



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section

Telephone (202) 514-3446

December 14, 2021

David M. Shelton
Counsel – Environmental and Litigation
United States Steel Corporation
600 Grant Street, Room 1844
Pittsburgh, PA 15219-2800

Paul M. Drucker and Fred Andes
Barnes & Thornburg LLP
11 S. Meridian St.
Indianapolis, IN 46204-3535

Re: U. S. Steel Midwest Plant discharges September 26-28 and October 13, 2021

Dear Counsel:

This letter is regarding recent noncompliance at the U. S. Steel Midwest plant.

As you know, on September 26, 27 and 28, 2021, the U. S. Steel Midwest Plant discharged from Outfall 004 a discolored effluent containing a release of high concentrations of iron into the Burns Ditch. On October 13, 2021 IDEM sent to U. S. Steel its Inspection Summary/Enforcement Referral, and November 16, 2021, EPA sent its CWA Compliance Evaluation Inspection Report, both documenting their inspections relating to those discharges. On October 7, 2021, U. S. Steel experienced an oil spill from the same Permitted outfall. On October 18, 2021, IDEM sent to U. S. Steel its Inspection Summary/ Enforcement Referral documenting its inspection relating to that spill. As you know, the Burns Ditch flows north into Lake Michigan approximately 1,000 feet away from Outfall 004.

These discharges are subject to stipulated penalties under the revised Consent Decree (CD) in *United States and the State of Indiana v. United States Steel Corporation*, Case No. 2:18 cv-00127. The discharges also evidence a need for U. S. Steel to review, and consider revising, its current O&M plan pursuant to the required annual review of its plan under the CD and to address as part of the CD's semi-annual reporting requirements, as well as to address as part of the evaluation due next month under the 2021 State Agreed Order, as discussed below.

Stipulated Penalty To Be Assessed

The discharges on September 26 through 28, and October 7 resulted in non-compliance with the narrative standards found in U. S. Steel's NPDES Permit No. IN0000337 (Permit) Part I.B. Those standards state, among other things:

At all times the discharge from any and all point sources specified within this Permit shall not cause receiving waters:

- 1) including the mixing zone, to contain substances, materials, floating debris, oil, scum, or other pollutants:*
 - a. that will settle to form putrescent or otherwise objectionable deposits;*
 - b. that are in amounts sufficient to be unsightly or deleterious;*
 - c. that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;*
 - d. which are in amounts sufficient to be acutely toxic to , or to otherwise severely injure or kill aquatic life, other animals, plants, or humans;*
 - e. which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.*

In addition, the discharges on September 26 through 28 and October 7 evidence non-compliance with the Permit's "Proper Operation and Maintenance" ("O&M") provision, which requires, among other things: "The permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for the collection and treatment which are installed or used by the Permittee and which are necessary for achieving compliance with the terms and conditions of this Permit in accordance with 327 IAC 5-2-8(8)."

In addition to being potentially actionable under Section 309(b) of the Clean Water Act, under CD paragraph 47 all instances of non-compliance with U. S. Steel's Permit are subject to the CD's stipulated penalties provision.

As you know, the CD required U. S. Steel to develop a comprehensive operation and maintenance plan for the facility's wastewater treatment system to implement actions and procedures necessary for achieving compliance with the Permit. It also required, among other actions, U. S. Steel to investigate its facility wastewater process monitoring system to evaluate and implement monitoring technologies and equipment for early detection of conditions that may lead to spills such as the April 11, 2017 Spill, and conditions that may lead to unauthorized discharges or discharges in exceedance of Permit limits at the wastewater treatment works.

We are investigating whether the discharges on September 26-28 and October 7 were the result of non-compliance not only with the Permit but also with certain specific O&M standard operating provisions (SOPs) approved under the CD and incorporated into the O&M Plan.

We anticipate that the above instances of noncompliance, and instances of potential noncompliance, will form the basis for assessment of the United States' and State's demand for stipulated penalties in connection with the recent discharges. Given our continuing investigation into this matter, this letter is not a formal demand for stipulated penalties at this time.

