

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA, and)
the STATE OF INDIANA,)
Plaintiffs,)
THE SURFRIDER FOUNDATION,)
Plaintiff-Intervenor,) Civil Action No. 2:18-cv-00127
THE CITY OF CHICAGO,)
Plaintiff-Intervenor,)
v.)
UNITED STATES STEEL)
CORPORATION,)
Defendant.)
)

**THE SURFRIDER FOUNDATION'S MOTION FOR AN EVIDENTIARY
HEARING OR, IN THE ALTERNATIVE, AN ORAL ARGUMENT, ON
PLAINTIFFS' MOTION TO ENTER REVISED CONSENT DECREE**

Pursuant to Local Rule 7-5, Plaintiff-Intervenor The Surfrider Foundation (“Surfrider”) hereby requests that the Court hold an evidentiary hearing or, in the alternative, an oral argument, on Plaintiffs’ Motion to Enter Revised Consent Decree (Dkt. 46) (the “Motion”). In support thereof, Surfrider states:

1. As explained in Surfrider’s Brief in Opposition to Entry of the Proposed Consent Decree, filed contemporaneously herewith, Plaintiffs’ filings in support of the Motion fail to address adequately many factual issues relevant to the questions before the Court, including the

factual bases for Plaintiffs' assertions regarding the adequacy of the technical provisions and civil penalty proposed in the revised consent decree. For example, Plaintiffs attached certain declarations to the Motion that present witness testimony with significant omissions and which should be subject to cross-examination. Further, additional employees of Plaintiffs who have relevant first-hand knowledge authored various exhibits that are central to disputed issues and contradict declarations provided by Plaintiffs; testimony from those employees would be appropriate and helpful.

2. Because courts have a duty to determine independently whether consent decrees proposed by the government meet the relevant legal standards and are in the public interest, courts often hold evidentiary hearings or oral argument on government motions to enter consent decrees in environmental enforcement cases. *See, e.g., United States v. BP Exploration & Oil Co.*, 167 F. Supp. 2d 1045, 1049 (N.D. Ind. 2001) (court held “a hearing regarding the consent decree and heard arguments from each party and the commenters’ [i.e. non-parties] counsel,” and required post-hearing submissions in a case where no party to litigation opposed entry of consent decree); *United States v. Metro. Water Reclamation Dist. of Greater Chicago*, No. 11 C 8859, 2014 WL 64655, at * 1 (Jan. 6, 2014) (describing basis for opinion as oral argument and “voluminous briefs and reams of exhibits, including deposition transcripts,” that the docket reflects were developed through discovery conducted after motion to enter was filed); *United States v. City of Akron*, 794 F.Supp.2d 782, 787 (N.D. Ohio 2011) (describing basis for opinion as multiple rounds of “additional information” requested by the court both before and after “two-day fairness hearing on the Decree”).

3. The widespread public concern with this matter and the fact that it implicates protection of a National Park, also described in Surfrider’s brief, further supports the need for a

hearing. The hearing should include an opportunity for members of the public to voice concerns directly to the Court.

4. Accordingly, Surfrider respectfully requests that the Court hold an evidentiary hearing on the Motion. Surfrider estimates that such an evidentiary hearing could be completed within two days, though proposes that the Court hold a status conference to discuss the scope of such hearing and the possible utility of any pre-hearing discovery or additional filings.

5. For the same reasons, if the Court declines to hold an evidentiary hearing at this time, Surfrider respectfully requests oral argument on Plaintiffs' Motion to Enter Revised Consent Decree (Dkt. 46). Surfrider estimates that a total of one hour of oral argument would be appropriate, if that argument is to be confined to the evidence in the record as of this date.

December 19, 2019

Respectfully submitted,

By: /s/ Robert A. Weinstock
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