of incidents, process changes, remediation efforts, etc.

USS should provide comprehensive training to any employees that are directly involved in the treatment of Cr(VI) and any other hazardous waste products. Any contractors used by USS should also have to meet a strict standard to assure compliance with state and federal rules and legislation. Those contractors should also be available to the agencies and the public for questioning.

It is our position that “self reporting” has proven to be ineffective as a regulatory tool and as an incentive to operate the plant within the limits of the permit. We request that an independent, outside contractor be hired, at the permittee’s expense, to supervise and report to the agencies and the public, their compliance with their permit. That contractor must be experienced in industrial permitting and independent of political influence from the company or public agencies.

This should also be applied for any industrial permit holders that have been found to have had repeat incidents in discharging dangerous materials exceeding their permit levels to our air and water. Much of the water pollution we see is the result of the deposition of pollutants discharged to our air.

We request an additional punitive fine for USS for circumventing the public notification process by asking IDEM to delay contacting the USEPA for the October 2017 leak and the IDEM has to be held accountable for acquiescing to the USS request.

It greatly concerns us that the state agency charged with protecting our air and water quality conspired with USS to prevent the notification of the USEPA and the public.

The USS Midwest plant needs to be redesigned and repiped to eliminate the possibility of Cr(VI) and other hazardous materials being released directly to our air and water

USS needs to have redundant instrumentation that alarms incidents to more than a single, local area. This should include automatic electronic notification to management and safety officers to improve safety, response times, and required notifications.

The Consent Decree should also spell out what the company must do to satisfy the requirements of the Emergency Planning and Community Right to Know Act and delineate significant penalties for non-compliance.

As a repeat permit violator, USS should be held to a higher standard for reporting any future incidents in violation of their permit. We request they be given a maximum of 24 hours to verbally report any permit violations to both the IDEM and the USEPA. The agencies need to provide 24 hours a day, 7 days a week monitoring of those agency contact numbers.

Processes generating hazardous materials should be shut down before direct discharges to our air and water are permitted. It is unacceptable that a discharge to our air and water be tolerated to keep a manufacturing process running. Any renewed water permits for this facility need to include this language or it should not be renewed.

USS needs to fund and participate in long term research of the impact of its emissions and effluents on the health of the Burns Waterway and Lake Michigan. This work needs to be done in conjunction with public agencies and stakeholders, such as the Indiana Dunes National Lakeshore and local universities.

Finally, the public notification process should include mandatory notification of all the municipalities that get their water from Lake Michigan or the utilities that use it.

Thank you,

Gary Brown, President
Porter County Chapter
Izaak Walton League of America
203 Harrison Blvd.
Valparaiso, IN 46383

May 23, 2018

Assistant Attorney General, U.S. DOJ-ENRD

pubcomment-ees.enrd@usdoj.gov

Re: Comments on Proposed Consent Decree-United States et.al v. US Steel Corporation, D. J.

Ref. No. 90-5-2-1-06476/2

Hello from IN and the shores of beautiful Lake Michigan!

I am concerned about the 902 pounds of hexavalent chromium that U. S. Steel dumped/spilled into Lake Michigan in April of 2017.

I am terrified about possible future dumps/spills of harmful chemicals by U. S. Steel into Lake Michigan.

I do not feel U. S. Steel did anything to communicate with the residents on the shores of Lake Michigan about the dump/spill.

The beach in Ogden Dunes was closed for several days and we were very concerned about the quality of water we drink. I filled up my bathtub and all my sinks in anticipation of not having a clean water supply for myself and my dog, BB.

Luckily, an alternative water supply was found for Ogden Dunes.

I want U. S. Steel to be transparent and much better communicators about any and all actions they are taking for this and any future dumps/spills.

I want U. S. Steel to provide clean sand on our beach in Ogden Dunes. A lot of clean sand.

I want U.S. Steel to test the sand on the beach in Ogden Dunes weekly until 2020...or until independent scientists have determined that there is no more risk of contamination from the dump/spill to the sand on the Ogden Dunes beach.

Please contact me if you have any questions.

Thank you for your time.

Barbara Schultz

[REDACTED]

From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 35 of 259
National Parks Conservation Association <nppca@nppca.org> on behalf of Michele Piver
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 5/30/2018 11:56:50 PM
Subject: Please Strengthen the Proposed Settlement with U.S. Steel

May 30, 2018

Jeffrey H. Wood

Department of Justice, Environment and Natural Resources Division, 950
Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Wood,

Along with the 1.3 million members and supporters of the National Parks Conservation Association, I strongly urge the U.S. Department of Justice (DOJ) to strengthen its proposed settlement with U.S. Steel regarding the highly publicized spill of hexavalent chromium that occurred in April 2017 adjacent to Indiana Dunes National Lakeshore.

U.S. Steel must be required to take all corrective measures and ensure that its maintenance and operations procedures prevent violations from recurring.

The proposed settlement doesn't go far enough and must be improved in several ways:

* The proposed \$300,000 civil penalty to the United States is wholly inadequate, given the scope of violations. In the last 5 years alone, U.S. Steel has reported more than 50 unique permit violations. If DOJ had followed Clean Water Act policy, the maximum civil penalty would be around \$6.5 million.

* U.S. Steel must provide proof to the public that it is acting to prevent future spills. The settlement claims that U.S. Steel has made significant repairs to its facilities, but after repeated requests, no documents have been made publicly available proving these repairs have taken place or describing details necessary to evaluating them.

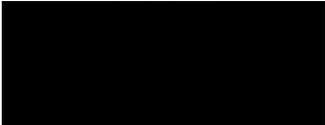
* The proposed spill prevention plans must provide greater detail and be subject to public input. The Preventative Maintenance Plan lacks any requirement to halt production if a problem is noticed during an inspection. As written, this plan would not have prevented last year's chemical spill that caused multiple beach closures at Indiana Dunes.

DOJ must do its part by implementing a settlement that protects public health and our national parks. Without a strong settlement that prevents future spills, ongoing pollution will result in increased risk to public health, harm to our waterways and damage to Indiana Dunes National Lakeshore and its nearly 2 million visitors every year.

Thank you for considering my comments for the record.

Sincerely,

Ms. Michele Piver



From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 37 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 6/6/2018 4:48:40 AM
Subject: Pollution from US Steel, Consent Decree

Re DJ Ref No 90-5-2-1-06476/2

Dear Assistant Attorney General, US DOJ
Washington, D.C.

The track record of pollution from US Steel and, most recently, the spills of Hexavalent Chromium into the Burns Harbor Waterway which flows into Lake Michigan, comprise a travesty which needs to be addressed much more aggressively by both state and local environmental testing and enforcement. The fact that US Steel asked authorities to delay the release of information about polluting Lake Michigan should result in punitive fines.

The permitting of even much smaller discharges into our lake seems ill-advised considering the toxic nature of Chromium VI while the 902 lb. discharge approximately one year ago should be met with larger civil penalties in the Consent Decree. Both the long term effects on our environment and short term impacts on public health should be addressed with US Steel held accountable.

The self-reporting process currently in place is inadequate and should be replaced by independent, out-side agency monitoring and testing for violations. Violations and suspected violations should be reported immediately without the 10 day grace period currently allowed. If violations occur, the cities which get their water from Lake Michigan should be notified.

The US Steel facility needs to be repaired and, longer-term, reengineered to prevent further spills of Chromium and other toxins from entering our lakes and streams.

Thanks for taking these points into consideration as the Consent Decree is developed and approved.

Walt Breitinger, President
Valparaiso Chain of Lakes Watershed Group, Inc
255 Park Avenue, Valparaiso, Indiana



From: USDC IN/ND case 2:18-cv-00127-TLS-JEM document 47-5 filed 11/20/19 page 38 of 259
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 5/15/2018 12:14:26 PM
Subject: Public Comment: USA and State of Indiana versus US Steel Corporation
Attachments: IDEQ Data.pptx

Sirs

Following the incidents at the US Steel Portorage Plant that resulted in violations of the Clean Water Act we were asked by US Steel to demonstrate the effectiveness of high frequency real-time monitoring of Hexavalent and total Chrome effluent at the Portorage Plant.

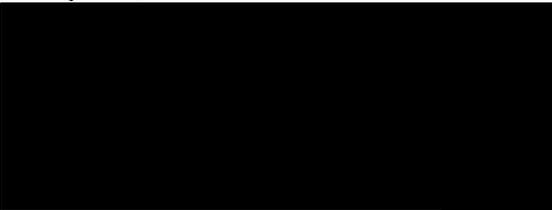
This highly accurate and reliable monitoring technology which has been used across the USA was able to detect within minutes changes in contaminant levels 24/7. Data generated by the analysers can be used to warn of treatment problems and automatically shut down effluent streams and warn those downstream (e.g. American Water's treatment plants). In other words, this data can be made available in real-time to all key stake-holders and IDEQ.

