

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

ENVIRONMENTAL LAW & POLICY)
CENTER and HOOSIER ENVIRONMENTAL)
COUNCIL)

Plaintiffs)

v.)

ARCELORMITTAL BURNS HARBOR, LLC,)
and ARCELORMITTAL USA, LLC)

Defendants)

Case No. 19-cv-473

COMPLAINT

Plaintiffs Environmental Law & Policy Center (“ELPC”) and Hoosier Environmental Council (“HEC”) (collectively “Plaintiffs”) bring this action on behalf of themselves and their members. Plaintiffs allege as follows:

NATURE OF THE ACTION

1. In August 2019, Defendants ArcelorMittal Burns Harbor, LLC’s and ArcelorMittal USA, LLC’s steel mill (“Steel Mill”) discharged toxic levels of cyanide and ammonia into the East Arm of the Little Calumet River, which flows into Lake Michigan. The days-long toxic spill violated numerous provisions of the Steel Mill’s permit issued under the Clean Water Act. It also killed thousands of fish, shut down nearby beaches—including in Indiana Dunes National Park—and closed a drinking water intake in Lake Michigan. Making matters worse, Defendants failed to report the spill to government officials or neighboring communities as required by the Steel Mill’s Clean Water Act permit.

2. The August 2019 incident was not an isolated event. Over the past five years, Defendants have repeatedly violated the Steel Mill's Clean Water Act permit by, among other things, exceeding discharge limits for dangerous pollutants like cyanide and ammonia, failing to report exceedances, and failing to maintain the Steel Mill in good working order. Defendants have not taken actions sufficient to prevent and avoid future permit violations of the types alleged in this Complaint. Absent an appropriate order from this Court, Defendants' Clean Water Act violations are likely to continue.

3. Plaintiffs are non-profit environmental organizations with members who live near the Steel Mill and use and enjoy the surrounding natural resources, including the East Arm of the Calumet River, Lake Michigan and its beaches, and Indiana Dunes National Park. Plaintiffs' members also obtain drinking water from Lake Michigan intakes affected by the Steel Mill's discharges. Plaintiffs bring this citizen enforcement action on behalf of themselves and their members pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. §1365(a) to redress Defendants' past Clean Water Act violations and to enjoin continuing and future violations.

4. Plaintiffs seek remedies available under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, including: (1) a declaratory judgment that Defendants violated the Clean Water Act, (2) appropriate injunctive relief, including equipment improvement and operating changes to reduce pollution and prevent future violations; (3) monetary civil penalties; and (4) costs, including attorney and expert witness fees.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this dispute arises under the laws of the United States, namely Section 505(a) of the Clean Water Act, 33 U.S.C. §1365(a).

6. Venue in this district is appropriate under 33 U.S.C. §1365(c) because the Steel Mill is located in this district.

PARTIES

7. Plaintiff Environmental Law & Policy Center is a public interest environmental and economic development advocacy organization focused on protecting the environment and public health in the Midwest, including Indiana and the Great Lakes. ELPC is a not-for-profit corporation organized under Illinois law.

8. ELPC has members who live, own homes, or spend time in Northwest Indiana near the Steel Mill, including members who live in the towns of Ogden Dunes and Portage, Indiana.

9. ELPC members in Ogden Dunes, Indiana obtain their drinking water from Lake Michigan, including from at least one intake that is affected by the Steel Mill's discharges.

10. ELPC has members who use and enjoy and intend to continue using and enjoying natural resources near and around the Steel Mill, including the East Arm of the Little Calumet River, Lake Michigan and the beaches on its southern coastline, and the Indiana Dunes National Park. The Steel Mill's illegal pollution discharges and other permit violations have harmed and continue to harm such ELPC members' use and enjoyment of these natural resources.

11. Plaintiff Hoosier Environmental Council is a public interest environmental advocacy organization focused on protecting the environment and public health in Indiana. HEC is a not-for-profit corporation organized under Indiana law.

12. HEC has members who live near the Steel Mill, including in the town of Ogden Dunes and Portage, Indiana.

13. HEC members in Ogden Dunes, Indiana obtain their drinking water from Lake Michigan, including from at least one intake that is affected by the Steel Mill's discharges.

14. HEC has members who use and enjoy and intend to continue using and enjoying natural resources around the Steel Mill, including the East Arm of the Little Calumet River, Lake Michigan and the beaches on its southern coastline, and the Indiana Dunes National Park. ArcelorMittal's illegal pollution discharges and other permit violations have harmed and continue to harm such HEC members' use and enjoyment of these natural resources.

15. Plaintiffs are "citizens" who may commence a civil action under this section of the Clean Water Act within the meaning of 33 U.S.C. §§ 1362(5), 1365(a), and 1365(g). Plaintiffs sue on behalf of themselves and their individual members described above.

16. Defendant ArcelorMittal Burns Harbor, LLC ("Arcelor Burns Harbor") is a Delaware limited liability company with its principal place of business in Burns Harbor, Indiana.

17. Defendant ArcelorMittal USA, LLC ("Arcelor USA") is a Delaware limited liability company with its principal place of business in Chicago, Illinois. Arcelor USA is the parent company of Arcelor Burns Harbor.

18. Arcelor USA and Arcelor Burns Harbor are each "persons" within the meaning of 33 U.S.C. § 1362(5).

19. Defendants own and operate the Steel Mill, which is located at 250 U.S. Highway 12, Burns Harbor, Indiana, 46304. The Steel Mill is adjacent to Lake Michigan and near the towns of Ogden Dunes and Portage, Indiana. The Steel Mill is adjacent to the Indiana Dunes National Park.

20. On information and belief, Arcelor USA exercises financial and managerial control over Arcelor Burns Harbor, including approval of all budgets and expenditures that are

necessary for Arcelor Burns Harbor to comply with the Clean Water Act, its permit pursuant to the Clean Water Act, and any relief ordered by this Court.

NOTICE REQUIRED UNDER CLEAN WATER ACT

21. Section 505(b) of the Clean Water Act requires prospective plaintiffs filing a citizen suit to provide notice via certified mail of their intent to sue to the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), to the State in which the alleged violations occur, and to prospective defendants at least 60 days before commencing any suit. 33 U.S.C. § 1365(b).

22. On October 4, 2019, Plaintiffs sent via certified mail with return receipts the notice required by Section 505(b) of the Clean Water Act. A true and accurate copy of Plaintiffs’ 60-day notice letter (“Notice Letter”) is attached as Exhibit A.

23. On or before October 11, 2019, all required parties received notice in accordance with Section 505(b) of the Clean Water Act. *See* Exhibit B (return receipts). More than sixty days have passed since such notice was received.

24. Neither U.S. EPA nor the State of Indiana has commenced (let alone begun diligently prosecuting) a civil or criminal action in a court of the United States or the State of Indiana to redress the violations addressed in the Notice Letter and described in this Complaint.

STATUTORY BACKGROUND

25. The objective of Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” 33 U.S.C. § 1251(a). That objective includes protecting “fish, shellfish, and wildlife” and the public’s right to “recreat[e] in and on the water.” 33 U.S.C. § 1251(a) (2). The Clean Water Act prohibits “the discharge of toxic pollutants in toxic amounts.” 33 U.S.C. § 1251(a)(3).

26. Section 301 of the Clean Water Act prohibits the “discharge of any pollutant by any person” into navigable waters, except in compliance with a permit issued by U.S. EPA as part of National Pollution Elimination Discharge System (“NPDES”) program. 33 U.S.C. § 1311(a). U.S. EPA can delegate NPDES permitting and enforcement authority to a state pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342. U.S. EPA has delegated such authority to the Indiana Department of Environmental Management (“IDEM”) for discharges into navigable waters within its jurisdiction.