Annual Review of the O&M Plan and Semi-Annual Reporting under the CD

EPA's November 16, 2021 inspection report sets forth several O&M issues that potentially relate to the discharges on September 26 through 28, 2021. Paragraph 10.e. of the CD requires ongoing review and potential revision of the facility's O&M plan, at a minimum on an annual basis, to insure proper operation and maintenance of its wastewater treatment process equipment. The purpose of that paragraph is to require U. S. Steel to reassess annually its O&M practices and make appropriate upgrades and/or modifications to its plan, including potential improvements, to help prevent instances of noncompliance.

Under paragraph 27.c., U. S. Steel's next semi-annual report is due on March 15, 2022 (reporting on the period July 1-December 31, 2021). Per the CD, U. S. Steel must not only identify and describe all instances of non-compliance but also describe the likely causes and remedial steps taken, or to be taken, to prevent or minimize such noncompliance.

Comprehensive Review of O&M procedures under the State Agreed Order

Also, as you know, the State Agreed Order in *Commissioner of Indiana Department of Environmental Management v. U. S. Steel- Midwest Plant*, Case Nos. 2019-26434-W and 2019-26665-W, adopted on May 10, 2021 (Agreed Order), contains additional provisions for proper O&M of the facility's wastewater pretreatment and treatment system to help ensure compliance with Permit requirements. The Order and the Compliance Plan approved by IDEM under the Order's terms last July require U. S. Steel, by January 6, 2022, to complete a comprehensive evaluation of its O&M procedures, taking into account all violations occurring from the facility, and to identify needs and propose an implementation schedule to address identified needs.

The purpose of the compliance plan is to identify actions that U. S. Steel will take to achieve and maintain compliance with the Permit. The Agreed Order includes specific requirements (among others) that are particularly relevant to the recent discharges, including:

- Section II.6.C.iii. "Evaluate adequacy of pretreatment equipment and operations and determine needs. The determination of equipment needs shall encompass equipment repair, replacement, and addition;"
- Section II.6.D.viii. "Evaluate adequacy of treatment equipment and operations and determine needs. The determination of equipment needs shall encompass equipment repair, replacement, and addition;"
- Section II.6.F. (regarding procedure for communications). "The SOP must take into account the timing of upstream releases to the Final Treatment Plant to mitigate issues with low pH, complexing agents and chelants, which interfere with proper settling."

O&M Upgrades and Evaluations in Light of Recent Discharges

In the Enclosure included with this letter, IDEM has identified specific evaluations and actions it expects to see in U. S. Steel's evaluation, needs assessment, and implementation schedule to be submitted under the Agreed Order. Also, where applicable, the Enclosure identifies those evaluations and actions that both EPA and IDEM expect U. S. Steel to address as part of its ongoing re-evaluation of its O&M Plan under Paragraph 10.e. of the CD, and as part of its semi-annual report under the CD due on March 15, 2022. We anticipate that the technical

teams of our respective agencies will be in contact soon with the technical team at U. S. Steel to further discuss the enclosed recommended compliance measures, with the goals of improving U. S. Steel's future compliance with the CD and Permit, and of better protecting the local residents and those who recreate in the vicinity of Lake Michigan and the national park.

Also, the National Park Service (NPS) has informed us that NPS will be asserting a SURPA claim seeking costs and damages, including lost services for several beach closures, as a result of the recent discharges. NPS intends to proceed with such claim separate and apart from the enforcement mechanisms in the CD and the State Agreed Order through which EPA and IDEM intend to address the recent discharges, as described above.

If U. S. Steel has any questions, or would like to discuss this letter, please feel free to contact us.

Sincerely,

ARNOLD
ROSENTHAL

Digitally signed by
ARNOLD ROSENTHAL
Date: 2021.12.14
15:54:13 -05'00'

Arnold S. Rosenthal
Senior Attorney
U.S. Department of Justice

Nancy
King

Digitally signed by
Nancy King
Date: 2021.12.14
16:18:24 -05'00'

Nancy King
General Counsel
Indiana Dept. of Environmental
Management

Enclosure

cc: Thomas Martin
Associate Regional Counsel
U.S. Environmental Protection Agency

Beth Admire
Indiana State Natural Resource Co-Trustee
Indiana Dept. of Environmental Management