It is not realistic to expect laboratory based testing to capture sudden changes in levels of Chrome in the Portorage Plant effluent that can occur as a result in mechanical failure or human error or omission. By the time laboratory samples have been taken, analysed and reported the impact of the disaster is already known. The attachment shows how a dosing pump failure was captured at a water treatment plant at 3 am on a Sunday morning.

We strongly urge you to consider an effluent control regime that addresses the needs and concerns of all stakeholders that takes advantage of technologies that have been designed for exactly this purpose and that have been proven in the field to be highly accurate and reliable.

Best regards

Rick Bacon,
C.E.O.
Aqua Metrology Systems Limited
1225 E Arques Avenue
Sunnyvale, CA 94085-4701



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<https://www.linkedin.com/company/aqua-metrology-systems-limited>

Kevin Cassidy
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June 4, 2018

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Electronic address: pubcomment-ees.enrd@usdoj.gov

Re: COMMENTS, Proposed Consent Decree, *United States et al. v. United States Steel Corporation*, D.J. Ref. No. 90-5-2-1-06476/2, submitted by National Parks Conservation Association, Submitted electronically and via Certified Mail (Certified Mail # 7004 0750 0000 9336 6819)

Dear Assistant Attorney General:

The National Parks Conservation Association (“NPCA”), on behalf of its members and supporters, submits these comments pursuant to 28 C.F.R. § 50.7(a), and the U.S. Department of Justice’s (“DOJ”) solicitation, 83 Fed. Reg. 14,891, 14,891 (Apr. 6, 2018), regarding the proposed Consent Decree in *United States et al. v. United States Steel Corporation*. The proposed Consent Decree would resolve claims under the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. § 11001 *et seq.*, brought by DOJ on behalf of the National Park Service (“NPS”), the Environmental Protection Agency (“EPA”), and the National Oceanic and Atmospheric Administration (“NOAA”), as well as the State of Indiana (“State”) on behalf of the Indiana Department of Environmental Management (“IDEM”) and the Indiana Department of Natural Resources (“IDNR”). The claims relate to violations of the CWA by the United States Steel Corporation (“U.S. Steel”) at its Portage, Indiana Facility (“Facility”), and the threatened and

actual harms to public resources including the Indiana Dunes National Lakeshore, Lake Michigan, and the surrounding public natural areas.

NPCA's national headquarters is located at 777 6th Street NW, Suite 700, Washington, DC 20001, (202)-223-6722. NPCA's Midwest Sr. Regional Director is Lynn McClure, whose office is located at 8 South Michigan Ave., Suite 2900, Chicago, IL 60603, (312)-263-0111. NPCA is an independent, nonpartisan, non-profit organization that, together with more than 1.3 million members and supporters, works to protect and preserve our nation's national parks for present and future generations. NPCA has many members who live near, visit and recreate at Indiana Dunes National Lakeshore, and whose use of that NPS property has been impacted by the Facility's CWA violations, and will be directly and/or indirectly impacted by the proposed terms of the Consent Decree. For purpose of these Comments, NPCA is represented by legal counsel, the Earthrise Law Center of Lewis & Clark Law School, through Kevin Cassidy, Earthrise's Sr. Staff Attorney, and Kathryn Roberts, Earthrise's Legal Fellow. Mr. Cassidy's mailing address, email address and phone number are set forth above. Please direct all correspondence and responses to these Comments to NPCA's legal counsel, Mr. Cassidy.

Notice Published: The public notice regarding this proposed Consent Decree was published on April 6, 2018, and granted a 30-day comment period. 83 Fed. Reg. at 14,891. The comment period was extended to a total of 60 days. 83 Fed. Reg. 17193, 17194 (Apr. 18, 2018). Therefore, these comments are timely, because they are submitted on June 4, 2018.

Issues Raised in these Comments: As detailed below, NPCA has several concerns with the ability of the proposed Consent Decree and its compliance requirements to fully remediate the losses to the public caused by the closure of multiple beaches at Indiana Dunes National

Lakeshore; to bring the Facility into compliance with all state and federal environmental laws designed to protect public resources; and to sufficiently deter the Facility from future violations, based on its history of delaying and/or avoiding needed maintenance and repairs and required monitoring and reporting, which has put public resources at risk. Specifically, NPCA is concerned that 1) the plans proposed for operation and maintenance, pollution prevention, wastewater monitoring, and spill notification, to the extent they are available for public review, are technically deficient; 2) the proposed civil penalty is not sufficient to meet the deterrent purpose of the CWA and is in contravention of EPA's Penalty Policy; 3) the proposed Consent Decree lacks a Supplemental Environmental Project that could restore the harms done to public resources, including Indiana Dunes National Lakeshore, 4) the proposed Consent Decree does not require an immediate revision of the Facility's CWA discharge permit, despite having compliance requirements that conflict with the permit; 5) the proposed Consent Decree does not employ the best means to ensure the Facility's compliance, including an independent onsite audit protocol; 6) the proposed Consent Decree is ambiguous as to whether demonstrated compliance with the Facility's own CWA permit is required before the Consent Decree may be terminated; and 6) the compliance requirements have not been subject to sufficient public review, because plans and information that form a substantial part of corrective actions the Facility purportedly has taken already and plans for future actions were not made public during the comment period.

I. The Plans proposed by U.S. Steel have Technical Deficiencies and Should be Substantially Improved Before Approval by EPA and Indiana or Entry by the District Court.

The proposed Consent Decree requires the Facility to produce a Wastewater Operation and Maintenance Plan ("O&M Plan"). Consent Decree, No. 18-cv-00127, Dkt. #2-1, ¶ 10(a) (Apr. 2, 2018) [hereinafter "Consent Decree"]. The proposed Consent Decree also requires the

Facility to produce a Preventative Maintenance Program Plan (“PM Plan”), which “shall be submitted as part of the [O&M Plan].” *Id.* ¶ 10(c). After requested by NPCA, the United States made public the draft document submitted by the Facility that purports to meet this requirement. *See* UNITED STATES STEEL CORP., MIDWEST PLANT, PORTAGE IND., WASTEWATER TREATMENT O&M MANUAL AND PREVENTATIVE MAINTENANCE PROGRAM PLAN (Draft Apr. 13, 2018) [hereinafter “O&M Plan”].¹ Additionally, the proposed Consent Decree included a Spill Notification Procedure to be implemented by U.S. Steel. Consent Decree, App. B. Each of these Plans and Notification Procedure contain deficiencies, as detailed below. NPCA respectfully requests that each of these Plans and Procedure be substantially improved prior to acceptance by the State or EPA.

A. The O&M Plan and PM Plan are technically deficient and fail to meet the Consent Decree’s requirements.

NPCA submits the enclosed technical comments from Carpenter Environmental Associates, Inc. to the O&M Plan and the PM Plan (collectively “Plans”), and incorporates them by reference.² *See* Attachment 1 (Carpenter Environmental Associates Technical Analysis

¹ On June 1, 2018, less than three full business days before comments on the Consent Decree were due, EPA and IDEM published on IDEM’s website a May 30, 2018 letter to U.S. Steel disapproving the O&M Plan (“O&M Plan Disapproval Letter”) and noting several deficiencies with the plan that U.S. Steel is required to correct before EPA and IDEM would approve the plan. While NPCA agrees with the agencies’ decision to disapprove the O&M Plan, the disapproval letter does not capture all of the ways the O&M Plan is deficient, as detailed in these comments. Further, the timing of the letter—so late in the public comment process—and the requirement that U.S. Steel resubmit a revised O&M Plan in 30 days—*after the public comment period has closed*—is fundamentally flawed and raises serious substantive and procedural concerns with the entire Consent Decree.

² Due to the late publication of the O&M Plan Disapproval Letter, NPCA’s technical consultants had no opportunity to evaluate EPA’s and IDEM’s rationale for disapproving the O&M Plan, much less an opportunity to evaluate U.S. Steel’s yet-to-be-submitted revised O&M Plan, or to incorporate that analysis into the Technical Report. For this reason, among others, NPCA respectfully requests an extension of the public comment period. *See* discussion, *infra*.

Report, hereinafter “Technical Report”). The Technical Report notes several deficiencies with the O&M Plan and PM Plan, including: a failure to meet all of the elements specified in the Consent Decree; a lack of sufficient detail, a failure to adequately link maintenance inspections to corrective action, and an inability of these Plans to “ensure that U. S. Steel [] at all times properly operate[s] and maintain[s] all wastewater treatment process equipment used” at the Facility, as required by the proposed Consent Decree, ¶ 10(a). At bottom, these Plans are insufficient to prevent the type of leaks or structural damage that caused the April 10–11, 2017 spill of highly toxic hexavalent chromium (“April, 2017 spill”). Accordingly these Plans should be rejected by EPA and IDEM (indeed, EPA and IDEM have already disapproved the O&M Plan per their May 30th letter), and not approved by the District Court, unless and until substantial improvements are made.