27. The “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

28. A “pollutant” is “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

29. A “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

30. NPDES permits regulate pollutant discharges from point sources by detailing certain requirements, such as numeric effluent limitations, narrative water quality standards, and monitoring and reporting requirements. 33 U.S.C. § 1342; 33 U.S.C. § 1362(11).

31. Numeric effluent limitations set the level a pollutant can be discharged by a point source. 33 U.S.C. § 1342; 33 U.S.C. § 1362(11). Narrative water quality standards prohibit a

regulated facility from causing unacceptable conditions in and on the water without reference to numeric limitations. 33 U.S.C. § 1342; 33 U.S.C. § 1362(11); 33 U.S.C. § 1313.

32. Failure to comply with any NPDES permit condition is a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and is actionable by citizens under Section 505 of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

33. Section 505 of the Clean Water Act grants district courts jurisdiction “to enforce . . . effluent standard[s] or limitation[s] . . . and to apply any appropriate civil penalties under section 1319(d)” of the Clean Water Act in citizen suits. 33 U.S.C. § 1365(a).

34. Section 309 of the Clean Water Act provides that “any person” who violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311, or violates any NPDES permit condition “shall be subject to a civil penalty.” 33 U.S.C. § 1319(d).

35. Each separate violation of the Clean Water Act subjects the violator to a civil penalty of up to \$37,500 per day per violation for violations between January 12, 2009 and November 2, 2015, and up to \$52,414 per day for violations after November 2, 2015. 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1-19.4.

36. Under Section 505 of the Clean Water Act, the court may also award the “costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party.” 33 U.S.C. § 1365(d).

FACTUAL BACKGROUND

The Steel Mill’s NPDES Permit

37. Each point from which the Steel Mill discharges wastewater is known as an “outfall” and is treated as a separate point source.

38. An external outfall empties directly into a water body covered by the Clean Water Act.

39. An internal outfall empties waste out of the Steel Mill to combine with other waste streams before its ultimate discharge through an external outfall. A diagram of the Steel Mill's wastewater stream can be found in Exhibit C.

40. At all relevant times, NPDES Permit No. IN0000175 ("Permit") has covered discharges from the Steel Mill's External Outfalls 001, 002, and 003, as well as Internal Outfalls 011 and 111. External Outfall 001 discharges into the East Arm of the Little Calumet River, which flows into Lake Michigan. Defendants have exclusive control over the systems, processes, and operations of the discharges from the outfalls at the Steel Mill covered by the Permit.

41. The current Permit became effective on July 1, 2016 and expires June 30, 2021.

42. The preceding version of the Permit (which had the same number) was effective from March 1, 2011 until issuance of the current Permit. All relevant distinctions between the permit requirements are accounted for in the tables of violations below.

43. The Permit contains four types of requirements relevant to this case: (a) effluent limitations; (b) narrative water quality standards; (c) reporting requirements; and (d) affirmative duties.

Effluent Limitations

44. Part I.A. of the Permit sets numeric effluent limitations on discharge levels of certain pollutants. It also requires the Steel Mill to monitor discharges of the pollutants subject to effluent limitations.

45. Pollutants are subject to different types of limits, such as maximum, minimum, daily maximum, 7-day average, and monthly average. A pollutant may be subject to multiple limits, such as a daily and a 7-day or monthly average limit.

46. Part I.A.1 of the Permit sets the following effluent limitations for Outfall 001:

Outfall 001

Parameter	Monthly Average Load	Daily Maximum Load	Unit	Monthly Average Concentration	Daily Maximum Concentration	Unit
Phenols	14	22	lbs/day			
Copper	20	39	lbs/day	0.018	0.035	mg/L
Silver	0.054	0.11	lbs/day	0.048	0.097	ug/L
Mercury	0.0015	0.0037	lbs/day	1.3	3.2	ng/L
Zinc	169	326	lbs/day	150	290	ug/L
Total Residual Chlorine	11	23	lbs/day	10	20	ug/L
Whole Effluent Toxicity				1.0	1.0	TU
Free Cyanide	5	9.9	lbs/day	4.4	8.8	ug/L
Parameter	Daily Minimum	Daily Maximum	Unit			
pH	6.0	9.0	s.u.			
Parameter	Month	Daily Maximum	Unit			
Temperature	Jan	60	deg F			
	Feb	60	deg F			
	Mar	65	deg F			
	Apr	71	deg F			
	May	81	deg F			
	Jun	86	deg F			
	Jul	86	deg F			
	Aug	86	deg F			
	Sep	85	deg F			
	Oct	80	deg F			
	Nov	75	deg F			
	Dec	65	deg F			

47. Part I.A.1 of the Permit sets the following effluent limitations for ammonia from Outfall 001:

Outfall 001

Parameter	Month	7-Day Average Load	Daily Maximum Load	Unit	7-Day Average Concentration	Daily Maximum Concentration	Unit
Ammonia	Jan	720	915	lbs/day	0.68	0.86	mg/L
	Feb	645	910	lbs/day	0.72	1.02	mg/L
	Mar	940	1300	lbs/day	0.9	1.27	mg/L
	Apr	730	1030	lbs/day	0.82	1.16	mg/L
	May	680	970	lbs/day	0.74	1.05	mg/L
	Jun	650	920	lbs/day	0.62	0.87	mg/L
	Jul	375	540	lbs/day	0.36	0.51	mg/L
	Aug	385	540	lbs/day	0.37	0.52	mg/L
	Sep	550	775	lbs/day	0.82	1.16	mg/L
	Oct	635	900	lbs/day	0.67	0.95	mg/L
	Nov	530	680	lbs/day	0.47	0.6	mg/L
	Dec	635	900	lbs/day	0.9	1.27	mg/L

48. Part I.A.4 of the Permit sets the following effluent limitations for Outfall 011:

Outfall 011

Parameter	Monthly Average Load	Daily Maximum Load	Unit
Total Cyanide		21	lbs/day
Zinc	28.4	85.2	lbs/day
Lead	19.8	40	lbs/day
Total Residual Chlorine		4.32	lbs/day
Naphthalene		0.402	lbs/day
Tetrachloroethylene		0.602	lbs/day

49. Part I.A.5 of the Permit sets the following effluent limitations for 2,3,7,8-tetrachlorodibenzofuran (“2,3,7,8-TCDF”) from Internal Outfall 111:

Outfall 111

Parameter	Daily Maximum Concentration	Unit
2,3,7,8-TCDF	10	pg/L

Narrative Water Quality Standards

50. Part I.B.1 of the Permit provides that, at all times, the discharge from all covered point sources shall not cause receiving waters to contain pollutants that, among other things:

(a) are in amounts sufficient to be unsightly or deleterious; (b) produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance; or (c) are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans.

51. Part I.B.2 of the Permit provides that, at all times, the discharge from all covered point sources shall not cause receiving waters outside the mixing zone to contain substances in concentrations which, based on available scientific data, are considered sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants.

Reporting Requirements

52. Part II.C.3 of the Permit requires Defendants to report to IDEM any noncompliance that may pose a significant danger to human health or the environment as soon as Defendants become aware of the noncomplying circumstances.

53. Part II.C.3 of the Permit provides that any noncompliance that meets the requirements of 327 IAC 2-6.1 shall be reported to IDEM within two hours from the time Defendants become aware of it. 327 IAC 2-6.1 also requires reporting and containment of spills of hazardous and objectional substances that may damage the waters of the state.

