

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

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UNITED STATES OF AMERICA, )  
 )  
and )  
 )  
THE STATE OF INDIANA, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CLEVELAND-CLIFFS BURNS )  
HARBOR LLC and )  
CLEVELAND-CLIFFS STEEL LLC, )  
 )  
Defendants. )

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Civil Action No. 22-CV-26

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ENVIRONMENTAL LAW & POLICY )  
CENTER and )  
HOOSIER ENVIRONMENTAL COUNCIL, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CLEVELAND-CLIFFS BURNS )  
HARBOR LLC and )  
CLEVELAND-CLIFFS STEEL LLC, )  
 )  
Defendants. )

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Civil Action No. 19-CV-473

**CONSENT DECREE**

**TABLE OF CONTENTS**

I. JURISDICTION AND VENUE..... 2

II. APPLICABILITY ..... 2

III. DEFINITIONS ..... 3

IV. COMPLIANCE REQUIREMENTS ..... 5

    A. Blast Furnace Recycle System Operation and Maintenance ..... 5

    B. Blast Furnace Once-Through Gas Cleaning ..... 7

    C. Outfall 002 ..... 9

    D. Outfall 001 and Outfall 011 ..... 10

    E. WET Investigation and Corrective Action ..... 10

    F. Sampling and Lab Analysis ..... 11

    G. Facility Communication and Mitigation of Adverse Impacts..... 11

    H. Public Notification ..... 12

    I. SWPPP ..... 13

    J. Blast Furnace Block and Bleed Valve ..... 13

    K. Payment of EPA Response Costs ..... 13

    L. Payment of Indiana Past Response Costs ..... 14

    M. Permits..... 14

    N. Approval of Deliverables..... 15

V. CIVIL PENALTY ..... 15

VI. ENVIRONMENTALLY-BENEFICIAL PROJECTS ..... 16

VII. REPORTING REQUIREMENTS..... 19

VIII. STIPULATED PENALTIES ..... 20

IX. FORCE MAJEURE..... 23

X. DISPUTE RESOLUTION..... 24

XI. RIGHT OF ENTRY AND INFORMATION COLLECTION AND RETENTION..... 26

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS ..... 27

XIII. COSTS ..... 28

XIV. NOTICES ..... 28

XV. EFFECTIVE DATE ..... 30

XVI. RETENTION OF JURISDICTION ..... 30

XVII. MODIFICATION ..... 30

XVIII. TERMINATION ..... 31

XIX. PUBLIC PARTICIPATION ..... 31

XX. SIGNATORIES/SERVICE ..... 31

XXI. INTEGRATION ..... 32

XXII. FINAL JUDGMENT ..... 32

XXIII. 26 U.S.C. SECTION 162(f)(2)(a)(ii) IDENTIFICATION ..... 32

XXIV. APPENDICES ..... 32

**TABLE OF APPENDICES**

Appendix 1	BFCWPS Maintenance Plan
Appendix 2	Diversion Procedure Plan
Appendix 3	Earlyman Sheet and Chain of Custody Forms
Appendix 4	Description of Property for Land Transfer EBP
Appendix 5	Water Quality Sampling EBP

**CONSENT DECREE**

WHEREAS, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (“State” or “Indiana”), on behalf of the Indiana Department of Environmental Management (“IDEM”), (collectively, “Plaintiffs”), filed a Complaint in this action concurrently with this Consent Decree against the Defendants, Cleveland-Cliffs Steel LLC (“CC Steel”) and Cleveland-Cliffs Burns Harbor LLC (“CCBH”) (collectively, “Defendants”);

WHEREAS, in its Complaint, the United States and Indiana allege that Defendants:

(1) violated the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, as amended; Title 13 of the Indiana Code and Title 327 of the Indiana Administrative Code; terms and conditions of CCBH’s National Pollutant Discharge Elimination System (“NPDES”) permit; the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11001 *et seq.*; and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601 *et seq.*; and

(2) are liable under Section 107 of CERCLA, 42 U.S.C. § 9607, and Indiana Code 13-25-6 for reimbursement of response costs incurred in responding to the release and threat of release of hazardous substances;

WHEREAS, on December 11, 2019, Plaintiffs Environmental Law & Policy Center (“ELPC”) and Hoosier Environmental Council (“HEC”) (collectively, “Citizen Plaintiffs”) filed a complaint against Defendants alleging violations of the CWA, 33 U.S.C. § 1251 *et seq.*, as amended and the terms and conditions of CCBH’s NPDES permit and seeking civil penalties, declaratory and injunctive relief, with costs and fees, under the CWA citizen suit provision, 33 U.S.C. § 1365(a);

WHEREAS, the alleged violations took place at the steel manufacturing and finishing facility (“Burns Harbor Facility” or “Facility”) in Burns Harbor, Porter County, Indiana, owned and operated by CCBH since December 9, 2020. Prior to December 9, 2020, the Facility was owned and operated by ArcelorMittal Burns Harbor LLC;

WHEREAS, Defendants do not admit any liability to the United States, Indiana, ELPC, or HEC arising out of the transactions or occurrences alleged in the complaints;

WHEREAS, the United States, Indiana, ELPC, HEC, and Defendants (the “Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; 33 U.S.C. §§ 1319(b); 42 U.S.C. § 11045(b)(3); 42 U.S.C. §§ 9607(a) and 9613(b); 54 U.S.C. § 100723(a); and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1331, 1345, 1391(b) and (c) and 1395(a); 33 U.S.C. §§ 1319(b); 42 U.S.C. § 11045(b)(3); and 42 U.S.C. §§ 9607 and 9613(b), because the violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this judicial district. Defendants consent to this Court's jurisdiction over this Consent Decree and any action to enforce this Consent Decree, and to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the CWA, 33 U.S.C. § 1319; Title 13, Article 18 and Article 30 of the Indiana Code and Title 327 of the Indiana Administrative Code; Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. §§ 9607(a) and 9613(b); and 54 U.S.C. § 100722(a).

## **II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States, Indiana, ELPC, HEC, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for Defendants as a Party under the Decree and thus be bound by the terms thereof, and (2) the United States and the State consent to relieve Defendants of their obligations. The United States' and the State's decision to approve substitution of the transferee for the Defendants shall not be subject to judicial review. At least 30 Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Indiana, the United States Department of Justice, and the State of Indiana in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. CCBH shall (a) provide a copy of this Consent Decree to all management-level employees whose duties might reasonably include compliance with any provision of this Decree, (b) ensure that any employees whose duties might reasonably include compliance with any provision of this Decree are made aware of the Consent Decree and specifically aware of the requirements of the Consent Decree that fall within such person's duties, and (c) provide relevant excerpts of the Consent Decree to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CWA or in federal and State regulations promulgated pursuant to the CWA shall have the meaning assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, including attached Appendices, the following definitions shall apply:

a. “Blast Furnace” shall mean a cylindrical, refractory-lined shaft furnace for the production of molten iron. CCBH currently operates two Blast Furnaces at the Facility, Blast Furnace C and Blast Furnace D.

b. “Blast Furnace Block and Bleed Valve” shall mean valving systems located at each Blast Furnace that allow for rapid transfer of Blast Furnace gas cleaning systems from operation with BFRS process water to Lake Michigan water.

c. “Blast Furnace Closed Water Pumping Station” or “BFCWPS” shall mean the BFRS pumping station and cooling tower used to cool and recirculate water for Blast Furnace gas cleaning. The BFCWPS includes a hot well and a cold well.

d. “Blast Furnace Recycle System” or “BFRS” shall mean the Blast Furnace gas cleaning water treatment and recycle system that recirculates gas cleaning process water to be reused in gas cleaning for Blast Furnace C and Blast Furnace D. The Blast Furnace Recycle System includes a 90-ft diameter thickener at each Blast Furnace, an underground sewer for conveying gas cleaning process water, and the BFCWPS.

e. “Blowdown” shall mean the periodic, low-volume discharge of gas cleaning process water from the Blast Furnace Recycle System to the DIW Sewer to maintain hydraulic balance within the BFRS.

f. “Complaint” shall mean the complaint filed by the United States and State of Indiana in this action.

g. “Consent Decree” or “Decree” shall mean this Decree and all Appendices attached hereto.

h. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

i. “Deerfield Pond” shall mean an existing lined leachate storage pond covered by the Landfill Permit and located south of the Deerfield storage facility to be utilized for the collection and management of Once-Through Water.

j. “Defendants” shall mean Cleveland-Cliffs Steel LLC and Cleveland-Cliffs Burns Harbor LLC.

k. “DIW Sewer” shall mean the dirty industrial water sewer network that conveys water to the Facility’s secondary wastewater treatment plant.

l. “Effective Date” or “Date of Entry” shall have the meaning given in Section XV (Effective Date).

m. “Environmental Manager” shall mean the manager of the Environmental Department at CCBH.

n. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies.

o. “EPA Past Response Costs” shall mean all EPA response costs through the Effective Date, including, but not limited to, direct and indirect costs not inconsistent with the National Contingency Plan (“NCP”) that EPA incurred in connection with the August 2019 discharge event.

p. “Facility” shall mean the steel manufacturing and finishing facility located at 250 West Highway 12, Burns Harbor, Porter County, Indiana, owned and operated by CCBH.

q. “gpm” shall mean gallons per minute.

r. “IDEM” shall mean the Indiana Department of Environmental Management and any successor departments or agencies.

s. “Indiana” or “State” shall mean the State of Indiana.

t. “Indiana Past Response Costs” shall mean all Indiana response costs through the Effective Date, including, but not limited to, direct and indirect costs not inconsistent with the NCP that Indiana incurred in connection with the August 2019 discharge event.