The O&M Plan does not provide sufficient information for Facility operators to adequately implement it. *See* Attachment 1, at 1–3. The O&M Plan does not refer to the manufacturer’s manuals or as-built drawings to provide requisite detail for Facility operators to follow. *See* O&M Plan, at 4–6 (providing a cursory overview of the Oil Pretreatment process, and then merely itemizing operating procedure numbers); *see also* Attachment 1, at 3 (detailing information lacking in O&M Plan). Further, the O&M Plan lacks a robust record keeping protocol. Although the O&M Plan states that the Facility “complies with the recordkeeping requirements of this [O&M Plan] and the Permit by maintaining the appropriate data and records for a minimum of five years” the O&M Plan does not actually have any specific recordkeeping requirements. O&M Plan, at 17. In fact, that sentence comprises the entire Recordkeeping Requirements section of the O&M Plan. *Id.* at 16–17. To ensure adequate operation and maintenance, the Facility must detail what actions, including repairs or maintenance are done,

when, by whom, and what caused the need for such actions for all its operations. *See* Attachment 1, at 3 (detailing minimal requirements for adequate recordkeeping protocol). An adequate O&M Plan must address each of these issues.

The PM Plan does not meet the requirements of the proposed Consent Decree. *See* Attachment 1, at 1–2. The proposed Consent Decree specifies that the Preventative Maintenance Plan must include “procedures and/or methodologies for: . . . periodic inspection, including schedules, for asset vulnerability assessment, lubrication, adjustment, and/or other servicing of machinery, equipment and structures[.]” Consent Decree, ¶ 10(c)–(c)(i). However, the PM Plan submitted by U.S. Steel does not contain any such procedures or methodologies. *See, e.g.*, Attachment 1, at 3–4 (noting lack of schedules or procedures for lubrication of motors, blowers, and pumps that are part of the wastewater treatment system; noting lack of detail regarding contractor-performed maintenance on centrifuges; noting discrepancy in frequency of thermal testing of mixer motors at the Final Treatment Plant).

The PM Plan does not detail any method or process for sufficiently inspecting any equipment or structure. *See generally* O&M Plan; *see also* Attachment 1, at 3. The PM Plan vaguely lists “inspection” or “full inspection” as the required maintenance, but fails to define what such inspection entails, or how an “inspection” is different from a “full inspection.” *See e.g.*, O&M Plan, at 8. Although the PM Plan does indicate inspection frequency, nowhere in the PM Plan is there any reference to the scope, method, process, or means by which employees or contractors will assess asset vulnerability, or to any requirement to conduct lubrication, adjustments, or other servicing, which the proposed Consent Decree expressly requires the PM Plan to address. *See* Consent Decree, ¶ 10(c)–(c)(i). The PM Plan further does not include any

procedure or mention of corrective actions that can or will be taken if asset vulnerability is in fact detected during any inspection.

An adequate PM Plan must specifically address the method of assessment (e.g., visual inspection via walk around of structure), and include specific aspects to assess, which may require either further assessment or corrective action (e.g., look for cracks in piping or assess if debris is built up in the equipment). *Compare, e.g.,* Complaint, No. 18-cv-00127, Dkt. #1, ¶ 63 (Apr. 2, 2018) [hereinafter “Comp.”] (EPA inspection noting lack of “comprehensive plan” and further finding an “undetected hole in the bottom of the trench” and “debris on the bottom of the flow weir channel”); *see also* Attachment 1, at 3–4. Further, the PM Plan should clearly explain a plan for corrective action to be taken in the event the inspection finds any structure or equipment in need of servicing or repair. *See* Comp., ¶ 63 (noting the trench hole allowed “highly corrosive wastewater” to flow from the Facility untreated). Such corrective action plan should address a potential need for diverting effluent away from damaged equipment or structures, a process for ensuring needed maintenance or repairs are conducted in a timely manner, and a process for documenting and where applicable investigating the root cause of damage.

A sufficient PM Plan should ensure that the type of leaks or structural damage that caused the April, 2017 spill are identified, remediated, and fully repaired prior to causing a discharge that threatens or causes harm to the environment. A PM Plan that lists no regular maintenance beyond calibration, merely calls for a “quarterly inspection” without specifying the method or scope of the inspection, and does nothing to connect the inspection to any necessary maintenance, repair or remedial actions to prevent leaks or spills would not prevent a spill like the April, 2017 spill. A strong PM Plan is all the more vital given the stakes here: a Facility that

discharges acutely toxic substances located in the midst of National Park Service properties, and which discharges flow to Lake Michigan, with drinking water supply intakes serving millions of people.

For the reasons discussed above and for the reasons enumerated in the Technical Report attached hereto, NPCA agrees with EPA's and IDEM's rejection the O&M Plan and PM Plan as written. NPCA respectfully requests EPA and IDEM insist on comprehensive Plans that provide all necessary information for Facility operators, include sufficiently detailed recordkeeping requirements and maintenance schedules, and which, overall, are fairly calculated to prevent spills like the April, 2017 spill.

B. The Spill Notification Plan is Insufficient to Adequately Notify Relevant Stakeholders, and Should be Strengthened to Proactively Alert Recreators.

The Facility's Spill Notification Procedure, Consent Decree, App. B, essentially codifies the minimum steps the Facility must take to comply with federal and state law. While NPCA agrees with the need for a written notification procedure to fully comply with all legal requirements, this procedure is insufficient in several respects. First, the procedure fails to identify sufficient employees at the Facility with responsibility under this procedure. No employees below a Management level are listed as having responsibility under this procedure, despite the fact that it is likely an Operator or Repairman-level employee would first detect the spill requiring notification. *Compare e.g.* O&M Plan, at 13–15 (identifying Operators and Repairmen as employees charged with overseeing wastewater treatment equipment), *with* Consent Decree, App. B, at 1 (listing only Director and Managers as having responsibilities under this procedure). At a minimum, all employees who are *potentially* in a position of detecting a spill or threatened release must be charged with following this procedure to initiate the evaluation and as necessary notification requirements. Additionally, as written, this

procedure has no requirement that *any* personnel are actually trained to follow this procedure. While U.S. Steel may properly delegate the actual notification of relevant entities to a management-level employee, the procedure for detection and initiation of evaluation of the spill must include all relevant employees, particularly those who operate and repair the waste treatment equipment likely to be a cause of such spill. *See e.g.* Comp., ¶ 63 (noting that poorly maintained waste treatment equipment “created a pathway” for pollutant spill). Similarly, all employees must be adequately trained to follow the detection, evaluation, and notification requirements of this procedure to ensure its efficacy. Such training requirement should be noted in the procedure itself.

Second, as written the Spill Notification Procedure limits the notification means to telephone calls to specified entities. *See e.g.* Consent Decree, App. B, at 3, (3)(b)(i)(2). While this Procedure tracks the minimum legal requirements for the Facility, they do not appear designed to effectively and efficiently notify all potentially impacted stakeholders, including the public. A proper Notification Procedure in 2018 should employ *all* means of readily available technology, including the use of social media, e-mail, and websites to reach the broadest audience the fastest.³ In addition to the minimally required telephone calls, notification through any or all of U.S. Steel’s Internet-based platforms would reach a broader audience quicker, with no meaningful increase in time or cost to the Facility. Accordingly, NPCA respectfully requests that the Spill Notification Procedure be updated to include the use of technology-based means to notify the public in the event of a notification-triggering release.

³ NPCA notes that U.S. Steel, and the Portage Facility, maintains an active presence on several social media platforms, including Facebook and Twitter, as well as hosting its own website.

Lastly, the Spill Notification Procedure as written is insufficient to adequately alert all relevant stakeholders given the location of the Facility and the nature of the effluent it discharges. Because the Facility discharges effluent directly to a highly trafficked public recreation area, located amidst National Park Service properties, its Spill Notification Procedures should exceed the minimum floor required by law, to be fully protective of public health and the local environment. Accordingly, the procedures should expand the notification distribution list to include local stakeholders like recreation-groups, watershed protection groups and other organizations who are well positioned to swiftly notify their membership, which includes the population at risk of potential direct contact with any spilled pollutants. Similarly, because of the proximity of the Facility to both land and water-based recreation, the Facility's spill notification should be triggered at a much lower threshold than the legal alert level. As written, no notification is required for a spill that does not threaten waters of the State. *See* Consent Decree, App. B, at 3, (3)(b)(i). However, spills that do not meet this threshold may still have adverse effect on populations that come into direct contact with the discharge waters. *See e.g.* The Surfrider Foundation, Complaint, No. 18-cv-00020, Dkt. #1, ¶ 17 [hereinafter "Surfrider Comp."] (describing recreators affected by odors and unsightly discoloration of waters in Burns Waterway); *see also Fishing and Boating, Indiana Dunes National Lakeshore*, NAT'L PARK SERV.⁴ (noting fishing, swimming, and boating opportunities in Burns Waterway). The Spill Notification Procedure should contain a notification protocol that includes alerts where releases may cause nuisance-like adverse effects to sensitive populations or those coming into direct contact with the discharge water, including people who fish in Burns Waterway and Lake

⁴ Available at: <https://www.nps.gov/indu/planyourvisit/fishing-and-boating.htm> (last visited Jun. 4, 2018).