54. Part II.C.3 of the Permit requires Defendants to report any of the following types of noncompliance to IDEM within 24 hours from the time Defendants become aware of the noncompliance: (a) any unanticipated bypass of wastewater treatment systems that exceed any effluent limitation in the Permit; (b) any “upset,” which is defined “an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee”; or (c) a violation of a maximum daily discharge limitation for lead, zinc, total cyanide, mercury, phenols, copper, and silver.

55. Part II.C.3 of the Permit requires Defendants to provide IDEM a written submission within five days after Defendants learn of the noncompliance. The written submission must identify: (a) the nature of the noncompliance; (b) the cause of the noncompliance; (c) the period of noncompliance, including exact dates and times; (d) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (e) steps taken or planned to reduce and eliminate the noncompliance and prevent its reoccurrence.

56. Part II.C.4 of the Permit requires Defendants to report all noncompliance not covered by Part II.C.3 to IDEM in the Steel Mill’s next “Discharge Monitoring Report.”

57. Discharge Monitoring Reports are self-monitoring reports that all NPDES permittees in Indiana are required to prepare and file with IDEM. Discharge Monitoring Reports identify sample results for pollutants covered by a NPDES permit and are submitted on a monthly basis.

58. Part II.C.3 of the Permit and 327 IAC 2-6.1-7(5) requires Defendants to notify potentially affected downstream users “upon discovery” of a spill that may damage the waters of the state.

Affirmative Duties

59. Part II.A.2 of the Permit imposes a “Duty to Mitigate” requiring Defendants to take all reasonable steps to minimize and/or correct any adverse impact to the environment resulting from noncompliance with the Permit.

60. During period of noncompliance, Part II.A.2 of the Permit imposes a duty to conduct accelerated or additional monitoring for the affected parameters, as appropriate or requested by IDEM, in order to determine the nature and impact of the noncompliance.

61. Part II.B.1 of the Permit imposes a duty to at all times, maintain in good working order and efficiently operate all facilities and systems used to achieve compliance with the other terms and conditions of the Permit.

The Steel Mill’s Blast Furnace Wastewater Treatment and Recycle System

62. The Steel Mill’s blast furnaces C and D are equipped with air scrubbers that wash blast furnace gas prior to its emission into the atmosphere. This wash process generates wastewater that contains pollutants, including cyanide and ammonia.

63. Cyanide is a toxic chemical that takes various forms. “Free cyanide” is composed of molecular hydrogen cyanide and the cyanide ion. “Total cyanide” includes free cyanide as well as other forms of cyanide that have the potential to become free cyanide.

64. Free cyanide is toxic to aquatic organisms, including fish.

65. Even short exposures to certain levels of free cyanide can be lethal to fish.

66. Free cyanide can also damage fishes’ reproductive capacity, impair their swimming ability, and alter their growth.

67. For humans, exposure to cyanide (whether free or total) in water may cause shortness of breath, convulsions and seizures, chest pain, vomiting, headaches, and loss of consciousness. Skin contact with cyanides in water can irritate and produce sores.

68. Ammonia is a form of nitrogen. When water contains too much ammonia, aquatic organisms cannot sufficiently excrete it, leading to toxic and potentially deadly ammonia buildup in internal tissues and blood.

69. For humans, exposure to liquid ammonia may cause burns or sores on the skin and eyes, or in the mouth and throat if swallowed.

70. In part to destroy cyanide and reduce ammonia, the Steel Mill's gas wash wastewater is treated and then reused in the wash process through a dedicated wastewater treatment and recycle system ("Recycle System"). This system includes an alkaline chlorination process that destroys cyanide. Exhibit C contains an illustration of the Steel Mill's wastewater stream diagram with a red box around where the Recycle System is located in the wastewater stream. *See* Exhibit C.

71. The Recycle System includes pumps, wells, and other equipment, housed in a pump station building or pumphouse. The power source for the pumps is a 5,000-volt electrical feed. The power source for the pump controls is a self-recharging 250-volt direct current battery system ("Pump Control Battery").

72. The Steel Mill has no backup power source for the pumps or pump controls.

73. To maintain hydraulic balance, gas wash wastewater is periodically removed from the Recycle System and replaced with water from Lake Michigan.

74. The removed wastewater is sent out of the pumphouse to the Steel Mill's Secondary Wastewater Treatment Plant, which treats all wastewater produced by the Steel Mill and discharges it through Internal Outfall 011.

75. That discharge combines with other waste streams and is then discharged through Outfall 001 into the East Arm of the Little Calumet River. The wastewater stream from the blast furnace to Outfall 001 is illustrated in Exhibit C.

76. The Secondary Wastewater Treatment Plant does not treat wastewater for cyanide. The only cyanide treatment at the Steel Mill occurs as part of the alkaline chlorination process in the Recycle System.

77. The Secondary Wastewater Treatment Plan does not treat wastewater for ammonia. Operation of the Recycle System results in sufficient ammonia reductions to satisfy the Permit's effluent limitations.

August 2019 Toxic Releases, Fish Kill, and Permit Violations

August 4-5, 2019 Ammonia Spill

78. On or about August 4, 2019, an air release valve on the Steel Mill's pump station return line to the blast furnace broke and released pressurized water to the ceiling of the pump station. This water damaged the Pump Control Battery.

79. As a result of this water damage, the Pump Control Battery was unable to recharge.

80. There was no alarm in place to alert Steel Mill personnel that the battery stopped recharging.

81. Repairs to the air release valve took three hours. During that time, the Recycle System was out of service.

82. During that time, the Steel Mill continued to operate the blast furnace at normal speed and capacity.

83. With the Recycle System down, the Steel Mill used water from Lake Michigan for the air scrubbers at blast furnaces C and D instead of using recycled water.

84. After one use for scrubbing, this water was sent from the pumphouse to the Secondary Wastewater Treatment Plant and ultimately discharged through Outfalls 011 and 001.

85. Because it was not processed through the Recycle System, this gas wash wastewater (a) was not put through the alkaline chlorination process to destroy cyanide; and (b) was not fully treated for ammonia.

86. Using Lake Michigan water for gas-washing without running it through the Recycle System is known as using water on a “once-through basis.”

87. Because using water on a “once-through basis” bypasses the critical treatments of the Recycle System, it can cause discharges with elevated amounts of cyanide and ammonia.

88. For example, the Steel Mill used water on a once-through basis on or about May 5, 2015. As a result, the Steel Mill discharged cyanide at a concentration of 0.120 mg/L from Outfall 011.

89. Using the measured value and the average monthly flow for May 2015, that equated to approximately 75 pounds of cyanide.

90. Defendants nonetheless failed to test for cyanide on August 5, 2019. That is the day elevated concentrations of cyanide would have been expected given the timing of the Recycle System shutdown.

91. This failure to test for cyanide violated the Permit’s affirmative duty to conduct accelerated or additional monitoring during periods of noncompliance.

92. The Steel Mill tested for ammonia-nitrogen on August 5, 2019.

93. That test showed a concentration of 0.92 mg/L at Outfall 001, nearly two times the concentration limit in the Permit of 0.52 mg/L. This exceedance resulted from the shutdown of the Recycle System and use of gas wash water on once-through basis.

94. Defendants did not report this ammonia-nitrogen exceedance to IDEM until August 25, 2019.

95. Although Defendants' report acknowledged the exceedance, they said the cause was unknown and did not acknowledge the August 4, 2019 Recycle System shutdown.