u. “Landfill Permit” shall mean CCBH’s Landfill Permit for the Deerfield storage facility issued by the IDEM Office of Land Quality (SW Program ID 64-10), and all revisions, modifications, renewals, and successors to this permit.

v. “Month” shall mean calendar month.

w. “NCCW” shall mean non-contact cooling water.

x. “Once-Through Gas Cleaning” shall mean the use of Once-Through Water for gas cleaning at Blast Furnace C, Blast Furnace D, or both Blast Furnaces.

y. “Once-Through Water” shall mean water drawn from Lake Michigan, rather than recirculated process water, for use in gas cleaning at Blast Furnace C, Blast Furnace D, or both Blast Furnaces. Once-Through Water is not recirculated for reuse within the BFRS.

z. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

aa. “Permit” or “NPDES Permit” shall mean CCBH’s National Pollutant Discharge Elimination System (“NPDES”) Permit, No. IN0000175, and all revisions, modifications, renewals, and successors to this permit.

bb. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

cc. “Storm Ditch” or “Outfall 001 Storm Ditch” shall mean the channel through which NCCW and stormwater flow to Outfall 001 at the Facility.

dd. “SWPPP” shall mean CCBH’s Storm Water Pollution Prevention Plan.

ee. “SWTP” shall mean CCBH’s Secondary Wastewater Treatment Plant.

ff. “Temporary Shutdown” shall mean the temporary cessation of the production of iron at one or both Blast Furnaces. Once the process to implement a Temporary Shutdown is complete, Once-Through Water is not utilized.

gg. “TRE Study” shall mean an effluent toxicity reduction evaluation.

hh. “United States” shall mean the United States of America, acting on behalf of EPA.

ii. “WET” shall mean whole effluent toxicity.

jj. “WWPS No. 2” shall mean the wastewater pump station number two.

#### **IV. COMPLIANCE REQUIREMENTS**

##### **A. Blast Furnace Recycle System Operation and Maintenance**

###### **8. Treatment Systems.**

a. CCBH shall maintain a cyanide treatment system to reduce cyanide in the Blowdown and shall operate the system (i) during a planned shutdown of one or both Blast Furnaces scheduled to last longer than five days; (ii) during the startup of one or both Blast Furnaces following such a planned shutdown; and/or (iii) when CCBH has reason to believe that treatment of the Blowdown may be necessary to maintain compliance with the applicable cyanide NPDES Permit effluent limits.

b. CCBH shall maintain and operate a pilot ammonia-N treatment system to reduce ammonia-N in the Blowdown from June 1 through September 15 each year until CCBH meets the requirements of Paragraph 8(c) below.



c. By May 31, 2025, CCBH shall design and install an ammonia-N removal system to reduce ammonia-N in the Blowdown. The project shall include treatment of, or other means of reducing, the contribution of ammonia-N to wastewater from the Reclamation Services Building (“RSB”). By November 30, 2024, CCBH shall develop an Operation and Maintenance Plan (the “O&M Plan”) for the ammonia-N removal system and submit such plan to EPA and IDEM for review and approval in accordance with Section IV.N. The O&M Plan shall include the following:

- i. a list of Permit requirements;
- ii. a description of, and operation information for, all ammonia-N treatment process equipment;
- iii. job descriptions or operating duties of assigned personnel;
- iv. laboratory requirements;
- v. record keeping requirements; and
- vi. references to all pertinent operation and maintenance forms, as-built plans, standard operating procedures, and manufacturer’s manuals.

CCBH shall operate the ammonia-N removal system in accordance with the approved O&M Plan and maintain compliance with the applicable ammonia-N NPDES Permit effluent limits. The Parties agree that in the event CCBH identifies an alternative to an ammonia-N removal system on or before November 30, 2024, CCBH shall continue to maintain and operate the pilot treatment system in Paragraph 8(b) until CCBH obtains approval from EPA and IDEM for an alternative to the ammonia-N removal system.

d. CCBH may elect to change its wastewater processes to eliminate the need for Blowdown from the BFRS. CCBH shall comply with Paragraphs 8(a) – (c) until such time as Blowdown is eliminated and the water that otherwise would have left the BFRS as Blowdown is not discharged through an outfall. CCBH shall submit its plans for the elimination of Blowdown to EPA and IDEM at least 60 Days prior to implementation of such plans.

9. CCBH shall continue to maintain the following equipment for the BFCWPS:

- a. Flow restrictors to limit the flow of Lake Michigan water into the BFCWPS to 2,200 gpm;
- b. The aboveground Lake Michigan water isolation valve outside the BFCWPS;
- c. The alarm on the rectifier for the batteries that control the pumps in the BFCWPS;
- d. The redundant battery rectifier (with an alarm) for the pumps in the BFCWPS;

- e. The wall seal between the BFCWPS pump room and the electrical substation;
- f. The redundant hot well and cold well water level sensors; and
- g. Critical spare equipment for the BFCWPS.

10. CCBH shall comply with the BFCWPS Maintenance Plan, attached to this Consent Decree as Appendix 1. If CCBH makes changes to the BFCWPS Maintenance Plan, such changes shall be summarized and reported to EPA and IDEM pursuant to Section VII (Reporting Requirements) of the Consent Decree. Such changes may be implemented immediately, but nonetheless any material changes shall be subject to approval under Section IV.N of the Consent Decree.

**B. Blast Furnace Once-Through Gas Cleaning**

11. Diversion to Deerfield Pond.

a. Beginning on the Date of Lodging and until implementation of the diversion process contemplated in Paragraph 11(b), if CCBH switches to Once-Through Gas Cleaning for one or both Blast Furnaces, then CCBH shall commence a Temporary Shutdown of the Blast Furnace(s) using Once-Through Water as soon as practicable, and must complete that process no later than 4 hours after switching to Once-Through Gas Cleaning; provided, however, that the requirements of this Paragraph no longer apply once normal gas cleaning operations are restored.

b. No later than June 1, 2023, if CCBH switches to Once-Through Gas Cleaning for one or both Blast Furnaces, then CCBH shall take immediate steps to divert Once-Through Water flow to the Deerfield Pond. CCBH shall use automated components to divert Once-Through Water to the Deerfield Pond where feasible.

c. After installation of the diversion process in Paragraph 11(b), during periods of normal gas cleaning operation, CCBH shall maintain unused at least 90% of the full capacity in the Deerfield Pond on a weekly average basis. CCBH shall monitor and record the unused capacity of the Deerfield Pond daily. Full capacity shall be the pond capacity determined by the IDEM Office of Land Quality in the Landfill Permit.

12. Once-Through Gas Cleaning Operation Requirements. No later than June 1, 2023, if CCBH switches to Once-Through Gas Cleaning for one or both Blast Furnaces due to a failure of the BFCWPS:

a. Process Water and Deerfield Pond Capacity.

- i. CCBH shall complete a Temporary Shutdown of the Blast Furnaces prior to the Deerfield Pond reaching full capacity, accounting for any freeboard required by the IDEM Office of Land Quality. CCBH shall comply with any freeboard requirements under its Landfill Permit and/or Indiana's rules for solid waste land disposal facilities. CCBH

shall install and operate a high-level alarm system to monitor the water level in the Deerfield Pond and alert CCBH when the water level is near full capacity and at full capacity.

- ii. As soon as practicable after switching to Once-Through Gas Cleaning, CCBH shall reduce the flow of Once-Through Gas Cleaning to approximately 7,600 gpm or less.
- iii. If both Blast Furnace C and Blast Furnace D are on Once-Through Water, CCBH shall complete the process of a Temporary Shutdown of the Blast Furnaces no later than 4 hours after switching to Once-Through Gas Cleaning.
- iv. If one of the two Blast Furnaces are on Once-Through Water, CCBH shall complete the process of a Temporary Shutdown of the Blast Furnace using Once-Through Water no later than 6 hours after switching that furnace to Once-Through Gas Cleaning.

b. Diversion Procedure Plan. CCBH shall comply with the Failure of the Blast Furnace Closed Water Pumping Station – Diversion Procedure Plan (“Diversion Procedure Plan”), attached to this Consent Decree as Appendix 2, which is a plan to reduce water flow to the Deerfield Pond, sample the Deerfield Pond water and other locations identified in the Diversion Procedure Plan for cyanide and ammonia-N, treat and/or meter the Deerfield Pond water so as to maintain compliance with applicable NPDES Permit effluent limits for ammonia-N and cyanide, and maintain compliance with Deerfield Pond capacity requirements. The Diversion Procedure Plan shall include, at a minimum, provisions implementing the requirements of Section IV.B of this Consent Decree. If CCBH makes changes to the Diversion Procedure Plan, such changes shall be summarized and reported to EPA and IDEM pursuant to Section VII (Reporting Requirements) of the Consent Decree. Such changes may be implemented immediately, but nonetheless any material changes shall be subject to approval under Section IV.N of the Consent Decree.

c. Once-Through Water Treatment and Metering.

- i. CCBH shall treat Once-Through Water to reduce cyanide prior to directing Once-Through Water to the SWTP. CCBH shall have the capability to treat Once-Through Water to reduce ammonia-N, as necessary to maintain compliance with the applicable ammonia-N NPDES Permit effluent limits.
- ii. CCBH may direct flow from the Deerfield Pond water to WWPS No. 2 and the SWTP only after CCBH has carried out at least two screening samples for cyanide and ammonia-N from the Deerfield Pond water, Outfall 001, and Outfall 011. CCBH shall meter the flow of water from the Deerfield Pond at a rate at which sampling indicates that CCBH is able to maintain compliance with applicable NPDES Permit effluent limits.

- iii. The available capacity requirement in Paragraph 11.c) shall not apply during periods of Once-Through Gas Cleaning or following any Once-Through Water event until the Once-Through Water has been metered out of the Deerfield Pond following any period of Once-Through Gas Cleaning.