Michigan in the vicinity of the Facility, even where that release may not trigger the legal threshold for a spill under Indiana law. The Facility should take this opportunity to not only bring itself into compliance with law, but to proactively establish a notification system that accounts for the recreation and natural resources in the area and is sufficiently protective of public health, welfare and the environment.

II. The Proposed Civil Penalty of \$300,621 is Inadequate Under EPA’s own CWA Penalty Policy and is Insufficient to Serve the Deterrent Purpose Congress Intended.

NPCA also has substantial concerns with the civil penalty assessed in the proposed Consent Decree. Consent Decree, ¶ 32. Given both the scope of violations, and the gravity of harm that has occurred and is continually threatened by the Facility’s noncompliance, particularly to public natural resources including Indiana Dunes National Lakeshore and Lake Michigan, the proposed civil penalty amount is not in line with EPA’s own CWA Penalty Policy for determining the minimal settlement penalty, and does not serve the deterrent purpose of the CWA.

A. The Proposed Penalty Does Not Comport with EPA’s CWA Penalty Policy.

EPA has published guidance on how to settle civil penalties for CWA violations. U.S. ENVTL. PROT. AGENCY, INTERIM CLEAN WATER ACT PENALTY POLICY, 2 (Mar. 1, 1995) [hereinafter “PENALTY POLICY”].⁵ EPA’s policy calculates “the lowest penalty figure that the Federal Government should accept in a settlement.” *Id.* This figure is derived from a formula that considers five variables of the case: 1) economic benefit; 2) gravity of harm, including

⁵ This Guidance is as-modified, most recently by EPA’s Jan. 11, 2018, Memorandum entitled “Amendments to EPA’s Civil Penalties Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule.” That Memorandum adjusted the per-violation amount to account for inflation, but otherwise “does not change or alter the narrative version of the media-specific penalty policies.” *Id.* at 3.

adjustment factors; 3) litigation considerations; 4) ability to pay; and 5) Supplemental Environmental Projects. *Id.* at 4. The economic benefit accounts for all costs avoided or delayed by the Facility's noncompliance and is designed to fully remove any competitive advantage the Facility may have had over competitors who follow the law. *Id.* at 4–5. The gravity of harm component accounts for seriousness of the violation, amount of environmental or public health harm, the number of violations, and the type of violations, for every month of noncompliance. *Id.* at 6–11. Litigation considerations and ability to pay components allow for reductions where there is potential difficulty in proving the violations in court, or where a smaller Facility may suffer substantial hardship based on the penalty amount. *Id.* at 13–15, 21. The last component allows the government to deduct from the penalty the value of a Supplemental Environmental Project the Facility agrees to undertake. *Id.* at 22.

In applying the Penalty Policy, the United States needs to account for both the substantial delayed and avoided costs for all capital and other equipment repairs, replacements and upgrades, as well as the value of all monitoring and reporting not done. Additionally, the United States must account for the more than 50 separate violations, many of which lasted weeks or months and/or included more than a single parameter violation (which are considered separate violations per the Penalty Policy). *Id.* at 4, Attachment 1. Looking to the maximum statutory penalty for the Facility's violations, which are counted at either \$37,500 (for older violations) or \$53,484 (for more recent violations) per day per violation, the Facility's liability⁶ is more than

⁶ NPCA notes that this is a conservative estimate, made on the basis of the alleged CWA violations itemized in the United States Complaint. *See Comp.*, at App. A. It does not include additional CWA violations alleged in other ongoing citizen suits against U.S. Steel. *See Surfrider Comp.*, ¶¶ 73, 97. It also does not include the penalties for violations of CERCLA or EPCRA as detailed in the United States Complaint.

\$6,500,000. *See id.* at 4 (noting that before calculating the settlement minimum, “Agency staff should estimate the statutory maximum penalty”).

As discussed in more detail below, the proposed \$300,621 payment to the United States⁷ to settle more than five years of violations, which includes the leak of hundreds of pounds of highly toxic effluent, causing National Park Service beach closures and diversion of public water supplies, is utterly inconsistent with EPA’s Penalty Policy for setting a *minimum* penalty amount. The proposed penalty is insufficient given the economic benefit the Facility gained by delaying the substantial capital improvements to its wastewater processing, and avoiding for years the costs of adequate monitoring and testing of its effluent. And the proposed penalty further fails to fully account for the full gravity of environmental and public health harm, and the pervasive and continuing nature of the violations. The low proposed penalty is not justifiable under any of the offsetting considerations specified by the Penalty Policy. Accordingly, the proposed penalty cannot be considered consistent with the Penalty Policy.

1. The Capital Repairs, Upgrades, and Intensive Monitoring and Testing Required by the Proposed Consent Decree Demonstrate the Economic Benefit of the Facility’s Noncompliance.

The economic benefit of noncompliance includes: delayed and avoided costs of capital improvements and repairs; engineering design, purchase, installation, and replacement of equipment; monitoring, sampling, laboratory analysis, and reporting costs; and one-time acquisitions delayed. PENALTY POLICY, at 4–5. The “best evidence of what the violator should

⁷ Because the CWA only contemplates payment of a civil penalty to the United States Treasury, *see Friends of the Earth, Inc. v. Laidlaw Env’tl. Services (TOC), Inc.*, 528 U.S. 167, 173 (2000), the proposed penalty to the U.S. is used. However, NPCA notes that even if the penalty amount included the payments to the State of Indiana, the total amount characterized by DOJ as a penalty (\$601,242.00, Consent Decree, ¶¶ 32, 33) is still drastically and inexplicably low, as discussed in this section.

have done to prevent the violations, is what it eventually does (or will do) to achieve compliance.” *Id.* Delayed costs are those costs the violator has put off incurring by not preventing the violations. *Id.* at 5. The delay in costs is calculated by looking back to the earliest date of violation. *Id.* Delayed costs include accounting for the value of inflation, taxation, and the time value of money. *See* Calculation of the Economic Benefit of Noncompliance in EPA’s Civil Penalty Enforcement Cases, 70 Fed. Reg. 50,326, 50,329 (Aug. 26, 2005). Typically, the Agency uses a computer model to derive the total economic benefit. PENALTY POLICY, at 5. By inputting all costs of compliance taken or to be taken to achieve compliance, as well as the length of delay, the model is able to calculate a benefit that accounts for inflation, excess cash flow during avoided compliance, alternative investments, the time value of money, competitive advantage over compliant firms, and other indirect benefits that a violator gained by noncompliance. 70 Fed. Reg. at 50328–29.

Because all necessary information to derive the full and complete economic benefit is not publically available,⁸ NPCA does not attempt to calculate a precise dollar amount for U.S. Steel’s economic benefit from its years of CWA noncompliance. *See* Attachment 1, at 4–5 (noting lack of information for public to adequately evaluate the actions U.S. Steel has taken to address its recurring CWA violations). However, NPCA notes that even the limited information publically available demonstrates that the economic benefit to U.S. Steel is considerable. For example, the proposed Consent Decree’s compliance requirements show some of the costs avoided and delayed by the Facility’s noncompliance. *See* Consent Decree, ¶¶ 9–12. The costs

⁸ NPCA has requested such information be made publically available to ensure a fully transparent settlement process. Such transparency is particularly necessary here where all available information strongly suggests that this penalty was not derived using the published guidance from the Agency responsible for CWA enforcement. *See* discussion, *infra*.

avoided are the costs the company should have incurred to prevent the violations. PENALTY POLICY, at 5. Looking to the proposed Consent Decree's required improvements, U.S. Steel has gained a substantial economic benefit from noncompliance, particularly in delaying capital costs for appropriate equipment, and costs of repairs and maintenance necessary to avoid the April, 2017 spill. Consent Decree, ¶ 9. The Facility also gained by avoiding the costs of the monitoring and testing of its effluent for the entire period of noncompliance, and the costs of preparing plans for the Facility's wastewater, operation, maintenance, and spill notification. *Id.* ¶¶ 11–12. The proposed Consent Decree's requirements to achieve compliance further include the direct capital costs, including complete replacement of the Facility's Chrome Treatment Plant pipe system (in addition to short-term replacement of the joints in the pipe system), replacement of the heat exchanger for the Facility's Tin Free Steel Line, and repairs to the Facility's concrete containment trench. *Id.* ¶ 9. All of these costs constitute part of the economic benefit. Ultimately, the requirements to come into compliance include *every* aspect of the Facility's wastewater processing, includes both equipment repair and capital costs to upgrade the equipment to appropriate standards, and includes a comprehensive, Facility-wide monitoring, sampling, and reporting process. *Id.* ¶¶ 9–12. Further, investigation by EPA and the State of Indiana found that these violations extended over a substantial period of time, with violations noted continually over the past five years.⁹ Comp., ¶ 63, App. A. Even without additionally calculating the competitive advantage, the inflation value, the time value of money, or the alternative investments added as

⁹ NPCA also notes that though the violations set forth in the Complaint only date back five years, this is not an indicator that the Facility was in compliance prior to five years ago. *See* PENALTY POLICY, at 5, n.3. Thus, given the Facility's poor track record, it is reasonable to assume CWA violations were occurring prior to the five-year period as well.

the Penalty Policy does, it is clear that the economic benefit to U.S. Steel is extensive, and undermines the relatively small civil penalty set forth in the proposed Consent Decree.