96. The August 4, 2019 Recycle System shutdown also caused the Steel Mill to violate the narrative water quality standards in the Permit by discharging cyanide (free and total) and ammonia in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans.

97. Defendants never reported this violation to IDEM as required by section II.C.3 of the Permit.

98. Defendants also failed to notify downstream users about the discharges caused by the August 4, 2019 Recycle System shutdown.

99. The failure to notify downstream users violated Part II.C.3 of the Permit, as well as the affirmative duty to mitigate in Part II.A.2 of the Permit.

100. The August 4, 2019 Recycle System shutdown and resulting ammonia spill resulted from a failure to maintain the Steel Mill in good working order and operate it efficiently as required by part II.B of the Permit.

August 11-16, 2019 Cyanide and Ammonia Spill

101. On or about August 11, 2019, the Pump Control Battery at the Steel Mill, which had stopped recharging because of the August 4, 2019 incident, ran out of power.

102. Automatic check valves on seven pumps failed in a closed position, rendering the pump station inoperable.

103. The pumphouse eventually flooded.

104. Water reached up to six feet from the floor and submerged the electrical power feed to the pumps.

105. Steel Mill personnel eventually stopped the flooding, but the pumphouse could not be repaired until it dried out.

106. The pumphouse repairs were completed on or about August 15, 2019.

107. The pump station and Recycle System at the Steel Mill resumed operation on or about August 15, 2019.

108. During the time the pump station was inoperable at the Steel Mill, the Recycle System could not be used.

109. Instead, the Steel Mill used water from Lake Michigan for gas washing on a once-through basis.

110. Consequently, between approximately August 11 and August 15, 2019, gas wash wastewater was sent to the Secondary Wastewater Treatment Plant and ultimately discharged into the Little Calumet River without being treated for cyanide by the alkaline chlorination process.

111. During that time, Defendants did not alter operations at the Steel Mill or take any other action to reduce the volume of gas wash wastewater being released to the Secondary Wastewater Treatment Plant.

112. The Steel Mill's use of gas wash wastewater on a once-through basis between August 11 and 15, 2019 led to substantial discharges of cyanide and ammonia that exceeded the Permit's effluent limitations.

113. For example, the 24-hour composite sample at Outfall 011 for August 13, 2019 yielded a total cyanide concentration of 0.26 mg/l.

114. That concentration converted into a daily load discharge of 188 pounds, nearly nine times the Permit's daily maximum 21-pound limit.

115. The chart in paragraph 155 below includes all effluent limitation violations resulting from the August 11-15, 2019 Recycle System shutdown.

116. The Steel Mill's cyanide and ammonia discharges in August 2019 killed fish and harmed aquatic life.

117. IDEM eventually determined that the Steel Mill's discharges between August 11-16, 2019 killed more than 3,000 fish in the Little Calumet River.

118. The Steel Mill's cyanide and ammonia discharges in August 2019 also caused beaches along the southern coastline of Lake Michigan to close.

119. During at least some of the period from August 11, 2019 through August 16, 2019, the beaches in the Town of Ogden Dunes and the Indiana Dunes National Park were closed to the public.

120. The Steel Mill's cyanide and ammonia discharges also caused Indiana American Water to close its drinking water intake in Lake Michigan during at least some of the period from August 11, 2019 through August 16, 2019.

121. The town of Ogden Dunes gets its drinking water from the closed intake facility.

122. The Steel Mill's discharge described in paragraphs 101-120 above violated the Permit's narrative water quality standards, including prohibitions on pollutant discharges "in amounts sufficient to be acutely toxic to . . . aquatic life."

123. The Steel Mill's discharge described in paragraphs 101-120 above reflected a violation of the Permit's affirmative duties to maintain the Steel Mill in good working order and operate it efficiently.

124. This violation includes, but is not limited to, a failure to install a mechanism to notify personnel that the Pump Control Battery stopped charging and a failure to arrange for backup power for the pump controls in the event the Pump Control Battery stopped charging.

125. Because using water on a once-through basis creates substantial risk of cyanide and ammonia exceedances, it triggers the affirmative duty to conduct accelerated or additional monitoring under the Permit.

126. Defendants did not conduct any accelerated or additional monitoring when the Steel Mill began using water on a once-through basis as a result of the incident described in paragraphs 101-120 above. That failure violated the affirmative duty to conduct accelerated or additional monitoring imposed by the Permit.

Defendants' Failure to Report the August 11-16, 2019 Cyanide and Ammonia Spill

127. The Steel Mill's personnel knew about the pump system failure at or around the time it occurred on August 11, 2019.

128. The Steel Mill's personnel also knew, at or around the time it started happening on August 11, 2019, that gas wash water was being used on a once-through basis and thus being sent to the Secondary Treatment Plant without being treated for cyanide by the alkaline chlorination process.

129. The Steel Mill's personnel screen for pollutants in the water entering the Secondary Wastewater Treatment Plant's influent once during each of the three, eight-hour shifts per day.

130. On or about 4:30 a.m. on August 12, 2019, the influent screening process detected cyanide.

131. Influent screening continued to detect cyanide during each subsequent eight-hour shift until approximately the last shift on August 15, 2019.

132. Defendants also had historical knowledge that using water on a once-through basis for gas washing caused cyanide and ammonia exceedances based on the May 5, 2015 and August 4, 2019 events discussed in paragraphs 78-99 above.

133. Defendants nonetheless failed to report the noncompliance with effluent limits or narrative water quality standards resulting from the pump system shutdown to IDEM within the deadlines contained in part II.C.3 of the Permit.

134. Defendants did not notify IDEM of the influent screening results for cyanide until after August 16, 2019.

135. The influent screening results showed wastewater with elevated cyanide concentrations entering the Secondary Wastewater Treatment Plant from August 12 through August 15, 2019.

136. The individual effluent exceedances that were not timely reported in August 2019 are included in the chart in paragraph 160 below.

137. Defendants also failed to notify downstream users about the discharges resulting from the pump system shutdown.

138. The failure to notify downstream users violated Part II.C.3 of the Permit. It also violated the affirmative duty to mitigate in Part II.A.2 of the Permit because it prevented downstream users from responding to or mitigating the consequences of the Steel Mill's discharges.

139. Defendants also failed to disclose or take responsibility for the pump system shutdown and resulting discharges when asked about it by government officials.

140. On or about August 12, 2019, IDEM and the Indiana Department of Natural Resources responded to a report of distressed fish in the East Branch of the Little Calumet River.

141. On August 12, 2019, IDEM Emergency Response On-scene Coordinator David Greinke told Defendants' personnel, including Environmental Engineer Theresa Kirk, about the distressed fish report and asked if the Defendants had any issues with its wastewater discharges or elevated sample results at the Steel Mill.

142. Kirk responded that she was not aware of any wastewater issues or elevated sample results.

143. On or about August 11, 2019, however, Kirk had been told by the Steel Mill's Manager of Operations that the pump station had become inoperable and lake water was being used on a once-through basis to wash gas.

144. Kirk then met with IDEM Wastewater Inspector Nicholas Ream on approximately August 14, 2019.

145. Ream asked if the Steel Mill was having any issues with its operations or wastewater discharges.

146. Kirk acknowledged that the gas washing recycle system was having an issue but said it was not impacting discharges at the Steel Mill.

147. In the same meeting, Kirk acknowledged to Ream that the Steel Mill had exceeded the Permit's daily maximum limit for ammonia-nitrogen of 0.52 mg/l at Outfall 001 with a result of 0.9 mg/l.

148. Kirk suggested, however, that nearby facilities (whose discharge also funnels into Outfall 001) were responsible for the exceedance.