13. Sampling, Notification, and Records.

- a. As soon as possible after switching to Once-Through Gas Cleaning, CCBH shall implement the following enhanced sampling protocol.
  - i. CCBH shall perform grab sampling at the cold well, influent to the SWTP, and the Deerfield Pond every 2 hours for total cyanide and ammonia-N using field testing until the use of Once-Through Gas Cleaning ceases.
  - ii. CCBH shall perform the following sampling using 40 C.F.R. § 136 methods until all Once-Through Water has been treated or metered as necessary to maintain compliance with applicable NPDES Permit effluent limits and the Deerfield Pond levels return to the required minimum unused capacity. Samples shall be analyzed on an expedited basis using an EPA certified lab:
    - 1. Daily grab sampling of the Deerfield Pond water for ammonia-N and total and free cyanide;
    - 2. Three grab samples per day for total and free cyanide at Outfall 011 and Outfall 001; and
    - 3. Composite sampling at Outfall 011 and Outfall 001 for ammonia-N.
- b. CCBH shall notify EPA and IDEM by email within 2 hours of beginning Once-Through Gas Cleaning due to a failure of the BFCWPS.
- c. CCBH shall notify EPA and IDEM by email within 1 hour of the Deerfield Pond high-level alarm sounding.
- d. CCBH shall maintain records of all periods of Once-Through Gas Cleaning, including start times, end times, the cause of the switch to Once-Through Gas Cleaning, the results of all enhanced sampling, and the volume of Once-Through Water used during the period.

**C. Outfall 002**

14. Unless otherwise authorized by the Permit, CCBH shall only discharge NCCW and storm water from Outfall 002.

15. Outfall 002 Investigation and Corrective Action. By no later than January 31, 2022, CCBH shall complete an investigation of any wastewater flows directed to Outfall 002 that are not identified in the NPDES Permit, and submit to EPA and IDEM for review and approval pursuant to Section IV.N a final Outfall 002 Investigation Report that includes, at a minimum:

- a. A summary of the investigation and all sampling results;
- b. A summary of any material changes in production or operation at the Facility during the Outfall 002 Investigation that may have impacted discharges from Outfall 002; and
- c. A description of all corrective actions taken and the sampling results confirming that the corrective actions have been effective.

**D. Outfall 001 and Outfall 011**

16. Outfall 001 and Outfall 011 Ammonia Investigation. By no later than January 31, 2022, CCBH shall submit to EPA and IDEM for review and approval pursuant to Section IV.N an Outfall 001 and Outfall 011 Ammonia Investigation Report that includes, at a minimum:

- a. All sampling results and a description of any other actions taken to investigate the levels and potential sources of ammonia-N to the Storm Ditch;
- b. A description of sources of ammonia-N that were identified as contributing to the Storm Ditch;
- c. The results of a dye tracer study of SWTP effluent as it is directed to the Facility's two polishing lagoons;
- d. Any data available to CCBH on groundwater ammonia-N levels in the area surrounding the Storm Ditch;
- e. An evaluation of the Facility's two polishing lagoons, including: (1) an analysis of the sludge depth; and (2) as-built construction plans of the lagoons; and
- f. CCBH's corrective action plan to address any identified process wastewater containing ammonia-N being discharged from Outfall 001 that is not identified in the existing NPDES Permit as being discharged through Outfall 001.

17. Effluent Limitations. CCBH shall comply with all effluent limitations for ammonia-N, free cyanide, and total cyanide, as required by the Permit.

**E. WET Investigation and Corrective Action**

18. CCBH shall complete the TRE Study under the September 18, 2020 TRE Plan no later than June 8, 2022.

19. CCBH shall complete all future TRE Studies in compliance with the requirements in the Permit.

**F. Sampling and Lab Analysis**

20. CCBH shall perform sampling as required by the Permit.

21. At Outfall 001 and Outfall 011, CCBH shall continue to perform daily, flow-proportioned sampling for cyanide and ammonia-N until the Facility's NPDES Permit in effect as of May 27, 2016, is revised, after which the sampling requirements of the revised NPDES Permit shall apply.

22. CCBH shall locate and calibrate a flow meter at Outfall 011 in accordance with any schedules and locations specified in the NPDES Permit.

23. CCBH shall utilize the Earlyman Sheet and Chain of Custody Forms, attached to this Consent Decree as Appendix 3. If CCBH makes material changes to the Earlyman Procedure, MEU-ENV-A7057, Earlyman Sheet, or Chain of Custody Forms, such changes shall be summarized and reported to EPA and IDEM pursuant to Section VII (Reporting Requirements) of the Consent Decree. Such changes may be implemented immediately, but nonetheless any material changes shall be subject to approval under Section IV.N of the Consent Decree.

**G. Facility Communication and Mitigation of Adverse Impacts**

24. Facility Communication. CCBH shall implement internal procedures that result in the following notifications to the Environmental Manager:

a. Air, Gas and Water management shall notify the Environmental Manager whenever any key component of the BFCWPS malfunctions or is not operating.

b. The Environmental Manager shall be notified when (i) samples indicate there is reason to believe that Blowdown may contain above-normal levels of permitted pollutants, such as cyanide or ammonia-N, and/or (ii) abnormal levels of cyanide or ammonia-N are detected in monitoring at the SWTP.

25. Mitigation of Adverse Impacts. CCBH shall take all reasonable steps to minimize or correct any adverse impact to the environment resulting from noncompliance with this Consent Decree or the Permit. During periods of noncompliance with this Consent Decree or the Permit, CCBH shall conduct such accelerated or additional monitoring for the affected Permit effluent parameters, including in-stream monitoring, as appropriate or as requested by IDEM or EPA, to determine the nature and impact of the noncompliance.

26. Training. CCBH shall train relevant employees annually regarding the communication and mitigation requirements of Paragraphs 24 and 25.

**H. Public Notification**

27. CCBH shall notify the following entities in the event of an exceedance of the Permit cyanide effluent limits:

- a. Michigan City Department of Water Works;
- b. Indiana American Water Co.;
- c. Borman Park Water Filtration Plant;
- d. National Park Service Indiana Dunes National Lakeshore;
- e. Indiana Department of Natural Resources, State Parks and Reservoirs;
- f. Portage Public Marina;
- g. City of Portage;
- h. Town of Ogden Dunes;
- i. Town of Beverly Shores; and
- j. Port of Indiana-Burns Harbor.

28. CCBH shall evaluate any reported or observed release of a hazardous or extremely hazardous substance to the environment from the Facility to determine whether any reporting requirements apply. The requirements of subparagraphs (a) and (b) do not apply to federally permitted releases, as that term is defined in 42 U.S.C. § 9601.

a. If the release is of a hazardous substance in quantities equal or greater than those determined pursuant to Section 9602 of CERCLA, CCBH shall immediately notify the National Response Center, State Emergency Response Commission, and Local Emergency Planning Committee.

b. If the release is of an extremely hazardous substance in quantities in excess of those determined pursuant to Section 302 of EPCRA, CCBH shall immediately notify the State Emergency Response Commission and Local Emergency Planning Committee.

c. If the release meets the definition of a spill under the Indiana Spill Rule, 327 IAC 2-6.1-1, CCBH shall as soon as possible, but within two hours of discovery, notify the IDEM Emergency Response Section. For spills to surface water that cause damage, CCBH shall notify (i) the nearest downstream water user located within ten miles of the spill and in the State of Indiana and (ii) the public entities listed in Paragraph 27.

**I. SWPPP**

29. By no later than 30 Days after the Date of Entry, CCBH shall update its SWPPP and any existing operating procedures, as applicable, to include all relevant requirements of this Consent Decree.

**J. Blast Furnace Block and Bleed Valve**

30. CCBH shall maintain and operate an alarm system on the valves at the cross-connection between NCCW and BFRS gas cleaning water at the Blast Furnace Block and Bleed Valves.

**K. Payment of EPA Response Costs**

31. By no later than 30 Days after the Effective Date, Defendants shall pay the United States the sum of \$10,025.37 for EPA Past Response Costs. If any portion of the payment due to the United States is not paid when due, Defendants shall pay interest on the amount past due, accruing from Effective Date through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest on unpaid EPA Past Response Costs shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any EPA Past Response Cost amount that is due, such partial payment shall be first applied to any interest on unpaid EPA Past Response Costs then owing.

32. Defendants shall make the payment by EFT to the U.S. Department of Justice in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Indiana following the Effective Date. Upon payment, Defendants shall send a copy of the EFT transaction record together with a transmittal letter, which shall state that the payment constitutes the amount due under Paragraph 31 of the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, and shall reference the EPA Hazardous Substance Superfund, EPA Site ID Number C5QC, DOJ Case Number 90-5-1-1-12268/1 to the following persons:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

and

By mail to:

Director, Superfund and Emergency Management Division  
United States Environmental Protection Agency, Region 5  
77 West Jackson (SE-6J)  
Chicago, IL 60604



and

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

and via email to:

EPA Cincinnati Finance Office at:  
acctsreceivable.cinwd@epa.gov

**L. Payment of Indiana Past Response Costs**

33. By no later than 30 Days after the Effective Date, Defendants shall pay the State the sum of \$37,650 for Indiana Past Response Costs. If any portion of the payment due to the State is not paid when due, Defendants shall pay interest on the amount past due, accruing from Effective Date through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest on unpaid Indiana Past Response Costs shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any Indiana Past Response Cost amount that is due, such partial payment shall be first applied to any interest on unpaid Indiana Past Response Costs then owing.