2. *The Gravity Components in the Penalty Policy Mandate a Substantially Higher Minimum Penalty for Settlement.*

The Penalty Policy also mandates that the settlement penalty sufficiently account for the nature, number, duration, toxicity, and degree of harm from the violations being settled.

PENALTY POLICY, at 6–9. Because removing the economic benefit “only places the violator in the same position as he would have been if compliance had been achieved on time[,]” the gravity component is added to the penalty amount “to ensure that the violator is economically worse off than if [he] had obeyed the law.” *Id.* EPA’s longstanding policy has been to use the gravity factors to ensure that a violator is in a worse-off position as a means of deterring this violator from future noncompliance and as an example to the larger community of the costs of noncompliance. 70 Fed. Reg. at 50,330. This method also is used to offset any “illegal competitive advantage” gained by delaying or avoiding compliance costs, which may not be fully calculable by the economic benefit model. *Id.* The gravity factor, calculated for every month in which the Facility had a violation, has a base penalty of \$1,000, which is multiplied by the type, number, and severity of violations during that month. PENALTY POLICY, at 6–9.

As an example, to calculate the monthly gravity factor for the Facility for April, 2017 (during which the spill of hexavalent and total chromium occurred), the violations occurring during that month are used to assess the multipliers for “A” through “D” in the Penalty Policy, which are added together (plus 1) and then multiplied by the \$1,000 gravity amount. *Id.* at 6–11. The “A” multiplier – Significance of Violation – is a range from 0-20. *Id.* at 7. For an effluent limit violation of 201-600% of the daily maximum for a toxic pollutant, *see* Comp., ¶ 64, the Penalty Policy recommends a multiplier of up to 15. PENALTY POLICY, at 8. The “B” multiplier –

Health and Environmental Harm – ranges from 0-50. *Id.* For violations that had actual or potential harm that included “impact on Human Health (e.g. interference with drinking water supplies),” *see* Comp., ¶ 65, the Penalty Policy recommends a multiplier of up to 50. PENALTY POLICY, at 8. The “C” multiplier – Number of Effluent Violations – assesses ranges from 0-5. *Id.* at 9. A minimum value of 1 is recommended where more than one effluent limit was violated, but otherwise the value may be based on the percentage of effluent limits exceeded. *Id.* Thus, the 7 effluent violations at Outfall 304A, *see* Comp., at App. A, which relative to the 16 effluent limits in the Facility’s permit for that outfall,¹⁰ would yield a multiplier of up to 3. PENALTY POLICY, at 9. The “D” multiplier – Significance of Non-Effluent limit Violations – ranges from 0-70. *Id.* The recommended multiplier for an incomplete Storm Water Pollution Prevention Plan, *see* Comp., at App. A, is up to 8. PENALTY POLICY, at 11. Thus, the multipliers for April, 2017 for the Facility is up to 76 (15+50+3+8). The gravity penalty for April, 2017 is up to \$77,000 ([1 + multipliers] x \$1000). *Id.* at 6.

This \$77,000 represents *only* the gravity factor (i.e. it does not include the addition of economic benefit) and *only* calculates the gravity factor for *one* of the 19 separate months where at least one violation occurred, but still alone would account for 25% of the total proposed penalty. *See* Comp., at App. A (months of violation). These calculations strongly suggest the United States has not followed the Penalty Policy in setting the proposed penalty amount, and that the proposed penalty is far below what the Agencies themselves recommend to provide a sufficient deterrent under the CWA. *See Laidlaw*, 528 U.S. at 185. NPCA respectfully requests that the United States release its own calculations of the settlement penalty it proposed, to enable

¹⁰ *See* STATE OF INDIANA, DEPT. OF ENVTL. MGMT., AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM, Permit, No. IN0000337, 16 (Apr. 1, 2016) [hereinafter “NPDES PERMIT”].

full and meaningful public participation, and to ensure that this policy is fairly and appropriately applied to U.S. Steel. *See generally* PENALTY POLICY, at 4 n.2 (noting only for calculation of statutory maximum penalty, but not Penalty Policy settlement penalty, that attorney work-product privilege applies).

3. *None of the Penalty Policy’s Mitigating Factors apply to U.S. Steel.*

The Penalty Policy allows for three categories of factors to offset or reduce the settlement penalty. PENALTY POLICY, at 13–22; *see also id.* at 4. First, litigation considerations, like the difficulty of proof or securing witnesses for prosecution can lower the penalty to account for the risk of the United States succeeding in a lawsuit. *Id.* at 13–16. Second, the ability to pay, allows for reduction of the settlement penalty, when it is “clearly beyond the financial capability of the violator.” *Id.* at 21. Finally, the settlement penalty may be reduced by the value of an approved Supplemental Environmental Project that the violator agrees to perform. *Id.* at 22. As discussed below, none of these factors apply to U.S. Steel or the current settlement, and thus do not justify the abnormally low civil penalty in the proposed Consent Decree.

There are no relevant litigation considerations that warrant reduction of the settlement penalty. Relevant considerations include “[k]nown problems with the reliability or admissibility of the government’s evidence” or the “credibility, reliability and availability of witnesses.” *Id.* at 15. However, these factors are inapplicable to the current case, where the Facility’s own monitoring reports are evidence of the violation, more than three different regulatory agencies had employees evaluating and working on the Facility’s spill, and where in a citizen suit arising from a largely overlapping set of violations, U.S. Steel has admitted many of the violations. *See e.g.* United States Steel Corporation’s Answer and Affirmative Defense to Plaintiff’s Complaint, No. 18-cv-00020, Dkt. #17, ¶¶ 57–58, 62, 73.

Further, the size of the company responsible for the violations, U.S. Steel, precludes any application of the Penalty Policy's reductions for inability to pay. PENALTY POLICY, at 21. U.S. Steel in 2017 reported corporate earnings of more than \$600 million. UNITED STATES STEEL CORP., ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITY AND EXCHANGE ACT OF 1934, FOR THE FISCAL YEAR ENDED DEC. 31, 2017, Form 10-K, 6 (Feb. 21, 2018). Further, the company is large enough that it actively plans for environmental cleanup in its budgeting. *See e.g. id.* at 91.

Finally, while the Penalty Policy allows offsetting the penalty amount by the value of an appropriate Supplemental Environmental Project, no such project is included as part of the proposed Consent Decree currently. NPCA strongly supports incorporating a Supplemental Environmental Project into the settlement in addition to an appropriate civil penalty. *See* discussion, *infra*. However, where no such project is contemplated, the full penalty amount must be imposed on the Facility in accordance with the Penalty Policy.

The proposed civil penalty of \$300,621 is incongruous with the scope and nature of the violations, and any fair application of EPA's CWA Penalty Policy. Accordingly, NPCA respectfully requests that the proposed Consent Decree be modified to apply the Penalty Policy, and assess an appropriate civil penalty amount.

B. The Proposed Civil Penalty and Stipulated Future Penalty Schedule do not meet the Deterrent Purpose of the CWA.

Beyond not meeting the EPA's Guidance document, neither the proposed civil penalty nor the stipulated future penalty schedule meets the goal of the Clean Water Act. The goal of the CWA is to restore the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251. The primary purpose of a penalty for violations of the CWA is to deter violations

by ensuring a violator does not see an economic benefit from the violation and ensuring that the violator pays more for delaying compliance than they would have by having not violated the law.

See e.g. Laidlaw, 528 U.S. at 185; *see also* PENALTY POLICY, at 2.

