

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

UNITED STATES OF AMERICA and
the STATE OF INDIANA,

Plaintiffs,

v.

CLEVELAND-CLIFFS BURNS HARBOR
LLC and CLEVELAND-CLIFFS STEEL
LLC,

Defendants.

Case No: 23-381

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through its undersigned attorneys, acting on behalf of the United States Department of the Interior (“DOI”), through the National Park Service (“NPS”) and the United States Fish and Wildlife Service (“FWS”); and the State of Indiana (“State” or “Indiana”), on behalf of the Indiana Department of Environmental Management (“IDEM”) and the Indiana Department of Natural Resources (“IDNR”), (collectively “Plaintiffs”), file this Complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action for recovery of natural resource damages, brought by the United States and Indiana against two Defendants, Cleveland-Cliffs Steel LLC (“CC Steel”) and Cleveland-Cliffs Burns Harbor LLC (“CCBH”) (collectively “Defendants” or “Cleveland-Cliffs”). The claim relates to the Cleveland-Cliffs Burns Harbor facility (“Burns Harbor Facility”)

or “Facility”) in Burns Harbor, Porter County, Indiana, which is owned and operated by Cleveland-Cliffs. The Facility is used by Cleveland-Cliffs to manufacture and finish steel.

2. Defendants and their steelmaking operation have violated pollution laws aimed at protecting health and the environment. Those violations include illegal discharges of cyanide and ammonia. In responding to these illegal discharges, the United States and Indiana incurred response costs that are addressed in *United States and the State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC*, No. 22-26 (N.D. Ind.).

3. The United States and Indiana assert these claims for natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, and 1355, and CERCLA Section 113(b), 42 U.S.C. § 9613(b). The State is a party to this action under 28 U.S.C. § 1367(a).

5. Venue lies in this District under 28 U.S.C. §§ 1331, 1345, 1391(b) and (c), and 1395(a); and CERCLA Sections 107 and 113(b), 42 U.S.C. §§ 9607 and 9613(b), because the violations alleged in the Complaint are alleged to have occurred in this judicial district and the damages alleged in the Complaint occurred within this district.

THE PARTIES

6. Plaintiffs are the United States, on behalf of DOI, through NPS and FWS, and the State of Indiana, on behalf of IDEM and IDNR.

7. The United States Department of Justice has authority to bring this action on behalf of the Director of the NPS and the Director of FWS under 28 U.S.C. §§ 516 and 519 and 54 U.S.C. § 100723(a).

8. The Indiana Attorney General is authorized to appear and represent Indiana in this case under IND. CODE §§ 4-6-3-2(a) and 13-14-2-6.

9. Defendant CCBH is organized as a limited liability company under the laws of Delaware, with a principal place of business in Burns Harbor, Indiana.

10. Defendant CC Steel is organized as a limited liability company under the laws of Delaware, with a principal place of business in Chicago, Illinois. CC Steel is the parent company of CCBH. CC Steel and CCBH are collectively referred to as “Cleveland-Cliffs” in this Complaint.

11. Since December 9, 2020, Defendants CCBH and CC Steel have owned and operated a steel manufacturing and finishing facility known as the Burns Harbor Facility located at 250 U.S. Route 12, in Burns Harbor, Porter County, Indiana.

12. Prior to December 9, 2020, the Burns Harbor Facility was owned and operated by ArcelorMittal USA, LLC, and ArcelorMittal Burns Harbor, LLC (“AMBH”).

13. Cleveland-Cliffs completed its acquisition of ArcelorMittal USA, LLC, and all its subsidiaries, including AMBH, on December 9, 2020. As part of the acquisition, Cleveland-Cliffs assumed all ArcelorMittal liabilities relevant to the claims in this action.

14. Defendants CCBH and CC Steel are each “persons” within the meaning of CERCLA Sections 101(21), 103(a), and 107, 42 U.S.C. §§ 9601(21), 9603(a) and 9607.