34. Defendants shall make the payment by EFT to Indiana. To receive wire instructions, Defendants shall call or email the following point of contact:

Robin Champion  
Accounts Receivable Manager  
Indiana Department of Environmental Management  
Phone: 317-233-2394  
Email: rchampion@idem.in.gov

**M. Permits**

35. Where any compliance obligation under this Section requires CCBH to obtain a federal, State, or local permit or approval, CCBH shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. CCBH may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if CCBH has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

**36. Applications for Permits Incorporating the Requirements in Section IV.**

a. By no later than 90 Days after the Effective Date, CCBH shall submit to permitting authorities in the State of Indiana a complete application to incorporate the BFCWPS Maintenance Plan into its Permit.

b. CCBH shall thereafter timely submit all necessary applications and information to permitting authorities in the State of Indiana to incorporate the above requirements into CCBH's Permit.

**N. Approval of Deliverables**

37. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA and IDEM shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

38. If the submission is approved pursuant to Paragraph 37, CCBH shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 37(b) or (c), CCBH shall, upon written direction from EPA and IDEM, take all actions required by the approved plan, report, or other item that EPA and IDEM determines are technically severable from any disapproved portions, subject to CCBH's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

39. If the submission is disapproved in whole or in part pursuant to Paragraph 37(c) or (d), CCBH shall, within 45 Days or such other time as CCBH, EPA and IDEM agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, CCBH shall proceed in accordance with the preceding Paragraph.

40. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and IDEM may again require CCBH to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to CCBH's right to invoke Dispute Resolution and the right of EPA and IDEM to seek stipulated penalties as provided in the preceding Paragraphs.

**V. CIVIL PENALTY**

41. By no later than 30 Days after the Effective Date of this Consent Decree, Defendants shall pay to the United States a civil penalty in the amount of \$1,500,000, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Defendants shall pay the civil penalty by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants, following the entry of the Decree, by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the Northern District of Indiana. The costs of such EFT shall be Defendants' responsibility. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

legalnotices@clevelandcliffs.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices). At the time of payment, Defendants shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268 and (ii) to the United States via email or regular mail in accordance with Section XIV (Notices). The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, and shall reference the civil action number, CDCS number, and DOJ case number 90-5-1-1-12268.

42. By no later than 30 Days after the Effective Date of this Consent Decree, Defendants shall pay to the State of Indiana a civil penalty in the amount of \$1,500,000, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Payment shall be wired through an EFT to Indiana. To receive wire instructions, Defendants shall call or email the following point of contact:

Robin Champion  
Accounts Receivable Manager  
Indiana Department of Environmental Management  
Phone: 317-233-2394  
Email: [rchampio@idem.in.gov](mailto:rchampio@idem.in.gov)

Defendants shall also notify the same point of contact within two (2) business days after sending the wire payments.

43. Defendants shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

## **VI. ENVIRONMENTALLY-BENEFICIAL PROJECTS**

44. In accordance with this Section, and to resolve the civil claims of ELPC and HEC for the violations alleged in the complaint in *Environmental Law & Policy Center and Hoosier Environmental Council v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, Case No. 19-cv-473 (N.D. Ind.), Defendants shall perform two Environmentally-Beneficial Projects (“EBPs”).

45. With regard to the EBPs, Defendants certify as follows:

a. That, as of the date of executing this Decree, Defendants are not required to perform or develop the EBPs by any federal, State, or local law or regulation and are not required to perform or develop the EBP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

b. That the EBPs are not projects that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree.

c. That Defendants have not received and will not receive credit for the EBPs in any other enforcement action.

d. That Defendants will not receive reimbursement for any portion of the EBPs from another person or entity.

e. That Defendants will not seek or otherwise benefit from a tax deduction or write-off for any portion of the EBPs.

46. Any public statement, oral or written in print, film, or other media, made by Defendants making reference to the EBPs under this Decree from the date of its execution shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken on behalf of U.S. EPA and the Indiana Department of Environmental Management and a citizen enforcement lawsuit brought on behalf of the Environmental Law & Policy Center and Hoosier Environmental Council.”

47. EBP 1: Land Transfer.

a. Within twelve months of the Effective Date, Defendants shall transfer approximately 127.33 acres of land abutting the Indiana Dunes National Park, as identified in Appendix 4 (the “EBP Property”), to a qualified land trust organization for permanent conservation protection and for a use that has environmentally beneficial effects on the local community and environment.

b. Prior to the transfer, Defendants shall arrange for a Phase I Environmental Site Assessment (“Phase 1 ESA”) of the EBP Property in accordance with ASTM International (ASTM) E 2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” Such Phase I ESA shall be performed by a qualified, independent consulting firm, and Defendants shall arrange with the consultant to simultaneously supply a copy of the Phase I ESA report to all Parties.

c. If the Phase I ESA identifies any Recognized Environmental Conditions (“RECs”) at the EBP Property, the Parties shall participate in informal negotiations about the land transfer EBP. Such informal negotiations may include, but are not limited to, the potential for Defendants to address the REC(s) at the EBP Property and/or potential alternative projects. The period of informal negotiations shall not exceed 30 Days from the date the Phase I ESA report is completed, unless that period is modified by written agreement.

48. EBP 2: Water Quality Sampling.

a. Defendants shall perform an EBP designed to monitor and report on water quality at two locations in the East Branch of the Little Calumet River and two locations in Lake Michigan (“Water Quality Sampling EBP”).

b. Sampling Locations. Defendants shall perform water quality sampling at the approximate locations identified on the map attached to this Consent Decree as Appendix 5.

c. Sampling Frequency. Defendants shall perform water quality sampling at each of the sampling locations on a weekly basis from June 1 through September 30. Defendants shall perform the water quality sampling during 2022 and 2023 (“Sampling Period”).

d. Sampling Parameters. Defendants shall measure for ammonia-n and free cyanide using 40 C.F.R. § 136 approved methods.

e. Public Reporting. Defendants shall submit to IDEM, ELPC, and HEC monthly reports by the 15th Day of the following month during the Sampling Period (e.g., the June report shall be submitted on or before July 15), and the report shall cover the sampling performed the previous month. Concurrently with each submission to IDEM, ELPC, and HEC, Defendants shall make the reports available at a publicly-accessible website. Each report shall include the dates and times of sampling events and the results of the measurements for each parameter. All data submitted shall fulfill the data quality assessment Level 3 criteria as outlined in the Technical Guidance for the Office of Water Quality External Data Framework (IDEM 2015). Submittal of such reports shall not constitute an admission of liability or an admission that the sampling results reported are connected in any way to the actions or discharges of CCBH.

f. Completion Report. Defendants shall submit an EBP Completion Report to IDEM, ELPC, and HEC (with an information-only copy to EPA) no later than 30 Days from the date of the Water Quality Sampling EBP’s completion. The EBP Completion Report must be certified by an appropriate corporate official and shall contain, at a minimum:

- i. A detailed description of the project as completed, including the dates, times, locations, sampling results, and all associated data for all required sampling events during the Sampling Period;
- ii. A certification stating:

I certify that the project has been fully implemented pursuant to the provisions of the consent decree entered in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, No. 2:18-127 (N.D. Ind.), that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

49. Following receipt of the EBP Completion Report described in Paragraph 48.f), within 90 Days, IDEM, after consultation with the Citizen Plaintiffs, will notify Defendants in writing whether Defendants have satisfactorily completed the Water Quality Sampling EBP and the EBP Completion Report.

## VII. REPORTING REQUIREMENTS

50. Progress Reports. By July 31 and January 31 of each year after the Effective Date of this Consent Decree until termination of this Consent Decree, CCBH shall submit to EPA, IDEM, ELPC, and HEC a progress report regarding the implementation of the requirements of this Decree in the preceding six months (“Progress Report”). The Progress Report shall include:

- a. Work performed and progress made toward implementing the requirements of Section IV (Compliance Requirements);
- b. Any significant modifications to previously-submitted design specifications of any pollution control system, or to monitoring equipment, required to comply with the requirements of Section IV (Compliance Requirements);
- c. Any significant problems encountered or anticipated in complying with the requirements of Section IV (Compliance Requirements), including implemented or proposed solutions;
- d. Records of all periods of Once-Through Gas Cleaning, including start times, end times, the cause of the switch to Once-Through Gas Cleaning, the results of all enhanced sampling, and the volume of Once-Through Water used during the period;
- e. A description of any material repairs or corrective action taken pursuant to the BFCWPS Maintenance Plan;
- f. Reports and results from EPA Method 40 C.F.R. § 136 analyses of samples that show exceedances of effluent limitations in the Permit during the period;
- g. A description of any material changes to the Facility’s Environmental Management System as it relates to Permit compliance;
- h. A description of any material changes to the BFCWPS Maintenance Plan or Diversion Procedure Plan, or any material changes to the Earlyman Sheet, Chain of Custody Form, or Earlyman Procedure;
- i. A description of any failure to follow the BFCWPS Maintenance Plan or Diversion Procedure Plan;
- j. Copies of any permit applications or other materials, as required by Paragraph 35 or 36; and
- k. Any non-compliance with the requirements of this Consent Decree and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

51. Whenever any violation of this Consent Decree or any other event affecting CCBH’s performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, CCBH shall notify EPA and

IDEM orally or by email as soon as possible, but no later than 24 hours after CCBH first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraphs.

52. All reports shall be submitted to the persons and in the manner designated in Section XIV (Notices).

53. Each report submitted by CCBH under this Section shall be signed by a CCBH official and include the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

54. The reporting requirements of this Consent Decree do not relieve CCBH of any reporting obligations required by the NPDES Permit, the CWA and the rules promulgated thereunder, and any other federal, State, or local law, regulation, permit, or other requirement.

55. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs and the Citizen Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

### **VIII. STIPULATED PENALTIES**

56. Defendants shall be liable for stipulated penalties to the United States and Indiana for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

57. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

58. For each failure to comply with CCBH's Permit, or any corresponding provision(s) under any successor NPDES permit, Defendants shall pay:

<u>Type of Violation</u>	<u>Penalty per Violation</u>	
Daily maximum concentration or mass limit	\$1,000 per Day	
Monthly average concentration or mass limit	\$20,000 per Month	
Any other violation of the NPDES Permit	Between 1 and 15 Days	\$500 per violation per Day
	Between 16 and 30 Days	\$750 per violation per Day
	Over 30 Days	\$1,500 per violation per Day

59. For each failure to comply with requirements in Section IV (except failure to comply with Paragraph 17, which is subject to the stipulated penalties in Paragraph 58, and failure to submit any required deliverables and reports, which is subject to the stipulated penalties in Paragraph 60), Defendants shall pay:

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
Between 1 and 15 Days	\$1,500
Between 16 and 30 Days	\$3,000
Over 30 Days	\$5,000

60. For each failure to submit, by the specified deadlines, any required deliverables and reports as set forth in Sections IV and VII, Defendants shall pay:

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
Between 1 and 15 Days	\$500
Between 16 and 30 Days	\$3,000
Over 30 Days	\$5,000

61. Stipulated Penalties for Environmentally-Beneficial Projects.

a. Land Transfer. If Defendants fail to complete the transfer pursuant to the requirements of Paragraph 47 by the required deadline, Defendants shall pay a stipulated penalty to the State of \$2,500 per Day for each Day that the transfer is late, up to 30 Days. For each Day that the transfer is late beyond 30 Days, Defendants shall pay a stipulated penalty to the State of \$7,500 per Day; provided, however, that such stipulated penalties shall not accrue during any period of informal negotiations pursuant to Paragraph 47.c) to the extent such informal negotiations occur after the deadline, and shall also not accrue if a written agreement is reached by all Parties on an alternative, pursuant to Paragraph 47.c).

b. Water Quality Sampling. For each failure to comply with the Water Quality Sampling EBP requirements in Paragraph 48, Defendants shall pay to the State:



<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
Between 1 and 15 Days	\$1,500
Between 16 and 30 Days	\$3,000
Over 30 Days	\$5,000

62. For noncompliance with any other requirement of the Consent Decree that is not specified in Paragraphs 56-61, Defendants shall pay a stipulated penalty of \$250 per violation per Day.

63. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

64. Defendants shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Except as provided in Paragraph 61, Defendants shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

65. Either the United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

66. Stipulated penalties shall continue to accrue as provided in Paragraph 63, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If the United States, the State, or Defendants appeal the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

67. Defendants shall pay stipulated penalties owing to the United States and/or the State in the manner set forth and with the confirmation notices required by Paragraphs 41-42, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

68. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

69. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

70. Stipulated penalties are not the United States' or the State's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States, the State, and the Citizen Plaintiffs expressly reserve the right to seek any other relief they deem appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### **IX. FORCE MAJEURE**

71. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to EPA, the State, and the Citizen Plaintiffs within 72 hours of when Defendants first knew that the event might cause a delay. Within 14 Days thereafter, Defendants shall provide in writing to EPA, the State, and the Citizen Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. The United States and the State may, in their unreviewable discretion, extend the time within which notice must be given. No such extension shall be effective unless in writing. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event

for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

73. If EPA and the State agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA and the State for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA and/or the State will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

74. If EPA and the State do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA and/or the State will notify Defendants in writing of its decision.

75. If Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), they shall do so no later than 15 Days after receipt of EPA's and/or the State's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 71 and 72. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA, the State, and the Court.

## **X. DISPUTE RESOLUTION**

76. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

77. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends a written Notice of Dispute to a Counter-Party. A Party sending a Notice of Dispute shall provide a copy of the Notice of Dispute to all other Parties. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States (or the State, if applicable) shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, a Party invokes formal dispute resolution procedures as set forth below.

78. Formal Dispute Resolution.

a. A Party shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Counter-Party a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the initiating Party's position and any supporting documentation relied upon by the Party.

b. The United States (or the State, if applicable), and any Counter-Party, shall serve its Statement of Position within 45 Days of receipt of the initiating Party's Statement of Position. The United States' or the State's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States or the State. The United States' or the State's Statement of Position shall be considered binding, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph. Where appropriate, the United States or the State may allow submission of supplemental statements of position by the parties to the dispute.

c. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States (or the State, if applicable) and the Citizen Plaintiffs, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' or the States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

d. Any Party opposing Defendants' motion may respond to the motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

79. Standard of Review. In a formal dispute proceeding under this Section, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and the Clean Water Act, and that Defendants are entitled to relief under applicable principles of law.

80. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

**XI. RIGHT OF ENTRY AND INFORMATION COLLECTION AND RETENTION**

81. The United States and the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into and upon the Facility at all reasonable times, upon presentation of proper identification for EPA personnel and proper credentials for anyone else, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

82. Upon request, Defendants shall provide EPA, the State, or their authorized representatives splits of any samples taken by Defendants. Upon request, EPA or the State, if applicable, shall provide Defendants splits of any samples taken by EPA, the State, or their authorized representatives.

83. Until three years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. This retention requirement does not apply to voicemail messages or text messages, so long as those forms of communication are not used for substantive discussions concerning compliance with the Consent Decree. Nor does this retention requirement apply to Defendants' outside counsel retained specifically for the purpose of potential litigation.

84. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States and the State at least 60 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendants shall deliver any such documents, records, or other information to EPA or the State, as applicable. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants asserts such a privilege, they shall comply with Federal Rule of Civil Procedure 26(b)(5) regarding claims of privilege. However, no documents, records, or other information created or

generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

85. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

86. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or State laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or State laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

87. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

88. This Consent Decree resolves the civil claims of ELPC and HEC for the violations alleged in the complaint in *Environmental Law & Policy Center and Hoosier Environmental Council v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, Case No. 19-cv-473 (N.D. Ind.).

89. The Plaintiffs and the Citizen Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the Plaintiffs or the Citizen Plaintiffs to obtain penalties or injunctive relief under the CWA and the rules promulgated thereunder, or under other federal or State laws, regulations, or permit conditions, except as expressly stated in Paragraphs 87 and 88. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise. The United States reserves all claims, rights, and remedies against Defendants with respect to any criminal liability.

90. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 87 and 88.

91. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Defendants’ compliance with this Consent Decree shall be no defense to any action

commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the NPDES Permit, the CWA and the rules promulgated thereunder, or any other federal, State, or local law, regulation, permit, or other requirement.

92. This Consent Decree does not limit or affect the rights of the Parties against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

93. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

### **XIII. COSTS**

94. The United States, the State, and Defendants shall bear their own costs of this action, including attorneys' fees, except that the United States and/or the State, if applicable, shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants. By separate agreement, Defendants have agreed to make a payment to the Citizen Plaintiffs with respect to the Citizen Plaintiffs' attorneys' fees and costs incurred in *Environmental Law & Policy Center and Hoosier Environmental Council v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, Case No. 19-cv-473 (N.D. Ind.)

### **XIV. NOTICES**

95. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing and addressed as follows. Any notification, submission, or communication required to be made to the United States shall be made to both the United States Department of Justice and EPA. Any notification, submission, or communication required to be made to EPA need not be made to the Department of Justice.

As to the United States  
Department of Justice by email: [eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)  
Re: DJ # 90-5-1-1-12268

As to the United States  
Department of Justice by mail: EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-12268

As to EPA by email: [R5weca@epa.gov](mailto:R5weca@epa.gov)

Re: Cleveland-Cliffs Burns Harbor Facility

As to EPA by mail:

Chief, Water Enforcement and Compliance  
Assurance Branch  
(WC-15J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

and

Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, IL 60604

As to the State of Indiana by email: [owqenforcement@idem.in.gov](mailto:owqenforcement@idem.in.gov)

As to the State of Indiana by mail: Chief, Administrative and Regulatory Enforcement  
Section  
Office of the Attorney General  
Indiana Government Center South, 5th Floor  
302 West Washington Street  
Indianapolis, IN 46204

and

Chief, Compliance and Enforcement Branch  
Indiana Department of Environmental Management  
Office of Water Quality, Mail Code 65-40  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

and

General Counsel  
Office of Legal Counsel  
IGCN, Rm. 1307  
100 North Senate Street  
Indianapolis, IN 46204-2251

As to ELPC and HEC:

Howard Learner  
Executive Director  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601



(312) 673-6500  
HLearner@elpc.org

As to Defendants:

Cleveland-Cliffs Burns Harbor LLC  
Attention: Plant Manager  
250 W US Highway 12  
Burns Harbor, IN 46304

With copy to:

Cleveland-Cliffs Inc.  
Attn: Office of the General Counsel  
200 Public Square, Suite 3300  
Cleveland, OH 44114-2315

96. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

97. Notices submitted pursuant to this Section shall be deemed submitted upon mailing (including emailing), unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XV. EFFECTIVE DATE**

98. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### **XVI. RETENTION OF JURISDICTION**

99. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### **XVII. MODIFICATION**

100. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

101. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 79 the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### **XVIII. TERMINATION**

102. After CCBH has completed the requirements of Section IV (Compliance Requirements) and has thereafter maintained satisfactory compliance with this Consent Decree for a period of at least 24 months; and after Defendants have paid EPA Past Response Costs, Indiana Past Response Costs, and all civil penalties and any accrued stipulated penalties under this Decree (and any interest thereon); and have complied with all other requirements of this Consent Decree; then Defendants may serve upon the United States, the State, and the Citizen Plaintiffs a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

103. Following receipt of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States and the State, after consultation with the Citizen Plaintiffs, agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

104. If the United States and the State do not agree that the Decree may be terminated, Defendants may invoke dispute resolution under Section X of this Decree (Dispute Resolution). However, Defendants shall not invoke dispute resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

### **XIX. PUBLIC PARTICIPATION**

105. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States, after consultation with the State, reserves the right to withdraw or withhold consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Defendants in writing that it no longer supports entry of this Decree.