1. The Proposed Civil Penalty is Insufficient to Deter the Corporate Conduct that Led to the CWA Violations.

The penalty amount proposed here fails to serve these goals, because the amount is insufficient to deter the underlying negligence and intentional delays in maintenance that contributed to the violations.

The violations being settled as part of the proposed Consent Decree include years of effluent violations, but also include the substantial lack of maintenance, repair, inspection, and monitoring that EPA and the State noted in their investigations following the April, 2017 spill of hexavalent chromium. *See* Comp., ¶ 63. While the penalty must account for the environmental and public health harms of the acutely toxic spill, the penalty can only meet the deterrent goals of the CWA if it *also* accounts for the actions and inactions of the Facility's management that put at risk the integrity of public waters and national park lands through cost-saving measures including delayed maintenance. Because the civil penalty is not sufficient to deter this behavior, it is insufficient to meet the goals of the CWA and must be adjusted.

The investigation by EPA and the State found repeated evidence that the Facility did not sufficiently prioritize maintenance or conduct inspections to prevent the leaking equipment that led to spills like the April, 2017 spill. Comp., ¶ 63. These failures included unnoticed holes in the Facility's wastewater containment trench, a lack of regular inspections of the wastewater equipment, and a failure to have preventative maintenance plans. *Id.* These failures predictably also led to findings that critical wastewater equipment had undetected leaks and unmitigated buildup of debris. *Id.* This evidence suggests a lack of commitment to ensuring that the Facility's

wastewater (which always includes some acutely toxic pollutants) is fully treated to prevent environmental harm. However, public statements and investigations further suggest that U.S. Steel particularly relied on the economic benefit of delaying compliance in its own financial planning. For example, U.S. Steel has included delaying maintenance and under spending on necessary capital repairs and upgrades at its facilities, including the Portage Facility, as part of a corporate strategy known as the “Carnegie Way” under its recent former CEO. *See* Joseph S. Pete, *U.S. Steel Planning \$50 Million In Investments In Gary Works*, NWI TIMES, (July 26, 2017)¹¹, (noting “U.S. [Steel] had been deferring maintenance for years as part of the Carnegie Way cost-cutting strategy launched by former CEO Mario Longhi”); *see also* Bob Tita, *U.S. Steel Posts Surprise Loss, Slashes Outlook*, MARKETWATCH.COM, (Apr. 26, 2017)¹², (detailing the “under-maintained” facilities at U.S. Steel); Len Boselovic, *Analysts Say U.S. Steel Cost-Cutting Hurting Operations, Safety*, PITTSBURG POST GAZETTE, (Nov. 3, 2016)¹³ (discussing how U.S. Steel is “clearly underspending on maintenance capital expenditures” and risking worker safety). This further reinforces that the Facility, and U.S. Steel as a company, have been willing to essentially leverage the Facility’s wastewater treatment equipment maintenance costs, while risking the environment and public health of those who use, depend on and enjoy the natural public resources of Lake Michigan and its surrounding shoreline. Discharging industrial pollutants into public waters is not a right, it is a privilege granted by the agencies — both state

¹¹ Available at: http://www.nwitimes.com/business/local/u-s-steel-planning-million-in-investments-in-gary-works/article_52a34625-9b1c-5153-b1a0-ec2affe35f6e.html (last visited Jun. 4, 2018).

¹² Available at: <https://www.marketwatch.com/story/us-steel-posts-surprise-loss-slashes-outlook-2017-04-26> (last visited Jun. 4, 2018).

¹³ Available at: <http://www.post-gazette.com/business/pittsburgh-company-news/2016/11/02/U-S-Steel-shares-dip-in-early-trading-Pittsburgh-steelmaker/stories/201611020168> (last visited Jun. 4, 2018).

and federal — entrusted to protect those public resources and public health. Those agencies protect public resources by including specific conditions in permits that allow pollutant discharges that are specifically tailored to protect water quality and public health. Absent strict adherence to those conditions, both the public waters and public health is put at risk, and consequently the privilege to discharge pollutants is revocable.

This is precisely the conduct that penalties under the CWA are designed to deter. *See Tull v. United States*, 481 U.S. 412, 422 (1987) (discussing legislative purpose behind CWA civil penalties). As discussed above, the proposed civil penalty is insufficient to account for the magnitude of violations in accordance with EPA’s Penalty Policy. However, given the evidence suggesting that U.S. Steel actively sought to avoid and defer maintenance as a business strategy, the proposed penalty is even more inadequate. The civil penalty assessed as part of any settlement must fully account for not only the economic benefit received and the gravity of harm caused, but also serve to fully deter the conduct and negligence that caused the underlying violations.

For the reasons stated above, NPCA respectfully requests that the proposed Consent Decree be modified to assess a civil penalty that appropriately accounts for the full economic benefit, gravity of harm, and necessary deterrent values in accordance with EPA policy, and federal statutory goals.

2. *The Stipulated Future Penalty Schedule is Insufficient to Meet the Deterrent Goal of the CWA.*

Additionally, the proposed Consent Decree establishes a schedule of stipulated penalties for both violations of the terms of the Consent Decree and future violations of the Facility’s NPDES permit. Consent Decree, ¶ 38. The proposed Consent Decree provides for stipulated penalties, which range from \$250 to \$5,000. *Id.* ¶ 38, Table 1. Nominally, the proposed schedule

assigns higher penalties for more egregious violations, however even the most severe penalty amounts to less than 10% of the statutory maximum penalty for daily violations. *Compare id.* (\$5,000 per day penalty for failure to comply with approved Plans required by Consent Decree for more than 30 days) *with* Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190, 1193 (Jan. 10, 2018) (maximum per day per violation civil penalty under CWA is \$53,484, irrespective of severity). In fact, because the stipulated penalty schedule applies to any future NPDES permit violations, the Facility could have another spill of acutely toxic hexavalent chromium, causing another week-long closure of public beaches, and a necessary diversion of public drinking water supplies and under the proposed Consent Decree the stipulated penalty would only be \$1,000. Consent Decree, ¶ 38, Table 1.

A stipulated civil penalty is only effective if it will deter the conduct leading to the penalty. *See Laidlaw*, 528 U.S. at 186. The stipulated penalty schedule here does the opposite of deterring illegal conduct—it offers U.S. Steel a guaranteed discount of ninety cents on the dollar when it does violate the law. For a company with more than \$600 million in annual revenue, with a documented history of noncompliance indicated by both public reporting and the more than 50 violations cited over the last five years by the United States, these penalty provisions are woefully inadequate to meet the deterrent purpose of the CWA. Rather than leveling the playing field, the proposed stipulated penalty schedule ensures U.S. Steel’s continued business advantage over similarly situated competitors that comply with environmental laws. Accordingly, NPCA respectfully requests that the stipulated penalty schedule be revised to require penalty amounts that are calculated to sufficiently deter future violations, in light of all the evidence about the violator.

III. The Proposed Consent Decree Should Include a Supplemental Environmental Project to Restore National Park Resources that have been affected.

In addition to the settlement penalty, the Consent Decree also should include a Supplemental Environmental Project (“SEP”) that helps restore the public natural resources, including Indiana Dunes National Lakeshore, affected by U.S. Steel’s noncompliance and which furthers the mission of the Agencies in the Settlement, including the NPS and the EPA. The failure to include a SEP here, given the unique nature of the public resources adjacent to and impacted by the Facility’s noncompliance, is a missed opportunity to achieve fully compensatory restoration to the local community, and to the general public that recreates and enjoys the beaches, lakeshore, Lake Michigan, and surrounding forest and parkland adjacent to and nearby U.S. Steel’s Facility.

A SEP is particularly relevant here, because the Facility is located amidst unique natural resources, which the Facility’s noncompliance puts at substantial risk. The Facility’s permitted outfalls discharge pollutants into the Burns Waterway. Comp., ¶ 56. The Burns Waterway is adjacent to the Portage Lakefront, a part of the Indiana Dunes National Lakeshore. *See Portage Lakefront and Riverwalk*, NAT’L PARK SERV.¹⁴ The Burns Waterway itself is frequented by recreators and visitors. *See e.g. Surfrider Comp.*, ¶ 17. Approximately 500 yards from the Facility’s outfalls, the Burns Waterway drains directly into Lake Michigan. Comp., ¶ 65. Lake Michigan provides drinking water, recreation, transportation, and food resources for more than 10 million people living within its watershed. *See Nature & Science, Indiana Dunes National Lakeshore*, NAT’L PARK SERV.¹⁵ Indiana Dunes National Lakeshore, a unit of the National Park

¹⁴ Available at: <https://www.nps.gov/indu/planyourvisit/portage-lakefront-and-riverwalk.htm> (last visited Jun. 4, 2018)

¹⁵ Available at: <https://www.nps.gov/indu/learn/nature/index.htm> (last visited Jun. 4, 2018).