15. CC Steel is the corporate parent of CCBH and, based upon reasonable investigation, exercises financial and managerial control over the Facility and over CCBH and

participated in, controlled, and/or directed the activities underlying the claims alleged in this Complaint.

STATUTORY BACKGROUND

Provisions of the Comprehensive Environmental Response, Compensation, and Liability Act

16. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility, . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss resulting from such release

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraph[] (A) Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned.

17. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides in pertinent part:

In any . . . action [for natural resource damages] . . . the court shall enter a declaratory judgment on liability for . . . [natural resource] damages that will be binding on any subsequent action or actions to recover further . . . damages.

18. The Directors of NPS and FWS, both operating under the Secretary of the Interior, have been designated as natural resource trustees for federal trust resources at and near the Burns Harbor Facility under 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580, 52 Fed. Reg. 2923 (Jan. 23, 1987). NPS and FWS act on behalf of the public as trustees for natural resources and their services, including threatened or endangered species, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See, e.g.*, 40 C.F.R. § 300.600.

Provisions Relating to State Natural Resource Damages

19. For purposes of CERCLA, 42 U.S.C. § 9607, and IND. CODE § 13-25-4-8(a)(3), the Governor of the State of Indiana designated IDEM and IDNR as trustees to undertake statutory responsibilities relating to natural resources injured, lost, or destroyed from a discharge of a hazardous substance or oil.

20. A person that is liable under CERCLA, 42 U.S.C. § 9607, for damages for, injury to, destruction of, or loss of natural resources in Indiana is liable in the same manner and to the same extent to the State under IND. CODE § 13-25-4-8.

GENERAL ALLEGATIONS

21. At all times relevant to this Complaint, Defendants or their predecessors have owned and operated the Burns Harbor Facility, a steel manufacturing and finishing facility, in Burns Harbor, Porter County, Indiana.

The Burns Harbor Facility and its Outfalls

22. The Burns Harbor Facility is one of the largest fully integrated steel mills in North America, with the capacity to produce approximately 5 million tons of raw steel per year.

23. Cleveland-Cliffs uses water for a number of steelmaking and pollution-control operations at the Facility. Cleveland-Cliffs operates one water treatment plant, called the Secondary Wastewater Treatment Plant (“SWTP”), to treat wastewater after the water has been used in various Facility processes.

24. The Facility is permitted to discharge via three external outfalls (Outfalls 001, 002, and 003). Outfall 001 discharges from the Facility to the East Branch of the Little Calumet River, Outfall 002 discharges from the Facility to Burns Harbor, and Outfall 003 discharges from the Facility to Lake Michigan.

Hazardous Substance Releases

August 4-5, 2019 Air Release Valve Failure Incident

25. On or about August 4, 2019, an air release valve at the Facility's Pump Station failed and released pressurized water to the Pump Station.

26. During the time that the air release valve was being repaired, the Facility was forced to put the water recycling system ("Recycle System") out of service.

27. During the time that the air release valve was being repaired and the Recycle System was out of service, the Facility continued normal operations at the blast furnaces.

28. For over twelve hours, between the evening of August 4, 2019, and the afternoon of August 5, 2019, while repairs were being performed in response to the valve failure, the Facility discharged thousands of gallons of once-through scrubber wastewater per minute to Outfall 001.

29. AMBH took samples at Outfall 001 on August 5, 2019, but at the time did not test those samples for ammonia-nitrogen. On August 15, 2019, IDEM instructed the Facility to test the August 5, 2019 samples for ammonia-nitrogen.

30. The testing of the August 5, 2019 samples showed an ammonia-nitrogen concentration of 0.92 mg/l at Outfall 001, nearly two times the effluent concentration-based limit allowed by the Permit.

31. This exceedance was caused by the shutdown of the Recycle System and use of Lake Michigan water on a once-through basis.

32. On August 4, 2019, and thereafter, the Facility failed to accelerate or increase its monitoring for pollutants that were elevated while the Recycle System was out of service.

