

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

UNITED STATES OF AMERICA)	
and the STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:18-cv-00127
)	
UNITED STATES STEEL CORPORATION,)	
)	
)	
Defendant.)	
_____)	

PLAINTIFFS’ MOTION TO ENTER REVISED CONSENT DECREE

The United States, on behalf of the U.S. Environmental Protection Agency, the National Park Service of the U.S. Department of the Interior, and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce; and the State of Indiana, on behalf of the Indiana Department of Environmental Management and the Indiana Department of Natural Resources (collectively, “Plaintiffs” or “Governments”), jointly request that the Court approve and enter the revised Consent Decree that is Attachment A to this Motion. The Plaintiffs filed a Complaint in this action against Defendant U. S. Steel Corporation (“U. S. Steel”), alleging violations of the Clean Water Act (“CWA”) and various other state and federal laws at U. S. Steel’s Midwest Plant in Portage, Indiana. *See* Complaint, Dkt. 1. The Complaint seeks injunctive relief, cost recovery, civil penalties, natural resource damage assessment costs and damages for lost use/compensatory restoration in accordance with a number of federal and state statutes, including the CWA; Titles 13 and 327 of the Indiana Administrative Code; the Emergency Planning and Community Right-to-Know Act of 1986; the Comprehensive

Environmental Response, Compensation and Liability Act of 1980; and the System Unit Resources Protection Act. Simultaneously with filing the Complaint, the United States lodged a proposed Consent Decree to remedy the alleged violations. At that time, the Governments asked the Court to defer action on the Consent Decree while the United States submitted the proposed settlement for public review and comment pursuant to 28 C.F.R. § 50.7.

The United States received 2,688 public comments on the proposed Consent Decree. Most of the comments were submitted using several varieties of “model forms” supplied by a number of citizen organizations. Those comments were similar in content to one another, depending on the specific form under which they were submitted. Approximately 72 comments, including letters (one as long as 50 pages) and emails from individuals or organizations, were submitted separately, outside of the various form templates.

In response to public comments, the Parties have proposed three changes to the lodged Consent Decree and its attachments: (1) the addition of a State-Only Environmentally Beneficial Project to be supervised by Indiana; (2) several changes to Appendix B to strengthen and broaden the notification procedures required if U. S. Steel experiences a spill or release; and (3) language clarifying that U. S. Steel must comply with revised Appendix B by October 1, 2019.¹ Further, after the lodging of the Consent Decree, the United States and Indiana required a number of changes to U. S. Steel’s initial submissions of several key plans required under the Decree, including operation and maintenance, preventive maintenance, and wastewater process monitoring design plans -- also in large part as a result of public comments.

¹ Attachment B to this Motion (not to be confused with Appendix B to the Consent Decree) is a marked-up version of the revised proposed Consent Decree (Attachment A to this Motion) comparing the revised proposed Decree to the original Decree that was lodged with the Court. In addition to the three proposed substantive changes outlined above, several other minor, non-substantive changes, including changes necessitated by the addition of the State-Only Environmentally Beneficial Project, were made to the originally lodged Decree, as shown in marked-up Attachment B.

After careful review of the public comments, the United States, after consultation with Indiana, believes that the revised Consent Decree is fair, reasonable, consistent with the CWA and other applicable environmental laws, and in the public interest. The comments do not disclose facts or considerations leading the Governments to believe that the Consent Decree is inappropriate, improper, or inadequate. Decree, ¶ 82. For those reasons, as explained in the memorandum in support of this motion and the United States' Response to Comments that summarize and address the public comments received, the Governments respectfully request that the Court sign, approve and enter the proposed revised Consent Decree.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2019, I filed the foregoing Motion, including Attachments A and B, electronically with the Clerk of the Court using the Court's Electronic Case Filing System, which sent notification of such filing to all counsel of record through the ECF notification system.

s/Arnold S. Rosenthal