Service, spans the shoreline of Lake Michigan on either side of the U.S. Steel's Portage Facility, extending roughly from Gary to Michigan City, Indiana. *See id.* The National Lakeshore consists of public beaches, sand dunes, oak and maple forests, wetlands, prairies, marshes, and rivers, which collectively contains among the highest biological diversity per unit of any of the National Park System units. *Id.* Indiana Dunes receives more than 2,000,000 visitors annually. *See Park Statistics, Indiana Dunes National Lakeshore*, NAT'L PARK SERV., (2010 data).¹⁶ The massive hexavalent chromium release at the Facility caused the NPS to close four of the National Lakeshore's public beaches for a week, as well as the week-long closure of the nearby public drinking water supply intake. *Comp.*, ¶ 65. On inspection following the hexavalent chromium release, EPA documented multiple failures and violations at the Facility that threaten or harm the surrounding natural resources. *Id.* ¶ 63. Despite the location of the Facility, which has the potential to damage a vast range of invaluable and irreplaceable natural resources, and despite the fact that EPA and state agencies have documented a history of violations that threaten and degrade these resources, the proposed Consent Decree included no SEP to remediate the harm and enhance the local environment. Although the Proposed Consent Decree provides for damages pursuant to the System Unit Resources Protection Act, 54 U.S.C. §§ 100721 *et seq.*, the amount of damages assessed makes clear that this provision covers the closure days of public beaches and not the full range of environmental harm resulting from five years of CWA violations. *See Comp.*, ¶ 28.

Including a SEP in the settlement would allow the proposed Consent Decree to further the mission of the federal agencies settling, and provide restoration in the local community to

¹⁶ Available at: <https://www.nps.gov/indu/learn/management/statistics.htm>. (last visited May 19, 2018).

unique natural resources. Moreover, a SEP here may follow the example of Portage Lakefront and Riverwalk, a former brownfield site used as pollutant settling ponds for a steel company, that now is a public recreation area offering trails, Lake access, fishing access, and other amenities. *See Portage Lakefront and Riverwalk*, NAT'L PARK SERV.¹⁷ Much like the Portage Lakefront, a SEP here can work to restore areas damaged by industrial pollution to publically accessible recreation areas that benefit the Lake, the shoreline and the superb diversity of the area. Such a SEP, included as part of the U.S. Steel settlement, would additionally serve and further the mission of both the NPS and the EPA, the very agencies engaging in the settlement. *See Our Mission, About EPA*, U.S. ENVTL. PROT. AGENCY,¹⁸; *Our Mission, About Us*, NAT'L PARK SERV.¹⁹ Because of the unique setting of the Facility, putting it adjacent to and in the middle of public natural resources of incalculable value, the settling parties should include in the Consent Decree a SEP that would remediate and compensate the local public and natural environment for the history of violations being resolved through this agreement.

IV. The Compliance Requirements of the Proposed Consent Decree Require an Immediate Modification of the Facility's NPDES Permit.

The compliance requirements for the Facility include necessary and long overdue equipment repairs and upgrades, changes to the Facility's operation and maintenance plans, spill notification plans, wastewater processing, and discharge monitoring. *See generally* Consent Decree, ¶¶ 9–12. NPCA agrees that all of these steps are necessary to bring the Facility into compliance and to adequately protect against the threat of future spills. However, to fully

¹⁷ Available at: <https://www.nps.gov/indu/planyourvisit/portage-lakefront-and-riverwalk.htm> (last visited Jun. 4, 2018).

¹⁸ Available at: <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> (last visited Jun. 4, 2018).

¹⁹ Available at: <https://www.nps.gov/aboutus/index.htm> (last visited Jun. 4, 2018).

implement these compliance measures the Facility must immediately modify its NPDES permit to incorporate these requirements. As written, the proposed Consent Decree allows the Facility to operate under its current NPDES permit—which in some instances conflicts with the terms of the proposed Consent Decree—until 2021 and perhaps even later. Further, the proposed Consent Decree does not even require all of the compliance requirements to *ever* be incorporated into the Facility’s NPDES permit. This approach creates confusion around the Facility’s legal mandate to comply with the CWA, and limits transparency and enforceability of the Facility’s compliance requirements. NPCA respectfully requests that the proposed Consent Decree be revised to require an immediate modification of the Facility’s NPDES permit to harmonize it with the requirements of the Consent Decree, and further requests that all of the operation, maintenance, preventative maintenance, wastewater process monitoring plans be incorporated into the NPDES permit.

The Facility currently has a NPDES permit issued by the State in 2016, which on its terms is valid for five years. Comp., ¶ 41. Further, in accordance with the policy of the State, the Facility’s current permit may be administratively extended indefinitely without modification. *See* 327 IND. ADMIN. CODE § 5-2-6(b) (2018). Thus, even where the proposed Consent Decree requires compliance measures to be incorporated into the Facility’s permit, without immediate modification of that permit, those changes will not occur until 2021 at the earliest. This reduces the transparency and enforceability of the Facility’s compliance requirements, which alone is enough reason to require an early modification to the Facility’s permit.

Here, because the proposed Consent Decree requires substantively different monitoring for both hexavalent and total chromium than is required by the Facility’s current NPDES permit, an immediate permit modification is essential to ensure the efficacy of the Consent Decree.

Compare Consent Decree, ¶ 12(a) *with* NPDES PERMIT, at 143. Allowing U.S. Steel to continue to operate with an outdated permit that does not accurately reflect *all* requirements of the Facility undermines the NPDES permit program itself. Fundamental to the permit program is that the permit, in a single operative document, contains all legal requirements for the Facility's discharge of pollutants. *See e.g.* 33 U.S.C. § 1342(b)(1)(A). Further, facilities are given operational certainty by following their permit. A facility in compliance with its NPDES permit is deemed in compliance with the CWA, even if the permit is later determined unlawful or inadequate. *Id.* § 1342(k). In this proposed Consent Decree, the United States proposes to change the Facility's effluent limitations with respect to monitoring frequency of total and hexavalent chromium from outfalls 104 and 204. To do so without modifying the Facility's permit creates uncertainty for U.S. Steel and precludes transparency for the public. Because the Facility's permit no longer contains all operative requirements for the Facility's discharges, U.S. Steel is no longer assured the benefit of the statutory 'permit shield' in CWA section 402(k). Compliance with the permit will no longer sufficiently meet U.S. Steel's pollutant discharge obligations. Further, because the proposed Consent Decree requires the results of the more frequent monitoring to be included in Discharge Monitoring Reports (DMR) and Monthly Monitoring Reports (MMR) submitted "pursuant to the Permit[.]" the likelihood of confusion to the public increases because the source of the Facility's legal obligation is obfuscated. *See* Consent Decree, ¶ 12(a). This lessens public disclosure and further subverts one of the fundamental purposes of the NPDES program, which is designed to ensure public participation and information disclosure. *See* 33 U.S.C. § 1342(a), (b)(3).

Further, by not updating the Facility's NPDES permit to match the proposed Consent Decree's compliance requirements, and incorporating all the CWA-based terms of the Consent

Decree into the permit, the United States creates a risk of confusion that prevents compliance with the more rigorous monitoring. To ensure adequate understanding of the Facility's NPDES permit limitations, the NPDES permit includes a requirement that all relevant employees be trained to the requirements of the permit. NPDES PERMIT, at 29, Cond. 4(h). The proposed Consent Decree has no such corresponding requirement that relevant employees be retrained to follow the more frequent monitoring protocol required by the proposed Consent Decree and not the less frequent protocol of the current permit. In fact, the proposed Consent Decree does not expressly require training for *any* compliance requirement imposed as a result of the settlement, despite the fact that compliance requirements include altering the design and operation of the Chrome Treatment Plant, and design and implementation of an entirely new wastewater process monitoring system. *See* Consent Decree, ¶¶ 9–13. By not incorporating the requirements of the proposed Consent Decree into the permitting process, there is no explicit mechanism for ensuring employees are fully trained. Moreover, there is an express risk that employees will be *mis-trained* to follow the NPDES Permit rather than the Consent Decree for hexavalent and total chromium monitoring from outfalls 104 and 204. And there is a further risk that employees will not be sufficiently trained at all on the other plans, which under the proposed Consent Decree will never be part of the permit. A modification of the NPDES Permit is essential where the proposed Consent Decree requirements impose a more stringent monitoring regime in conflict with the permit. *See generally* 327 IND. ADMIN. CODE § 5-2-16(b)(3) (listing change in condition as cause to modify an issued NPDES permit).