### **XX. SIGNATORIES/SERVICE**

106. Each undersigned representative of Defendants, Citizen Plaintiffs, the State of Indiana, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice (or his or her designee) certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

107. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

Defendants shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on its behalf. Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XXI. INTEGRATION**

108. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and its Appendices and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**XXII. FINAL JUDGMENT**

109. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**XXIII. 26 U.S.C. SECTION 162(F)(2)(A)(ii) IDENTIFICATION**

110. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section IV (Compliance Requirements), Paragraphs 8-36 and related Appendices; Section VII (Reporting Requirements), Paragraphs 50 and 52-53; and Section XI (Right of Entry and Information Collection and Retention), Paragraphs 81-83 is restitution or required to come into compliance with law.

**XXIV. APPENDICES**

111. The following Appendices are attached to and part of the Consent Decree:

Appendix 1 – BFCWPS Maintenance Plan

Appendix 2 – Diversion Procedure Plan

Appendix 3 – Earlyman Sheet and Chain of Custody Forms

Appendix 4 – Description of Property for Land Transfer EBP

Appendix 5 – Water Quality Sampling EBP

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

---

UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF INDIANA

Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR THE UNITED STATES OF AMERICA:**

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

2/14/22

Date



---

NICHOLAS MCDANIEL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611

Signature Page for the Consent Decree in *United States and the State of Indiana v. Cleveland-Cliffs Steel LLC and Cleveland-Cliffs Burns Harbor LLC (N.D. Ind.)*:

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Date

**ROBERT  
KAPLAN**

Digitally signed by ROBERT KAPLAN  
Date: 2022.01.27 09:22:28 -06'00'

\_\_\_\_\_  
ROBERT A. KAPLAN  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, IL 60604

\_\_\_\_\_  
Date

**Martin,  
Thomas**

Digitally signed by Martin,  
Thomas  
Date: 2022.01.12  
13:48:52 -06'00'

\_\_\_\_\_  
THOMAS J. MARTIN  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, IL 60604

\_\_\_\_\_  
Date

**IAN CECALA**

Digitally signed by IAN  
CECALA  
Date: 2022.01.12  
13:18:03 -06'00'

\_\_\_\_\_  
IAN E. CECALA  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, IL 60604

Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.)

**FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:**

**LAWRENCE** Digitally signed by  
**STARFIELD** LAWRENCE STARFIELD  
Date: 2022.02.04  
09:57:13 -05'00'


\_\_\_\_\_  
Date

\_\_\_\_\_  
La rence E. Starfield  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S Environmental Protection Agency  
1 00 Pennsylvania Ave., NW  
Washington, DC 0460


Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR THE STATE OF INDIANA:**

1/13/22  
Date

  
BRIAN ROCKENSUESS  
Commissioner  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204

1/13/22  
Date

  
NANCY KING  
General Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204

1/15/22  
Date

  
SUSANNA BINGMAN  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204

2/1/22  
Date

  
PATRICIA ORLOFF ERDMANN  
Chief Counsel of Litigation  
Office of the Indiana Attorney General  
Indiana Government Center South  
5<sup>th</sup> Floor  
302 West Washington Street  
Indianapolis, IN 46204



Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR THE ENVIRONMENTAL LAW & POLICY CENTER:**

Handwritten signature of Howard A. Learner in black ink.

Date: January 4, 2022

Howard A. Learner  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601  
[Hlearner@elpc.org](mailto:Hlearner@elpc.org),  
(312) 673-6500  
One of the Attorneys for the  
Environmental Law & Policy Center

Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR THE HOOSIER ENVIRONMENTAL COUNCIL:**

Handwritten signature of Howard A. Learner in black ink.

Date: January 4, 2022

Howard A. Learner  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601  
[Hlearner@elpc.org](mailto:Hlearner@elpc.org),  
(312) 673-6500

One of the Attorneys for the  
Hoosier Environmental Council

Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR CLEVELAND-CLIFFS STEEL LLC:**

1/3/2022  
Date

James D. Graham  
James D. Graham  
Executive Vice President, Chief Legal Officer & Secretary

Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR CLEVELAND-CLIFFS BURNS HARBOR LLC:**

1/3/2022  
Date

James D. Graham  
James D. Graham  
General Counsel & Secretary

## **Appendix 1**

### **BFCWPS Maintenance Plan**

**Cleveland-Cliffs Burns Harbor LLC**

**Maintenance Procedure for the Blast Furnace Closed Water Pump Station (“BFCWPS”)**

Cleveland-Cliffs Burns Harbor LLC (“CCBH”) shall implement the following maintenance procedures on the BFCWPS.

1. An instrumentation inspection of the BFCWPS equipment shall be performed at least once per week pursuant to MEU-AGW-P4439, Instrumentation Weekly Checks – BFCWPS. The results of the inspections shall be documented on BFCWPS Instrumentation Weekly Checksheet #8754.
2. A mechanical inspection of the equipment in service at the BFCWPS shall be performed at least once per week pursuant to MEU-AGW-P4489, Mechanical Weekly Checks – BFCWPS. The results of the inspections shall be documented on BFCWPS Mechanical Weekly Checksheet #8813.
3. Electrical inspections shall be performed as follows:
  - a. Pursuant to MEU-PWR-P6810, Power Weekly Checks – MEU Utility Areas, at least once per week, an inspection shall cover variable frequency drives, motors, switches, alarms, lights, and other sensors in the BFCWPS; and
  - b. Pursuant to MEU-PWR-P4714, Power Twice per Week Checks – Lakewater and BFCWPS, at least twice per calendar week, an inspection of the power systems shall be performed at the BFCWPS, including battery chargers, batteries, transfer switches, rectifiers, inverters, and related shop supply systems.

The results of these inspections shall be documented on Utility Power Weekly Checksheet #9051 and Lakewater and BFCWPS Power Twice per Week Checksheet #9050, respectively.

4. CCBH shall perform corrective actions as identified through the inspections in Paragraphs 1, 2 and 3 and so that the BFCWPS is maintained in good operating order.
5. CCBH will maintain records of all inspections and corrective actions performed at the BFCWPS.
6. CCBH may update this Maintenance Plan from time to time, as appropriate, so long as the overall effectiveness of the plan is not diminished. CCBH shall submit any updates to the plan in the next Semi-Annual Report.

## **Appendix 2**

### **Diversion Procedure Plan**

**Cleveland-Cliffs Burns Harbor LLC**  
**Work Scope and Safety Guideline**  
**Failure of the Blast Furnace Closed Water Pumping Station – Diversion Procedure**

**Purpose:**

The purpose of this Procedure is to outline the steps to be taken in the event one or both blast furnaces use Once-Through Gas Cleaning due to the failure of the BFCWPS.

**Definition:**

The failure of the BFCWPS is defined as the inability to circulate blast furnace gas cleaning water to one or both furnaces.

**Notification:**

The Waste Ammonia Liquor Pumping Station (WALPS) operator and the AGW shift manager are responsible for the 24/7 operation of the BFCWPS. As such, they are responsible for ensuring representatives from the following organizations are notified in the event of a BFCWPS failure:

- Central Dispatch – Dispatcher
- Environmental – Engineer responsible for water and Environmental Manager
- MEU Management – AGW Operations Manager, AGW Maintenance Manager, P&U Division Manager, MEU Division Manager
- Operations Management – Iron Producing Division Manager, Primary Senior Division Manager
- Plant Manager

**Failure and Repair Assessment:**

The assessment of the failure and timeframe for returning the station to full service shall be made as soon as possible. Work to return the station to full operation shall be performed around the clock. All necessary resources shall be mobilized to return the station to full operation.

**Operational Impact:**

1. In the event that one or both blast furnaces are operating on once-through water due to the failure of the BFCWPS, CCBH shall divert the DIW flow to the Deerfield Retention Pond as soon as reasonably practicable.



2. CCBH shall:

- a. Determine how long operation on once-through water is expected;
- b. Determine current available capacity of the Deerfield Retention Pond; and
- c. Determine current flows to the No. 2 Wastewater Pump Station (WWPS 2) from the following operations:

<b>Operation</b>	<b>Approximate Process Water Flow in Typical Operation (gpm, rounded)</b>
Blast Furnaces: <ul style="list-style-type: none"> <li>• Gas Cleaning with Once-Through Lake Water</li> <li>• Other Process Water</li> <li>• Thickener Underflows, RSB HC Overheads</li> </ul>	7,600  1,900  400
110" Plate Mill	6,300
Sinter Plant	3,000
BOF Steelmaking (including hot metal transfer, desulfurization)	600
Vacuum Degassing	1,400
Continuous Casting	1,800
Power Station	2,000

3. Based on the above determinations, CCBH shall determine in what order and when the flows from the identified operations in Paragraph 2, above, must be reduced and/or shut off to maintain capacity in the Deerfield Retention Pond.
4. CCBH shall issue instructions to reduce or shut off the relevant operation's flow to the DIW based on the determination in step 3.
5. CCBH shall repeat steps 2 and 3 above as appropriate based on available capacity in the Deerfield Retention Pond and/or receipt of information about the expected duration of operation on once-through water.
6. Based on the operating parameters of the blast furnaces, capacity in the Deerfield Retention Pond, expected duration of once-through operation, and other relevant information, CCBH

shall determine if and when to safely curtail gas cleaning operations by putting one or both furnaces on check or by taking one or both furnaces down safely.