149. On or about August 16, 2019, Defendants finally acknowledged and took responsibility for the cyanide and ammonia spill.

150. Defendants issued a press release stating "ArcelorMittal apologizes and accepts responsibility for the incident from the Burns Harbor facility." A true and correct copy of the press release, as obtained from Defendants' website, is attached as Exhibit D.

151. IDEM inspected the Steel Mill on August 14, August 22, September 11, and October 1, 2019.

152. On October 21, 2019, IDEM released an investigative report that concluded cyanide released from the Steel Mill in August 2019 caused the fish kill described in paragraph 101-120 above. A true and correct copy of the IDEM investigative report is attached as Exhibit E.

Additional Known Permit Violations

Narrative Water Quality Standard Violations

153. Between approximately October 18 through 20, 2019, the Steel Mill discharged cloudy colored water from Outfall 001. That discharge violated the narrative water quality standards in Part I.B.1 of the Permit.

Effluent Limitation Violations

154. The Steel Mill exceeded Permit effluent limitations on at least 88 occasions since January 2015 from Outfalls 001, 011, and 111.

155. Below is a non-inclusive list of numerical effluent limitation exceedances as of the date of this Complaint in chronological order. This list is compiled from Discharge Monitoring Reports (DMRs). This list also includes the exceedances that resulted from the incidents in August 2019 described in detail above.

Outfall	Pollutant	Limit	Limit Unit	Type of Limit	DMR Sample Value	Noncompliance Date (approximate)
001	Noel Statre 7Day Chronic Ceriodaphnia	100	%	MINIMUM	48.96	6/30/2015
001	Toxicity [chronic], Ceriodaphnia dubia	1	toxic	MAXIMUM	2.04	6/30/2015
001	LC50 Static Renewal 48Hr Acute Ceriodaphnia dubia	100	%	MINIMUM	84.78	10/13/2015
001	Toxicity [acute], Ceriodaphnia dubia	1	toxic	MAXIMUM	1.18	10/13/2015
001	Ammonia (nitrogen)	910	lb/d	DAILY MX	952	2/25/2016
001	Ammonia (nitrogen)	910	lb/d	DAILY MX	977	2/28/2016
001	Ammonia (nitrogen)	0.72	mg/L	7 DA MAX	0.76	2/28/2016
001	Ammonia (nitrogen)	645	lb/d	7 DA MAX	750	2/28/2016
001	Noel Statre 7Day Chronic Ceriodaphnia	100	%	MINIMUM	96.95	3/31/2016
001	Toxicity [chronic], Ceriodaphnia dubia	1	toxic	MAXIMUM	1.03	3/31/2016
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	577	8/16/2016
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.55	8/29/2016
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	604	8/29/2016
001	Ammonia (nitrogen)	0.37	mg/L	7 DA MAX	0.41	8/30/2016
001	Ammonia (nitrogen)	385	lb/d	7 DA MAX	460	8/30/2016
001	Temperature, water deg. fahrenheit	86	deg F	DAILY MX	88	7/21/2017
001	Temperature, water deg. fahrenheit	86	deg F	DAILY MX	87	7/28/2017
001	Temperature, water deg. fahrenheit	86	deg F	DAILY MX	87	7/31/2017
001	Temperature, water deg. fahrenheit	86	deg F	DAILY MX	87	8/1/2017

Outfall	Pollutant	Limit	Limit Unit	Type of Limit	DMR Sample Value	Noncompliance Date (approximate)
001	Ammonia (nitrogen)	385	lb/d	7 DA MAX	450	8/6/2017
001	Ammonia (nitrogen)	0.37	mg/L	7 DA MAX	0.46	8/6/2017
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	899	8/6/2017
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.92	8/6/2017
001	Phenolics, total recoverable	22	lb/d	DAILY MX	27	9/12/2017
001	Ammonia (nitrogen)	645	lb/d	7 DA MAX	702	2/26/2018
001	Temperature, water deg. Fahrenheit	60	deg F	DAILY MX	61	2/27/2018
001	Temperature, water deg. Fahrenheit	60	deg F	DAILY MX	62	2/28/2018
011	Oil and grease, hexane extr method	5584	lb/d	DAILY MX	8286	3/18/2018
111	2,3,7,8-Tetrachlorodibenzofuran	10	pg/L	DAILY MX	10.9	4/10/2018
001	Ammonia (nitrogen)	0.74	mg/L	7 DA MAX	0.81	5/21/2018
001	Ammonia (nitrogen)	680	lb/d	7 DA MAX	828	5/21/2018
111	2,3,7,8-Tetrachlorodibenzofuran	10	pg/L	DAILY MX	29.4	7/13/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	87	7/13/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	88	7/27/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	87	8/2/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	88	8/3/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	88	8/4/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	87	8/5/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	87	8/9/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	87	8/10/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	89	8/12/2018

Outfall	Pollutant	Limit	Limit Unit	Type of Limit	DMR Sample Value	Noncompliance Date (approximate)
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	90	8/13/2018
001	Temperature, water deg. Fahrenheit	86	deg F	DAILY MX	87	8/14/2018
001	Ammonia (nitrogen)	0.51	mg/L	DAILY MX	0.63	7/26/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	673	7/26/2019
001	Ammonia (nitrogen)	0.36	mg/L	7 DA MAX	0.44	7/26/2019
001	Ammonia (nitrogen)	375	lb/d	7 DA MAX	421	7/26/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.92	8/5/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	901	8/5/2019
001	Ammonia (nitrogen)	0.37	mg/L	7 DA MAX	0.48	8/7/2019
001	Ammonia (nitrogen)	385	lb/d	7 DA MAX	460	8/7/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.92	8/11/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	911	8/11/2019
001	Free Cyanide	0.0088	mg/L	DAILY MX	0.16	8/12/2019
001	Free Cyanide	9.9	lb/d	DAILY MX	178.8	8/12/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	1	8/12/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	1117	8/12/2019
011	Total Cyanide	21	lb/d	DAILY MX	136	8/12/2019
001	Free Cyanide	0.0088	mg/L	DAILY MX	0.22	8/13/2019
001	Free Cyanide	9.9	lb/d	DAILY MX	244.9	8/13/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.8	8/13/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	891	8/13/2019
011	Total Cyanide	21	lb/d	DAILY MX	188	8/13/2019
001	Free Cyanide	0.0088	mg/L	DAILY MX	0.106	8/14/2019
001	Free Cyanide	9.9	lb/d	DAILY MX	104.9	8/14/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.57	8/14/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	562	8/14/2019

Outfall	Pollutant	Limit	Limit Unit	Type of Limit	DMR Sample Value	Noncompliance Date (approximate)
001	Ammonia (nitrogen)	0.37	mg/L	7 DA MAX	0.65	8/14/2019
001	Ammonia (nitrogen)	385	lb/d	7 DA MAX	679	8/14/2019
011	Total Cyanide	21	lb/d	DAILY MX	138	8/14/2019
001	Free Cyanide	0.0088	mg/L	DAILY MX	0.1252	8/15/2019
001	Free Cyanide	9.9	lb/d	DAILY MX	116.3	8/15/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.81	8/15/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	854	8/15/2019
011	Total Cyanide	21	lb/d	DAILY MX	110	8/15/2019
001	Free Cyanide	0.0088	mg/L	DAILY MX	0.0119	8/16/2019
001	Free Cyanide	9.9	lb/d	DAILY MX	12.4	8/16/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.53	8/16/2019
001	Ammonia (nitrogen)	540	lb/d	DAILY MX	554	8/16/2019
011	Total Cyanide	21	lb/d	DAILY MX	35	8/16/2019
001	Ammonia (nitrogen)	0.52	mg/L	DAILY MX	0.53	8/17/2019
011	Total Cyanide	21	lb/d	DAILY MX	33.3	8/17/2019
001	Ammonia (nitrogen)	0.37	mg/L	7 DA MAX	0.49	8/21/2019
001	Ammonia (nitrogen)	385	lb/d	7 DA MAX	488	8/21/2019
001	Free Cyanide	0.0044	mg/L	MO AVG	0.03	8/31/2019
001	Free Cyanide	5	lb/d	MO AVG	29.2	8/31/2019
001	Ammonia (nitrogen)	0.37	mg/L	7 DA MAX	0.39	8/31/2019
001	Ammonia (nitrogen)	85	lb/d	7 DA MAX	401	8/31/2019

156. A violation of a weekly or monthly limit constitutes a violation on each day included in that week or month. For example, a violation of a weekly standard constitutes a violation lasting seven days.