33. In particular, the Facility failed to test for cyanide on August 5, 2019, when elevated concentrations of cyanide would have been expected given the Recycle System shutdown.

34. After the August 4, 2019 air release valve failure and shutdown of the Recycle System, the Facility continued standard operation of the blast furnaces and did not reduce the rate or volume of scrubber wastewater being generated and sent to the SWTP.

35. After the August 4, 2019 air release valve failure and shutdown of the Recycle System, the Facility did not make any changes to its operations that would mitigate the amount of pollutants being discharged through its outfalls.

36. As set forth in Table 2 attached hereto in Appendix A, on August 5, 2019, the Burns Harbor Facility experienced ammonia exceedances that resulted from the air release valve failure and shutdown of the Recycle System.

August 11-16, 2019 Pump Controls Incident and Resulting Release

37. When water was released in the Recycle System Pump Station due to the August 4, 2019 air release valve failure, some of the water flowed over the wall separating the room with the failed valve from the Recycle System electrical substation that houses equipment to supply power to the Pump Station. The moisture from this flooding damaged and eventually caused a failure on the recharger for the battery power for the Recycle System pumps.

38. On the morning of August 11, 2019, the batteries for the Recycle System pump controls completely lost charge and were unable to recharge, causing the Recycle System pumps to be inoperable.

39. In response to the complete disabling of the Recycle System, the Facility switched to using Lake Michigan water in the wet scrubber system on a once-through basis.

40. Due to other equipment failures, Lake Michigan “make-up” water also continued to flow into the Pump Station wells, despite the fact that the Recycle System was inoperable and this water was not being used in the wet scrubber process.

41. Water levels in the flooded system continued to rise, resulting in an overflow of once-through scrubber wastewater through a standpipe in the thickener overflow sewer. The water traveled through the standpipe to the SWTP.

42. On August 11 and for the following four days, from August 12-15, 2019, during the Recycle System failure, the Burns Harbor Facility continued to send millions of gallons of scrubber wastewater to the SWTP and ultimately through Outfalls 011 and 001.

43. On August 12, 2019, IDNR received a citizen complaint of a distressed fish in the East Branch of the Little Calumet River. Both IDEM and IDNR investigated and observed a distressed fish.

44. On the evening of August 13, 2019, IDEM and IDNR received additional complaints about the presence of numerous dead fish. IDEM and IDNR conducted reconnaissance on Wednesday, August 14, 2019, and observed that a significant fish die-off had occurred.

45. On August 14, 2019, IDEM initiated an investigation of the cause of the fish kill, which included conducting a field screening for various parameters, including ammonia, at locations along the East Branch of the Little Calumet River. One ammonia screening conducted at a location downstream of Outfall 001 indicated an ammonia concentration of 1.0 mg/l.

46. IDNR initially estimated that approximately 3,000 fish were killed in August 2019.

47. On August 15, 2019, NPS closed the Portage Lakefront and Riverwalk beach area within the Indiana Dunes National Park and the Town of Ogden Dunes closed their adjacent public beach. The public beaches remained closed until August 22, 2019.

48. On August 15, 2019, the Facility notified IDEM that it had violated the daily maximum limit for total cyanide. In response to a directive from IDEM to identify the cause of the exceedances, the Facility stated that the Recycle System Pump Station had failed.

49. On August 17, 2019, the United States Coast Guard (“USCG”) and IDEM contacted EPA, requesting technical assistance and risk communication support. EPA On-Scene Coordinator (“OSC”) Ramon Mendoza (“OSC Mendoza”) responded on Sunday, August 18, 2019, and attended the emergency response staff meeting.

50. On August 18, 2019, IDEM ordered the Facility to conduct additional daily sampling in the East Branch of the Little Calumet River, Burns Ditch up to the confluence with Lake Michigan, and along the western shore of Lake Michigan from the Riverwalk to West Beach (approximately two miles of lakeshore across Ogden Dunes Beach and Indiana Dunes National Park), until further notice.