Items for U. S. Steel-Midwest Plant to Evaluate in Connection with its September 26-28th and October 7th Release Incidents

I. IDEM

Items 1 and 2 below are specific evaluations and actions IDEM expects to see in U. S. Steel's evaluation, needs assessment, and implementation schedule to be submitted under the State Agreed Order by or before January 6, 2022:

1. Emergency Storage for Treatment Plants – U. S. Steel should evaluate and, as feasible, implement the use of a currently unused approximately one-million-gallon storage basin as emergency wastewater storage for both the Final Treatment Plant (FTP) and the chrome treatment plant. U. S. Steel should assess the feasibility of using this existing storage basin to store effluent wastewater that is either off-specification and/or discharged during a treatment plant incident to prevent releases, spills, and NPDES permit effluent limit exceedances. This assessment should include a summary of the overall design, including how wastewater will be conveyed to the emergency wastewater storage basin and how the emergency storage basin will be dewatered, along with an estimated amount of time the emergency storage would provide during regular treatment plant operation for the FTP and the chrome treatment plant.
2. Additional Wastewater Treatment Operator Resources – U. S. Steel should evaluate its wastewater treatment operator schedules to allow for on-call wastewater treatment operators to respond to treatment issues at the chrome treatment plant and the FTP. The O&M plan may also need to be updated/enhanced to describe when U. S. Steel's wastewater treatment operators should be communicating with specified staff for assistance during wastewater treatment plant issues.

II. EPA

EPA has conducted further analysis of the facts and circumstances attending the noncompliance described in its November 16, 2021 inspection report transmitted to U. S. Steel on that date. As a result of this analysis, below are specific evaluations and actions EPA and IDEM expect U. S. Steel to address as part of its ongoing re-evaluation of its O&M Plan under Paragraph 10.e. of the CD, and as part of its Semi-annual Report under the CD due on March 15, 2022:

1. Additional Wastewater Monitoring – U. S. Steel should evaluate and consider implementing the utilization of additional wastewater parameter monitoring devices at the FTP and chrome treatment plant in order for U. S. Steel wastewater plant operators to be able to identify/assess treatment plant issues or off-specification effluent discharges in a timely fashion. This includes, at a minimum, the evaluation of additional monitoring devices/sensors/analyzers for pollutant parameters such as pH, turbidity, and hydrocarbon before discharge from Outfall 104 and/or before a potential diversion to the wastewater emergency storage.

2. Real-time Monitoring System at Both Treatment Plants – U. S. Steel should evaluate the use of a real-time monitoring system at the FTP (such as a Supervisory Control and Data Acquisition or SCADA system). This real-time monitoring system is to allow U. S. Steel's wastewater treatment plant operator and supervisor staff to access all monitoring devices/sensors/analyzers used at the FTP at a central location (or multiple locations). This evaluation should closely correspond with #1 above and identify areas within the FTP that need additional wastewater treatment parameter monitoring.
3. Waste Acid Use at FTP – U. S. Steel should evaluate ending the use of the process waste acid that is used within the wastewater treatment at the FTP. This evaluation should include expanding the current sulfuric acid storage and using only sulfuric acid in the FTP wastewater treatment process.
4. Additional Wastewater Tertiary Treatment Analysis – U. S. Steel should evaluate the implementation of additional tertiary treatment (to be used as-needed or during all times) downstream of the current treatment components for both the FTP and chrome treatment plant. This evaluation is to identify the potential tertiary treatment technologies that are possible at both treatment plants, including but not limited to the use of activated carbon treatment technology, and how the tertiary treatment may have prevented/mitigated the September 26-28th and October 7th incidences.
5. O&M Procedures/Plan Enhancements – U. S. Steel should evaluate the September 26-28th and the October 7th discharge incidents in-depth and determine which of its O&M Plan procedures (including referenced procedures) need to be revised/enhanced and what additional procedures need to be added. This evaluation should take into account items 1-4, above (including what revisions are needed to the O&M plan to account for new treatment components). U. S. Steel should also describe how the revised O&M Plan, with all referenced and updated procedures, would have addressed any operational errors that occurred and contributed to the September 26-28th and October 7th incidents.