157. The Steel Mill’s effluent limitation violations are continuous, ongoing and present a continuing likelihood of recurrence.

Reporting Requirement Violations

158. Defendants have violated and continue to violate the notification and reporting requirements in Part I.C. of the Permit.

159. Defendants do not have procedures and practices in place to comply with its notification and reporting requirements found in Part I.C. of the Permit.

160. Below is a non-inclusive list of numerical effluent limit exceedances for which Defendants failed to timely notify IDEM as required by Part I.C. of the Permit. This list includes the exceedances that resulted from the discharges in August 2019 described above.

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
001	Noel Statre 7Day Chronic Ceriodaphnia	MINIMUM	6/30/2015
001	Toxicity [chronic], Ceriodaphnia dubia	MAXIMUM	6/30/2015
001	LC50 Static Renewal 48Hr Acute Ceriodaphnia dubia	MINIMUM	10/13/2015
001	Toxicity [acute], Ceriodaphnia dubia	MAXIMUM	10/13/2015
001	Ammonia (nitrogen)	7 DA MAX	2/28/2016
001	Ammonia (nitrogen)	7 DA MAX	2/28/2016
001	Noel Statre 7Day Chronic Ceriodaphnia	MINIMUM	3/31/2016
001	Toxicity [chronic], Ceriodaphnia dubia	MAXIMUM	3/31/2016
001	Ammonia (nitrogen)	7 DA MAX	8/30/2016
001	Ammonia (nitrogen)	7 DA MAX	8/30/2016
001	Phenolics, total recoverable	DAILY MX	9/12/2017
001	Ammonia (nitrogen)	DAILY MX	8/5/2019
001	Ammonia (nitrogen)	DAILY MX	8/5/2019

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
001	Ammonia (nitrogen)	DAILY MX	8/11/2019
001	Ammonia (nitrogen)	DAILY MX	8/11/2019
001	Free Cyanide	DAILY MX	8/12/2019
001	Free Cyanide	DAILY MX	8/12/2019
001	Ammonia (nitrogen)	DAILY MX	8/12/2019
001	Ammonia (nitrogen)	DAILY MX	8/12/2019
011	Total Cyanide	DAILY MX	8/12/2019
001	Free Cyanide	DAILY MX	8/13/2019
001	Free Cyanide	DAILY MX	8/13/2019
001	Ammonia (nitrogen)	DAILY MX	8/13/2019
001	Ammonia (nitrogen)	DAILY MX	8/13/2019
011	Total Cyanide	DAILY MX	8/13/2019
001	Free Cyanide	DAILY MX	8/14/2019
001	Free Cyanide	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/14/2019
011	Total Cyanide	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/21/2019
001	Ammonia (nitrogen)	7 DA MAX	8/21/2019
001	Free Cyanide	MO AVG	8/31/2019
001	Free Cyanide	MO AVG	8/31/2019
001	Ammonia (nitrogen)	7 DA MAX	8/31/2019
001	Ammonia (nitrogen)	7 DA MAX	8/31/2019

161. Below is a non-inclusive list of numerical effluent limit exceedances for which Defendants failed to submit the written report required by Part I.C.3 of the Permit. This list includes the exceedances that resulted from the incidents in August 2019 described above.

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
001	Noel Statre 7Day Chronic Ceriodaphnia	MINIMUM	6/30/2015
001	Toxicity [chronic], Ceriodaphnia dubia	MAXIMUM	6/30/2015
001	LC50 Static Renewal 48Hr Acute Ceriodaphnia dubia	MINIMUM	10/13/2015
001	Toxicity [acute], Ceriodaphnia dubia	MAXIMUM	10/13/2015
001	Ammonia (nitrogen)	7 DA MAX	2/28/2016
001	Ammonia (nitrogen)	7 DA MAX	2/28/2016
001	Noel Statre 7Day Chronic Ceriodaphnia	MINIMUM	3/31/2016
001	Toxicity [chronic], Ceriodaphnia dubia	MAXIMUM	3/31/2016
001	Ammonia (nitrogen)	7 DA MAX	8/30/2016
001	Ammonia (nitrogen)	7 DA MAX	8/30/2016
001	Phenolics, total recoverable	DAILY MX	9/12/2017
001	Ammonia (nitrogen)	DAILY MX	8/11/2019
001	Ammonia (nitrogen)	DAILY MX	8/11/2019
001	Free Cyanide	DAILY MX	8/12/2019
001	Free Cyanide	DAILY MX	8/12/2019
001	Ammonia (nitrogen)	DAILY MX	8/12/2019
001	Ammonia (nitrogen)	DAILY MX	8/12/2019
011	Total Cyanide	DAILY MX	8/12/2019
001	Free Cyanide	DAILY MX	8/13/2019
001	Free Cyanide	DAILY MX	8/13/2019
001	Ammonia (nitrogen)	DAILY MX	8/13/2019
001	Ammonia (nitrogen)	DAILY MX	8/13/2019

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
011	Total Cyanide	DAILY MX	8/13/2019
001	Free Cyanide	DAILY MX	8/14/2019
001	Free Cyanide	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/14/2019
011	Total Cyanide	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/21/2019
001	Ammonia (nitrogen)	7 DA MAX	8/21/2019
001	Free Cyanide	MO AVG	8/31/2019
001	Free Cyanide	MO AVG	8/31/2019
001	Ammonia (nitrogen)	7 DA MAX	8/31/2019
001	Ammonia (nitrogen)	7 DA MAX	8/31/2019

162. Defendants’ violations of their notification and reporting requirements are continuous, ongoing, and present a continuing likelihood of recurrence.

Affirmative Duty Violations

163. Defendants have violated and continue to violate their duty to, at all times, to maintain in good working order and efficiently operate all facilities and systems for the collection and treatment of pollutants, which are installed or used by the Steel Mill, and which are necessary for achieving compliance with the terms and conditions of the Permit.

164. The Steel Mill’s numerous violations of Narrative Water Quality Standards and numeric effluent limitations were caused by a failure to maintain the Steel Mill and all equipment in good working order.

165. Below is a non-inclusive list of exceedances of numerical effluent limits caused by failures to maintain the Steel Mill in good working order. This list includes the exceedances that resulted from the incidents in August 2019 described in detail above.