Lastly, as the NPDES Permit is modified, *all* compliance requirements of the proposed Consent Decree should be included to increase their enforceability, and to increase the transparency of the Facility's compliance. When made a part of the Facility's NPDES Permit,

compliance with the plans may be enforced by any person, not merely the parties to the Consent Decree. *See* 33 U.S.C. § 1365(a). Incorporation into the permit will allow for routine re-examination and revision as the Permit is renewed on its five-year schedule. *See generally* 327 IND. ADMIN. CODE § 5-2-6(a). Finally, by including the plans from the proposed Consent Decree in the permit, authorities will be ensured that permit and Consent Decree requirements are consistent with one another, which is particularly relevant where many of the plans are designed to detect and avoid noncompliance with the permit's effluent limits. *See* Consent Decree, ¶ 11(b). To ensure comprehensive enforcement, full public transparency, and consistency between all legal requirements, NPCA respectfully requests that the proposed Consent Decree be revised to require immediate modification of the Facility's NPDES Permit to include all Plans and compliance requirements imposed by the Consent Decree.

V. The Consent Decree Should Require Independent Auditing to Verify the Compliance Requirements are Implemented.

The proposed Consent Decree outlines a series of changes at U.S. Steel's Facility to fully come into compliance. These changes include equipment upgrades, but also call for overhauling the Facility's operation and preventative maintenance program for wastewater processing equipment, and a new wastewater processing monitoring system to be designed and implemented at the Facility. NPCA supports these requirements, as necessary components to ensure the Facility is both in full compliance with the CWA, and that it implements the reforms needed to avoid the failures that caused the April, 2017 spill. However, NPCA remains concerned that the proposed Consent Decree lacks sufficient proactive oversight to ensure all compliance requirements are being implemented. NPCA respectfully requests that the Consent Decree

include a protocol for routine, independent onsite auditing to verify and report on the progress made toward the Facility's compliance during the term of the Consent Decree.

A substantial part of the proposed Consent Decree's compliance requirements are not merely a one-time correction, but rather Facility-wide ongoing changes to operation, inspection, maintenance, and repair throughout the Facility's wastewater processing system. *See* Consent Decree, ¶¶10–11. The efficacy of these changes requires more than review and approval of the Plans. *See id.* § VII. Rather, the success of the Facility's compliance will require on-the-ground commitment to regular inspection, repair, and preventative maintenance, as well as a dedication to reporting and elevating any noticed operational challenges to create the culture necessary to prevent a future spill. Both the substantial compliance requirements and the documented history of U.S. Steel's prior failures to prioritize maintenance and repair warrant the inclusion of a routine, independent audit to proactively verify the implementation of the Consent Decree's compliance requirements.

NPCA suggests that the proposed Consent Decree include a quarterly on-site audit, which inspects, reviews, and reports on the ongoing status of the Facility's discharge monitoring reports, capital equipment upgrades, development of wastewater processing monitoring plans, and employee training on and implementation of the O&M and PM Plans. Such an audit should be conducted by a qualified, third party contractor agreed upon by U.S. Steel, the United States, and the State. NPCA recommends an audit quarterly, for the duration of the Consent Decree, timed to allow verification that the preventative maintenance schedule identified in the O&M and PM Plans are being effectively carried out. *See* O&M Plan, at 12 (PM Schedule frequency). NPCA also recommends that the audit conclude with a written report of findings, recommendations, and other conclusions, submitted to both EPA and the State. NPCA

recommends that this report be published on a publicly accessible website by the State or EPA within three days of receipt.

NPCA believes that an audit protocol, such as suggested above, would meaningfully ensure the Facility comes into compliance and would work to remediate the notification and reporting failures that compounded the Facility's effluent violations. An independent auditor would be able to accurately assess the actual on-the-ground changes in training, operation, maintenance, and documentation, to ensure that the Facility is in fact taking the necessary steps, beyond merely drafting Plans approvable by the agencies. Further, an audit would allow for proactive iterative oversight—recommending changes and catching potential failures before they occur—to supplement the deterrent oversight of the Consent Decree's stipulated penalty schedule.

An independent audit also would provide opportunity to address the ancillary failures at the Facility, which compounded the harms of the April, 2017 spill. Among the noted violations addressed by the proposed Consent Decree was both a lack of timely and widely-distributed notification of the April, 2017 spill, and a history missing, untimely, incomplete, or miscalculated monitoring reports. *See generally* Comp., ¶¶ 85–95 (reporting violations); ¶¶ 106–117 (notification violations). A publicly released audit report would ensure accurate and timely notification and full, meaningful public disclosure. Moreover, such independent and routine reports would allow U.S. Steel to rebuild the public's trust, which has been eroded by the Facility's history of violations, and the lack of timely and complete disclosures about the potential threats to public health and irreplaceable natural resources. Accordingly, NPCA respectfully requests that the parties consider the above-proposed audit protocol and adopt such a requirement as part of the Consent Decree.

VI. The Duration of the proposed Consent Decree is Ambiguous and Should be Clarified to Require a Minimum Compliance Period with the Facility’s NPDES Permit.

The proposed Consent Decree includes provisions for the termination of the agreement, following completion of all compliance requirements where U.S. Steel “has thereafter maintained satisfactory compliance with the Consent Decree for a period of at least twenty-four (24) months[.]” Consent Decree, ¶ 79. Although the proposed Consent Decree includes a stipulated penalty for violation of the Facility’s NPDES permit, as written it is not clear that the Facility must maintain compliance with its NPDES permit for 24 consecutive months prior to being able to propose termination of the Consent Decree. *See id.* NPCA respectfully requests that this language be clarified to unambiguously condition proposed termination of the Consent Decree on a minimum of 24 consecutive months of compliance with the CWA, the Facility’s NPDES permit, and the terms of the Consent Decree.

VII. The Compliance Requirements of the Proposed Consent Decree Lack Sufficient Documentation for Meaningful Public Participation and Input.

A substantial portion of the proposed Consent Decree’s compliance requirements includes the development of multiple plans for the Facility’s operation, maintenance, preventative maintenance, and wastewater monitoring process. Consent Decree, ¶¶ 10–11. These plans will contain the details necessary to assure that the Facility comes into full compliance with the CWA. *Id.* Because these plans represent the core essentials controlling virtually every aspect of the Facility’s wastewater treatment and handling, public review and comment on each of these plans is vital to ensure both the robustness of the plans, and a fully informed public. However, because neither all of these Plans nor documentation sufficient to enable adequate review of the proposed Consent Decree’s requirements were released during the public comment

period, NPCA and other members of the public have been denied an opportunity to review and comment on the plans. *See* Attachment 1, at 4–5 (noting incomplete and insufficient technical documentation and information provided to date). Specifically, to date, the required evaluation of the Facility’s wastewater processing, Consent Decree ¶ 11(a), and a design for wastewater process monitoring by June 30, 2018 (or three months from the wastewater evaluation), *id.* ¶ 11(b) have not been made public. Additionally, documentation sufficient to meaningful review of the proposed Consent Decree’s equipment upgrades has not been released. *See* Attachment 1, at 4–5 (detailing lacking information). Finally, because EPA and IDEM’s disapproval of the Plans was publicly released only on June 1, 2018, and further required U.S. Steel to submit revised Plans after the close of the public comment period, neither EPA and IDEM’s rationale, nor any revisions to the Plans were available for meaningful public comment. The lack of timely and complete public disclosure has limited NPCA’s and others review of the O&M and PM Plans, and completely precluded review of other compliance requirements. The lack of the public’s ability to review and comment on the Facility’s wastewater treatment monitoring system is particularly egregious since that system is being required specifically to enhance the Facility’s early detection capabilities so as to prevent spills like the April, 2017 spill. NPCA respectfully requests that all such information, including plans and reports required to bring the Facility into compliance and/or required by the Consent Decree be posted publicly, and submitted for public comment prior to final approval by the United States.

Due to the comprehensive revisions necessary to the proposed Consent Decree, including revisions that EPA and IDEM have insisted upon in their O&M Plan Disapproval Letter, NPCA also respectfully requests that an additional public comment period be opened to allow input on the proposed Consent Decree once modified as suggested by these or other public comments.

Specifically, the public comment period should be extended for a period that, at a minimum, gives the public time to review and evaluate U.S. Steel's revised O&M Plan as required by EPA's and IDEM's May 30th letter.

Conclusion

For the forgoing reasons, NPCA respectfully requests the United States alter the proposed Consent Decree to align with the purpose and goals of the Clean Water Act and the requirements of EPA's Penalty Policy. Further, NPCA requests the United States supply the necessary documentation and comment extension that will allow for transparency and meaningful public participation in the process of bringing the Facility into compliance with the CWA and restoring the natural resources affected by the Facility's recurring violations. Finally, NPCA requests that, if the proposed Consent Decree is submitted to the Court as written, the United States Department of Justice submit these comments to the Court for consideration in its review of the proposed Consent Decree.

Respectfully,



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Attachments:

Attachment 1 Carpenter Environmental Associates, Inc., Technical Analysis Report