51. Based on the sampling required by IDEM after the Recycle System Pump Station failure, the Facility discharged cyanide and ammonia-nitrogen exceeding its NPDES permit limits for several days. The Facility also exceeded weekly and monthly average limits for these pollutants.

CLAIM FOR RELIEF

Liability for Natural Resource Damages under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and IND. CODE 13-25-4-8(a)(3)

52. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs 1-51 as if fully set forth herein.

53. The Burns Harbor Facility is a “facility” within the meaning of Sections 107(a) and 101(9) of CERCLA, 42 U.S.C. §§ 9607(a) and 9601(9).

54. Defendants are the “owner[s]” of the Burns Harbor Facility within the meaning of CERCLA Sections 107(a)(1) and 101(20), 42 U.S.C. §§ 9607(a)(1) and 9601(20).

55. Cyanide and ammonia are “hazardous substances” within the meaning of Sections 107(a) and 101(14) of CERCLA, 42 U.S.C. §§ 9607(a) and 9601(14). *See* 40 C.F.R. § 302.4 (App. A).

56. A “release” or “threatened release” of “hazardous substances” into the environment has occurred at and/or from the Burns Harbor Facility, as those terms are defined in Section 101(14) and 101(22) of CERCLA, 42 U.S.C. § 9601(14) and (22).

57. “Natural Resources” within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been and/or are being injured, lost, or destroyed as a result of the releases of hazardous substances at the Burns Harbor Facility.

58. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable to the United States for all damages for injury to, destruction of, or loss of natural resources and their services, including costs of assessing such injury, destruction or loss, and including prejudgment interest, that the United States has incurred and will incur with respect to the incidents between August 4 through 16, 2019.

59. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and IND. CODE § 13-25-4-8, Defendants are liable to the State of Indiana for all damages for injury to, destruction of, or loss of natural resources and their services, including costs of assessing such injury, destruction or loss, and including prejudgment interest, that the State of Indiana has incurred and will incur with respect to the incidents between August 4 through 16, 2019.

60. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States is entitled to recover interest on the damages that it has incurred with respect to the incidents between August 4 through 16, 2019, at the rate that is specified for interest on investments of the Hazardous Substances Superfund established under subchapter A of chapter 98 of title 26 of the United States Code.

61. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and IND. CODE § 13-25-4-8, the State of Indiana is entitled to recover interest on the damages that it has incurred with respect to the incidents between August 4 through 16, 2019.

62. Under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States and the State are entitled to a declaratory judgment on liability for damages that will be binding on any subsequent action or actions to recover further damages.

PRAYER FOR RELIEF

WHEREFORE, based upon all of the allegations set forth above, the United States of America and the State of Indiana respectfully requests that this Court:

1. Enter judgment in favor of the United States and the State of Indiana, holding Defendants liable under Section 107 of CERCLA, 42 U.S.C. § 9607; and IND. CODE 13-25-4-8(a)(3), for recovery of damages—including damages for injury to, destruction of, or loss of natural resources and their services, belonging to, managed by, held in trust by, controlled by, or appertaining to the United States and the State—resulting from the incidents between August 4 through 16, 2019.

2. Under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a declaratory judgment on liability against the Defendants for damages that will be binding on any subsequent action or actions to recover further damages;

3. Award the United States of America and the State of Indiana their costs and disbursements for this action; and

4. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

FOR THE UNITED STATES OF AMERICA

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

/s/ Nicholas McDaniel
NICHOLAS A. MCDANIEL
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-0096
Nicholas.A.Mcdaniel@usdoj.gov

CLIFFORD D. JOHNSON
United States Attorney

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

FOR THE STATE OF INDIANA

TODD ROKITA
Attorney General of Indiana
Attorney No. 18857-49

By:

/s/ Blake T. Erickson
BLAKE T. ERICKSON
Deputy Attorney General
Office of the Indiana Attorney General
302 W. Washington St., IGCS 5th Floor
Indianapolis, IN 46204
Phone: 317-234-7128