**Testing Protocol As a Result of Failure:**

1. Perform grab sampling at the cold well, influent to the SWTP, and the Deerfield Pond every 2 hours for total cyanide and ammonia-N using field testing until the use of Once-Through Gas Cleaning ceases.
2. Perform the following sampling using 40 C.F.R. § 136 methods until all Once-Through Water has been treated or metered as necessary to maintain compliance with applicable NPDES Permit effluent limits and the Deerfield Pond levels return to the required minimum unused capacity. Samples shall be analyzed on an expedited basis using an EPA certified lab:
  - a. Daily grab sampling of the Deerfield Pond water for ammonia-N and total and free cyanide;
  - b. Three grab samples per day for total and free cyanide at Outfall 011 and Outfall 001; and
  - c. Composite sampling at Outfall 011 and Outfall 001 for ammonia-N.

Based on the sampling results, CCBH shall arrange for treatment and/or meter out the water diverted to the Deerfield Retention Pond to the outfalls in such a manner as to maintain compliance with NPDES permit effluent limits.

## **Appendix 3**

### **Earlyman Sheet and Chain of Custody Forms**

Date Obtained: \_\_\_\_\_ 24-hour Sampling Period: \_\_\_\_\_ Technician: \_\_\_\_\_

**FLOW DATA**

Sample	Time	Todays	Integrator	Factor	Daily Flow
002	_____	002	_____	0.005 (MGD)	002 _____ MGD
001	_____	001	_____	0.001 (MGD)	001 _____ MGD
011	_____	011	_____	0.001 (MGD)	011 _____ MGD
031	_____	031	_____	0.0001 (MGD)	031 _____ MGD
WPL	_____	WPL	_____	1 (GD)	WPL _____ GD
WAL 1	_____	WAL 1	_____	1 (GD)	WAL 1 _____ GD
WAL 2	_____	WAL 2	_____	1 (GD)	WAL 2 _____ GD
WAL 3	_____	WAL 3	_____	1 (GD)	WAL 3 _____ GD
J Box	_____	LWPS Dewatering	_____	1 (GD)	Water Cannon _____ MGD
WWII	_____				999 _____ MGD
DIW 131	_____				
003	_____				
RSB	_____				
BFTC	_____				
BFTD	_____				
999	_____				
Mixed Liquid	_____				
BFCWPS	_____				
Cold Well	_____				

**pH Data**

**Temperature Data**

	Max	Min	Instr	Lab	Max	Min	Inst	Grab	Refrig
999	_____	_____	_____	_____	_____	_____	_____	_____	_____
002	_____	_____	_____	_____	_____	_____	_____	_____	_____
001	_____	_____	_____	_____	_____	_____	_____	_____	_____
011	_____	_____	_____	_____	_____	_____	_____	_____	_____
RSB	_____	_____	_____	_____	_____	_____	_____	_____	_____

	Max	Min	Avg	Seal Pot Level	Max Barometric Pressure
WPL	_____	_____	_____	_____	_____
WAL 1	_____	_____	_____	_____	_____
WAL 2	_____	_____	_____	_____	_____
WAL 3	_____	_____	_____	_____	_____

**Waste Ammonia Liquor / Waste Pickle Liquor Pressure Data**

	Injection Pressure			Annulus Pressure		Annulus at	Inj. Press at	Min	Formation Pressure	Inj. Press. WAL 1	Inj. Press. WAL 2	Inj. Press. WAL 3
	Max	Avg	Min	Avg	Min	Min Differ.	Min Differ.	Differ.				
WPL	_____	_____	_____	_____	_____	_____	_____	_____	0600	_____	_____	_____
WAL 1	_____	_____	_____	_____	_____	_____	_____	_____	1200	_____	_____	_____
WAL 2	_____	_____	_____	_____	_____	_____	_____	_____	1800	_____	_____	_____
WAL 3	_____	_____	_____	_____	_____	_____	_____	_____	2400	_____	_____	_____

	In Calibration		Composite		Surface		Oil		Grease
	Temp	pH	Sample		Oil	Boom			
	+/- 2 deg F +/-0.3 SU								
002	Y	N	Y	N	Y	N	Y	N	
011	Y	N	Y	N	Y	N	Y	N	
Lagoon					Y	N	Y	N	
001	Y	N	Y	N	Y	N	Y	N	
WAL		Y	N						
Ditch					Y	N	Y	N	
003					Y	N			Y N

Comments: \_\_\_\_\_

\*All daily automatic data is 12:00am sampling period day to 12:00am obtained date CST Non - Day light savings.

\*\*Temperature and pH data are not 2-hour sustained values.

Chain of Custody Wednesday – NPDES Compliance

Lab ID:



Cleveland Cliffs Burns Harbor

Lab Report Address		Turnaround Time	<i>TO BE COMPLETED BY MICROBAC</i>	
Client Name:	Cleveland Cliffs Burns Harbor	<input type="checkbox"/> Contract	Temperature Upon Receipt (°C)	
Address:	250 W US Highway 12	<input type="checkbox"/> Rush	Therm ID	
City, State, Zip:	Burns Harbor, IN 46304	<input type="checkbox"/> Other _____	Holding Time	
Contact:	Telephone Number:	<input checked="" type="checkbox"/> Results Only <input checked="" type="checkbox"/> EDD	Samples Received on Ice? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	

E-mail address:

Project: NPDES Compliance Location: See Client Sample ID Compliance Monitoring:

\*\*\*Matrix Types: Soil/Solid (S), Sludge, Oil, Wipe, Drinking Water (DW), Groundwater (GW), Surface Water (SW), Waste Water (WW), Other (Specify)  
 \*\*\*\* Preservative Types: (1) HNO3, (2) H2SO4, (3) HCl, (4) NaOH, (5) Zinc Acetate, (6) Methanol, (7) Sodium Bisulfate, (8) Sodium Thiosulfate, (9) Hexane, (U) Unpreserved

Requested Analysis																			
24 HR Comp End Date/Grab Date:		24 HR Comp Start Time	24 HR Comp End Time/Grab Time	No. of Containers	Matrix ***	Preservative Types ****	NH3	TSS	Total Rec. Metals (Pb, Zn)	O&G	Retain							Additional Notes	
No.	Client Sample ID																		
01	011 – Comp			1	WW	2	C												
				1	WW	1			C										
				2	WW	U		C				C							
02	011 – Grab	NA		1	WW	2				G									
03	001 – Comp			1	WW	2	C												
				2	WW	U		C			C								
04	001 – Grab	NA		1	WW	2				G									

Possible Hazard Identification  Non-Hazardous Sample Disposition  Dispose of as appropriate

Comments:

Sampler Signature:	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time
Sampled by:	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time
Sampler Phone No.:						

Chain of Custody Wednesday – NPDES Compliance

Lab ID:



Cleveland Cliffs Burns Harbor

Lab Report Address		Turnaround Time	<i>TO BE COMPLETED BY MICROBAC</i>	
Client Name:	Cleveland Cliffs Burns Harbor	<input type="checkbox"/> Contract	Temperature Upon Receipt (°C)	
Address:	250 W US Highway 12	<input type="checkbox"/> Rush	Therm ID	
City, State, Zip:	Burns Harbor, IN 46304	<input type="checkbox"/> Other _____	Holding Time	
Contact:	Telephone Number:	<input checked="" type="checkbox"/> Results Only <input checked="" type="checkbox"/> EDD	Samples Received on Ice? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	

E-mail address:

Project: NPDES Compliance Location: See Client Sample ID Compliance Monitoring:

\*\*\*Matrix Types: Soil/Solid (S), Sludge, Oil, Wipe, Drinking Water (DW), Groundwater (GW), Surface Water (SW), Waste Water (WW), Other (Specify)  
 \*\*\*\* Preservative Types: (1) HNO3, (2) H2SO4, (3) HCl, (4) NaOH, (5) Zinc Acetate, (6) Methanol, (7) Sodium Bisulfate, (8) Sodium Thiosulfate, (9) Hexane, (U) Unpreserved

Requested Analysis																		
24 HR Comp End Date/Grab Date:		24 HR Comp Start Time	24 HR Comp End Time/Grab Time	No. of Containers	Matrix ***	Preservative Types ****	NH3	TSS	Total Rec. Metals (Cu, Zn)	O&G	BOD	Fecal						Additional Notes
No.	Client Sample ID																	
05	031 – Grab	NA		2	WW	U		G			G							
06	031 – Grab	NA		2	WW	8						G						
07	002 – Comp			1	WW	U		C										
				1	WW	2	C											
				1	WW	1			C									
08	002 – Grab	NA		1	WW	2			G									

Possible Hazard Identification  Non-Hazardous Sample Disposition  Dispose of as appropriate

Comments:

Sampler Signature:	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time
Sampled by:	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time
Sampler Phone No.:						



Chain of Custody 3 PT - Compliance  
Cleveland Cliffs Burns Harbor

Lab ID:

Lab Report Address		Turnaround Time	TO BE COMPLETED BY MICROBAC	
Client Name:	Cleveland Cliffs Burns Harbor	<input type="checkbox"/> Contract	Temperature Upon Receipt (°C)	
Address:	250 W US Highway 12	<input type="checkbox"/> Rush	Therm ID	
City, State, Zip:	Burns Harbor, IN 46304	<input type="checkbox"/> Other _____	Holding Time	
Contact:	Telephone Number:	<input checked="" type="checkbox"/> Results Only	<input checked="" type="checkbox"/> EDD	Samples Received on Ice? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA

E-mail address: \_\_\_\_\_

Project: NPDES Compliance      Location: See Client Sample ID      Compliance Monitoring:

\*\*\*Matrix Types: Soil/Solid (S), Sludge, Oil, Wipe, Drinking Water (DW), Groundwater (GW), Surface Water (SW), Waste Water (WW), Other Specify)  
\*\*\*\* Preservative Types: (1) HNO3, (2) H2SO4, (3) HCl, (4) NaOH, (5) Zinc Acetate, (6) Methanol, (7) Sodium Bisulfate, (8) Sodium Thiosulfate, (9) Hexane, (U) Unpreserved

Requested Analysis												
		Collection Date/Time				No. of Containers	Matrix ***	Preservative Types ****	Cyanide, Total	Cyanide, Free 1677	Phenol	Additional Notes
		1 <sup>st</sup> Grab										
No.	Client Sample ID	Date <sup>a</sup>	Time	Flow Reading								
01	011 – Composite					2	WW	4	C	C		Manual composite with 3 grabs
						1	WW	2			C	Manual composite with 3 grabs
02	001 – Composite					2	WW	4	C	C		Manual composite with 3 grabs
						1	WW	2			C	Manual composite with 3 grabs
03	002 – Composite					1	WW	2			C	Manual composite with 3 grabs

Possible Hazard Identification  Non-Hazardous      Sample Disposition  Dispose of as appropriate

Comments:  
a. Sample Start Date  
b. Sample End Date

Sampler Signature:	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time
Sampled by:	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time
Sampler Phone No.:						

Chain of Custody 3 PT - Compliance  
Cleveland Cliffs Burns Harbor

Lab ID:



Lab Report Address		Turnaround Time	O B E C O M P E E B M C O B C	
Client Name:	Cleveland Cliffs Burns Harbor	<input type="checkbox"/> Contract	Temperature Upon Receipt °C)	
Address:	250 W US Highway 12	<input type="checkbox"/> Rush	Therm ID	
City, State, Zip:	Burns Harbor, IN 46304	<input type="checkbox"/> Other _____	Holding Time	
Contact:	Telephone Number:	<input checked="" type="checkbox"/> Results Only	<input checked="" type="checkbox"/> EDD	Samples Received on Ice? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA

E-mail address: \_\_\_\_\_

Project: NPDES Compliance      Location: See Client Sample ID      Compliance Monitoring:

\*\*\*Matrix Types: Soil/Solid (S), Sludge, Oil, Wipe, Drinking Water (DW), Groundwater (GW), Surface Water (SW), Waste Water (WW), Other Specify)  
\*\*\*\* Preservative Types: (1) HNO3, (2) H2SO4, (3) HCl, (4) NaOH, (5) Zinc Acetate, (6) Methanol, (7) Sodium Bisulfate, (8) Sodium Thiosulfate, (9) Hexane, (U) Unpreserved

Requested Analysis														
No.	Client Sample ID	Collection Date/Time						No. of Containers	Matrix ***	Preservative Types ****	Cyanide, Total	Cyanide, Free 1677	Phenol	Additional Notes
		2 <sup>nd</sup> Grab			3 <sup>rd</sup> Grab									
		Date <sup>a</sup>	Time	Flow Reading	Date	Time	Flow Reading							
01	011 – Composite							2	WW	4	C	C		Manual composite with 3 grabs
								1	WW	2			C	Manual composite with 3 grabs
02	001 – Composite							2	WW	4	C	C		Manual composite with 3 grabs
								1	WW	2			C	Manual composite with 3 grabs
03	002 – Composite							1	WW	2			C	Manual composite with 3 grabs

Possible Hazard Identification  Non-Hazardous      Sample Disposition  Dispose of as appropriate

Comments:  
a. Sample Start Date  
b. Sample End Date

Sampler Signature:	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time
Sampled by:	Received By (signature)	Date/Time	Relinquish By (signature)	Date/Time	Received By (signature)	Date/Time
Sampler Phone No.:						



## **Appendix 4**

### **EBP Property**

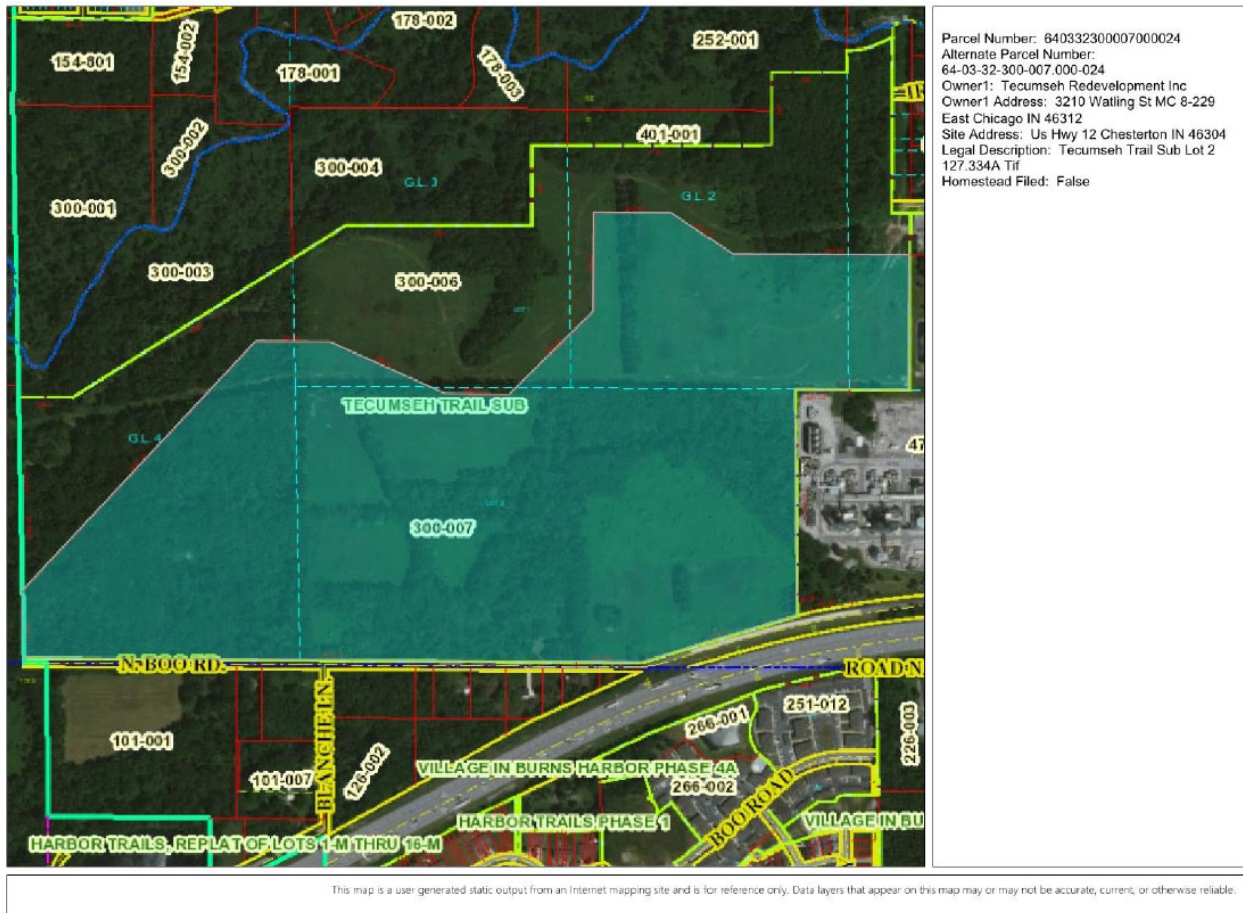
### **EBP Property Description**

The EBP Property is approximately 127 acres north of North Boo Road and west of Indiana Route 149 in Burns Harbor, Indiana shown in Figure 4.1. The Property consists of a mix of woodlands and cleared land previously used for farming. Portions of the EBP Property are in the East Branch Little Calumet River watershed and the headwaters of a tributary to Salt Creek flows through the Property. The EBP Property abuts the Indiana Dunes National Park to the north.

As provided by Paragraph 47 of the Consent Decree, Defendants shall transfer, or cause to be transferred, the EBP Property in fee simple to a land-trust pursuant to a donation agreement between the Defendants and the land-trust, subject to reasonable terms and conditions reasonably acceptable to the land-trust, including with respect to marketable title, environmental due diligence and condition of the property, and property taxes.

Defendants previously conducted a Phase I ESA, dated February 15, 2016, which found no Recognized Environmental Conditions. This Phase I ESA has been provided to Plaintiffs, ELPC, and HEC. As required by Paragraph 47 of the Consent Decree, Defendants shall conduct a new Phase I ESA prior to transfer of the EBP Property.

**Figure 4.1 EBP Property Map**



## **Appendix 5**

### **Water Quality Sampling EBP Locations**

**CLEVELAND-CLIFFS BURNS HARBOR  
SAMPLING LOCATIONS (in yellow)**

- UPSTREAM EAST BRANCH LITTLE CALUMET RIVER
- DOWNSTREAM EAST BRANCH LITTLE CALUMET RIVER
- LAKE MICHIGAN (Cleveland-Cliffs Burns Harbor Intake, Indiana Dunes National Park West Beach)

Lake Michigan



Lake Michigan

Burns Harbor

CLEVELAND-CLIFFS  
BURNS HARBOR INTAKE

INDIANA DUNES  
NATIONAL PARK  
WEST BEACH

CLEVELAND CLIFFS  
BURNS HARBOR  
OUTFALL 002

EAST BRANCH  
LITTLE CALUMET RIVER  
AT HOWE RD

Burns Ditch

Storm Ditch

East Branch  
Little Calumet River

CLEVELAND CLIFFS  
BURNS HARBOR  
OUTFALL 001

Little Calumet River

EAST BRANCH  
LITTLE CALUMET RIVER  
AT CRISMAN RD

East Branch Little Calumet River

Salt  
Creek

5000 ft