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
001	Noel Statre 7Day Chronic Ceriodaphnia	MINIMUM	6/30/2015
001	Toxicity [chronic], Ceriodaphnia dubia	MAXIMUM	6/30/2015
001	LC50 Static Renewal 48Hr Acute Ceriodaphnia dubia	MINIMUM	10/13/2015
001	Toxicity [acute], Ceriodaphnia dubia	MAXIMUM	10/13/2015
001	Ammonia (nitrogen)	DAILY MX	2/25/2016
001	Ammonia (nitrogen)	DAILY MX	2/28/2016
001	Ammonia (nitrogen)	7 DA MAX	2/28/2016
001	Ammonia (nitrogen)	7 DA MAX	2/28/2016
001	Noel Statre 7Day Chronic Ceriodaphnia	MINIMUM	3/31/2016
001	Toxicity [chronic], Ceriodaphnia dubia	MAXIMUM	3/31/2016
001	Ammonia (nitrogen)	DAILY MX	8/16/2016
001	Ammonia (nitrogen)	DAILY MX	8/29/2016
001	Ammonia (nitrogen)	DAILY MX	8/29/2016
001	Ammonia (nitrogen)	7 DA MAX	8/30/2016
001	Ammonia (nitrogen)	7 DA MAX	8/30/2016
001	Ammonia (nitrogen)	7 DA MAX	8/6/2017
001	Ammonia (nitrogen)	7 DA MAX	8/6/2017
001	Ammonia (nitrogen)	DAILY MX	8/6/2017
001	Ammonia (nitrogen)	DAILY MX	8/6/2017
001	Phenolics, total recoverable	DAILY MX	9/12/2017
001	Ammonia (nitrogen)	7 DA MAX	2/26/2018
001	Temperature, water deg. fahrenheit	DAILY MX	2/27/2018

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
001	Temperature, water deg. fahrenheit	DAILY MX	2/28/2018
011	Oil and grease, hexane extr method	DAILY MX	3/18/2018
111	2,3,7,8-Tetrachlorodibenzofuran	DAILY MX	4/10/2018
001	Ammonia (nitrogen)	7 DA MAX	5/21/2018
001	Ammonia (nitrogen)	7 DA MAX	5/21/2018
111	2,3,7,8-Tetrachlorodibenzofuran	DAILY MX	7/13/2018
001	Ammonia (nitrogen)	DAILY MX	7/26/2019
001	Ammonia (nitrogen)	DAILY MX	7/26/2019
001	Ammonia (nitrogen)	7 DA MAX	7/26/2019
001	Ammonia (nitrogen)	7 DA MAX	7/26/2019
001	Ammonia (nitrogen)	DAILY MX	8/5/2019
001	Ammonia (nitrogen)	DAILY MX	8/5/2019
001	Ammonia (nitrogen)	7 DA MAX	8/7/2019
001	Ammonia (nitrogen)	7 DA MAX	8/7/2019
001	Ammonia (nitrogen)	DAILY MX	8/11/2019
001	Ammonia (nitrogen)	DAILY MX	8/11/2019
001	Free Cyanide	DAILY MX	8/12/2019
001	Free Cyanide	DAILY MX	8/12/2019
001	Ammonia (nitrogen)	DAILY MX	8/12/2019
001	Ammonia (nitrogen)	DAILY MX	8/12/2019
011	Total Cyanide	DAILY MX	8/12/2019
001	Free Cyanide	DAILY MX	8/13/2019
001	Free Cyanide	DAILY MX	8/13/2019
001	Ammonia (nitrogen)	DAILY MX	8/13/2019
001	Ammonia (nitrogen)	DAILY MX	8/13/2019
011	Total Cyanide	DAILY MX	8/13/2019
001	Free Cyanide	DAILY MX	8/14/2019

Outfall	Pollutant	Type of Limit	Noncompliance Date (approximate)
001	Free Cyanide	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	DAILY MX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/14/2019
001	Ammonia (nitrogen)	7 DA MAX	8/14/2019
011	Total Cyanide	DAILY MX	8/14/2019
001	Free Cyanide	DAILY MX	8/15/2019
001	Free Cyanide	DAILY MX	8/15/2019
001	Ammonia (nitrogen)	DAILY MX	8/15/2019
001	Ammonia (nitrogen)	DAILY MX	8/15/2019
011	Total Cyanide	DAILY MX	8/15/2019
001	Free Cyanide	DAILY MX	8/16/2019
001	Free Cyanide	DAILY MX	8/16/2019
001	Ammonia (nitrogen)	DAILY MX	8/16/2019
001	Ammonia (nitrogen)	DAILY MX	8/16/2019
011	Total Cyanide	DAILY MX	8/16/2019
001	Ammonia (nitrogen)	DAILY MX	8/17/2019
011	Total Cyanide	DAILY MX	8/17/2019
001	Ammonia (nitrogen)	7 DA MAX	8/21/2019
001	Ammonia (nitrogen)	7 DA MAX	8/21/2019
001	Free Cyanide	MO AVG	8/31/2019
001	Free Cyanide	MO AVG	8/31/2019
001	Ammonia (nitrogen)	7 DA MAX	8/31/2019
001	Ammonia (nitrogen)	7 DA MAX	8/31/2019

166. Defendants' violations of the duty to maintain the Steel Mill in good working order in accordance with Part II.B of the Permit are continuous, ongoing, and present a continuing likelihood of recurrence.

CLAIMS FOR RELIEF

COUNT 1: Violations of NPDES Permit Effluent Limitation

167. Plaintiffs re-allege paragraphs 1 through 166 above and incorporate them by reference into Count 1.

168. Section 301 of the Clean Water Act prohibits the "discharge of any pollutant by any person" into navigable waters except in compliance with the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a).

169. At all relevant times, the Steel Mill has discharged pollutants into the East Arm of the Little Calumet River, which is a navigable water, through Outfalls 001, 011, and 111.

170. At all relevant times, the Steel Mill has been subject to a NPDES permit that, among other things, imposes numerical effluent limitations on discharges from Outfalls 001, 011, and 111.

171. Between January 1, 2015 until the date of this Complaint, the Steel Mill exceeded the Permit's numerical effluent limitations governing Outfalls 001, 011, and 111 on at least 88 occasions. *See* ¶¶ 155 (table of violations).

172. The Steel Mill's numerical effluent exceedances between January 1, 2015 to present includes excessive discharges of Total Cyanide, Free Cyanide, Nitrogen-Ammonia, Total Suspended Solids, Biological Oxygen Demand, Temperature, 2,3,7,8-Tetrachlorodibenzofuran, Oil and Grease, Phenolics, and violations of Whole Effluent Toxicity standards.

173. Each Defendant is a "person" as defined by 33 U.S. § 1362(5) that is responsible for the Steel Mill's discharges in excess of the effluent limitations in the Permit.

174. Each of the Steel Mill's numerical effluent limitation exceedances constitute separate violations of a term or condition of a NPDES permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), and are actionable under Section 505 of the Clean Water Act, 33 U.S.C. § 1365(a).

175. The Steel Mill's numerical effluent limitations are ongoing and present a continuing likelihood of recurrence unless enjoined by this Court.

176. Pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1-19.4, Defendants are liable for civil penalties of up to \$37,500 per day for each violation occurring from January 12, 2009 through November 2, 2015, and \$52,414 per day for each violation occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1-19.4.

COUNT 2: Violations of NPDES Permit Narrative Water Quality Standards

177. Plaintiffs re-allege paragraphs 1 through 166 above and incorporate them by reference into Count 2.

178. Section 301 of the Clean Water Act prohibits the "discharge of any pollutant by any person" into navigable waters except in compliance with the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a).

179. At all relevant times, the Steel Mill has discharged pollutants into the East Arm of the Little Calumet River, which is a navigable water, through Outfalls 001, 011, and 111.

180. At all relevant times, the Steel Mill has been subject to a NPDES permit that, among other things, imposes narrative water quality standards on all discharges from Outfalls 001, 011, and 111. Those Narrative Water Quality Standards include prohibitions on discharges of pollutants in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans, and on discharges that produce color.

181. The Steel Mill has violated the Narrative Water Quality Standards in its Permit on at least three occasions, including as a result of the August 4-5, 2019 Recycle System shutdown, the August 11-16, 2019 pump station shutdown, and the October 2019 cloudy water discharge. See ¶¶ 78-126, 153.

182. Each Defendant is a “person” as defined by 33 U.S. § 1362(5) responsible for the Steel Mill’s violations of the Permit’s Narrative Water Quality Standards.

183. Each of the Steel Mill’s violations of the Permit’s narrative water quality standards constitute separate violations of a term or condition of a NPDES permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), and are actionable under Section 505 of the Clean Water Act, 33 U.S.C. § 1365(a).

184. The Steel Mill’s violations of the Permit’s narrative water quality standards are ongoing and present a continuing likelihood of recurrence unless enjoined by this Court.

185. Pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1-19.4, Defendants are liable for civil penalties of up to \$37,500 per day for each violation occurring from January 12, 2009 through November 2, 2015, and \$52,414 per day for each violation occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1-19.4.

COUNT 3: Violations of NPDES Permit Reporting Requirements

186. Plaintiffs re-allege paragraphs 1 through 166 above and incorporate them by reference into Count 3.

187. A person violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), when they cause a violation of a term or condition or limitation in an NPDES permit.

188. Each Defendant is a “person” as defined by 33 U.S. § 1362(5).

189. Part I.C of the Steel Mill's Permit requires Defendants to notify IDEM when the Steel Mill violates a term or condition or limitation of the Permit.

190. Part I.C of the Steel Mill's Permit requires Defendants to submit a noncompliance report to IDEM within 5 days of initially reporting such noncompliance to IDEM.

191. Part I.C of the Steel Mill's Permit requires Defendants to notify potentially affected downstream users "upon discovery" of a spill that may damage the waters of the State of Indiana.

192. Defendants have violated and are in violation of the Permit's reporting requirements. *See* ¶¶ 160-161 (table of violations).

193. Defendants' failures to notify or submit reports in accordance with Part I.C. of the Permit constitute violations of a term or condition or limitation of the Permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and are actionable under Section 505 of the Clean Water Act, 33 U.S.C. § 1365(a).

194. Defendants' violations of the Permit's notification and reporting requirements are ongoing and present a continuing likelihood of recurrence unless enjoined by this Court.

195. Pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1-19.4, Defendants are liable for civil penalties of up to \$37,500 per day for each violation occurring from January 12, 2009 through November 2, 2015 and \$52,414 per day for each violation occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1-19.4.

COUNT 4: Violations of Duty to Mitigate Noncompliance and Duty to Conduct Accelerated Monitoring During Periods of Noncompliance

196. Plaintiffs re-allege paragraphs 1 through 166 above and incorporate them by reference into Count 4.

197. A person violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), when they cause a violation of a term or condition or limitation in an NPDES permit.

198. Each Defendant is a “person” as defined by 33 U.S. § 1362(5).

199. Part II.A.2 of the Steel Mill’s Permit requires Defendants to take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the Permit.

200. Part II.A.2 of the Permit requires that, during periods of noncompliance, Defendants must conduct accelerated or additional monitoring for the affected parameters, as appropriate or requested by IDEM, to determine the nature and impact of the noncompliance.

201. On at least two occasions, Defendants failed to mitigate noncompliance and conduct accelerated or additional monitoring during periods of noncompliance as required by Part II.A.2 of the Permit. *See* ¶¶ 78-100 (August 4-5, 2019), 101-126 (August 11-16, 2019).

202. Defendants’ failures to mitigate noncompliance and conduct accelerated or additional monitoring during periods of noncompliance in accordance with Part II.A.2 of the Permit constitute a violation of a term or condition or limitation of the Permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and are actionable under Section 505 of the Clean Water Act, 33 U.S.C. § 1365(a).

203. Defendants’ violations of the Permit’s duty to mitigate noncompliance and conduct accelerated or additional monitoring during periods of noncompliance are ongoing and present a continuing likelihood of recurrence unless enjoined by this Court.

204. Pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1-19.4, Defendants are liable for civil penalties of up to \$37,500 per day for each violation occurring from January 12, 2009 through November 2, 2015 and \$52,414

per day for each violation occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1-19.4.

COUNT 5: Violations of Duty to Maintain Facility in Good Working Order

205. Plaintiffs re-allege paragraphs 1 through 166 above and incorporate them by reference into Count 5.

206. A person violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), when they cause a violation of a term or condition or limitation in an NPDES permit.

207. Each Defendant is a “person” as defined by 33 U.S. § 1362(5).

208. Part II.B of the Steel Mill’s Permit requires Defendants to, at all times, maintain the Steel Mill in good working order and efficiently operate all facilities, equipment, and systems for the collection and treatment of pollutants, which are installed or used by the Steel Mill and which are necessary for achieving compliance with the term and conditions of its Permit.

209. On at least 27 occasions, Defendants failed to maintain in good working order and efficiently operate their facility, equipment, and systems at the Steel Mill for the collection and treatment of pollutants. *See e.g.*, ¶¶ 78-100 (August 4-5, 2019 incident), 101-126 (August 11-16, 2019 fish kill); ¶¶ 163-165 (table of violations).

210. Defendants’ failures to maintain in good working order and efficiently operate their facility, equipment, and systems at the Steel Mill for the collection and treatment of pollutants in accordance with Part II.B of the constitute violations of a term or condition or limitation of the Permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and are actionable under Section 505 of the Clean Water Act, 33 U.S.C. § 1365(a).

211. Defendants’ violations of the Permit’s duty to maintain in good working order and efficiently operate the Steel Mill are ongoing and present a continuing likelihood of recurrence unless enjoined by this Court.

212. Pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1-19.4, Defendants are liable for civil penalties of up to \$37,500 per day for each violation occurring from January 12, 2009 through November 2, 2015 and \$52,414 per day for each violation occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1-19.4.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Court grant the following relief with regard to the Defendants' significant and ongoing violations of law:

A. Declare that Defendants have violated and are in violation of the Clean Water Act and NPDES Permit No. IN0000175.

B. Issue a permanent injunction requiring Defendants to cease discharging pollutants from the Steel Mill into the East Arm of the Little Calumet River unless and only to the extent authorized by the Clean Water Act and NPDES Permit No. IN0000175.

C. Issue a permanent injunction requiring Defendants to undertake all actions necessary to ensure full compliance with NPDES Permit No. IN0000175 and all applicable requirements of the Clean Water Act.

D. Order Defendants to pay civil penalties for each violation until the Defendants achieve full compliance or until this lawsuit is resolved, pursuant to Section 309(d) of the Clean Water Act. 33 U.S.C. § 1319(d); 28 U.S.C. § 2461; 40 C.F.R. §§ 19.1–19.4.

E. Award Plaintiffs their costs of litigation, including attorneys' fees and expert fees pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d).

F. Grant such other relief as the Court deems just, reasonable, equitable, and in the public interest.

DATED: December 11, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2019, I caused copies of Plaintiffs' Complaint and all exhibits to be hand-delivered to and/or served by first class mail, postage prepaid on:

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/s/ Robert Michaels
Robert Michaels
Environmental Law & Policy Center

*Attorney for Plaintiffs Environmental Law & Policy
Center and Hoosier Environmental Council*