

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

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
THE STATE OF INDIANA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civil Action No. 23-381
CLEVELAND-CLIFFS BURNS	)	
HARBOR LLC and	)	
CLEVELAND-CLIFFS STEEL LLC,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

**TABLE OF CONTENTS**

I. BACKGROUND.....	1
II. JURISDICTION AND VENUE.....	2
III. PARTIES BOUND.....	2
IV. DEFINITIONS .....	2
V. PAYMENTS BY DEFENDANTS.....	4
VI. CONVEYANCE OF INTERESTS IN PROPERTY.....	5
VII. STIPULATED PENALTIES.....	6
VIII. USE OF PAYMENTS FOR NATURAL RESOURCE RESTORATION .....	7
IX. COVENANTS NOT TO SUE BY PLAINTIFFS .....	7
X. RESERVATION OF RIGHTS BY PLAINTIFFS .....	7
XI. COVENANTS NOT TO SUE BY DEFENDANTS .....	8
XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION.....	9
XIII. RETENTION OF RECORDS.....	10
XIV. NOTICES.....	11
XV. SIGNATORIES/SERVICE .....	12
XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT.....	12
XVII. EFFECTIVE DATE .....	13
XVIII. INTEGRATION.....	13
XIX. MODIFICATION .....	13
XX. APPENDICES .....	13
XXI. FINAL JUDGMENT .....	13

**TABLE OF APPENDICES**

Appendix 1	Description of EBLCR Properties
Appendix 2	Map of EBLCR Properties

## **CONSENT DECREE**

This Consent Decree (or “Decree”) is entered into by and among Plaintiffs United States of America (“United States”), on behalf of the United States Department of the Interior (“DOI”), through the United States Fish and Wildlife Service (“USFWS”) and the National Park Service (“NPS”), 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”), and Defendants Cleveland-Cliffs Steel LLC (“CC Steel”) and Cleveland-Cliffs Burns Harbor LLC (“CCBH”) (collectively, “Defendants”).

### **I. BACKGROUND**

A. Contemporaneously with the lodging of this Consent Decree, the United States and Indiana filed a Complaint (“Complaint”) initiating this action against Defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, and Indiana Code (“IC”) 13-25-4-8. The Complaint alleges that Defendants are liable under CERCLA and the Indiana Code for damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances at the steel manufacturing and finishing facility (“Burns Harbor Facility” or “Facility”) in Burns Harbor, Porter County, Indiana, owned and operated by CCBH since December 9, 2020 (the “Site”). Prior to December 9, 2020, the Facility was owned and operated by ArcelorMittal Burns Harbor LLC.

B. Pursuant to Section 107(f)(2) of CERCLA, the National Contingency Plan regulations at 40 C.F.R. Part 300, subpart G, and further designations and delegations, DOI, IDEM, and IDNR (collectively the “Trustees” and each individually a “Trustee”) serve as trustees of Natural Resources that have been or may be injured, destroyed, or lost as a result of the releases described in the Complaint. The Trustees’ responsibilities include the assessment and recovery of damages for those injuries and use of the recovered damages to restore, replace, rehabilitate, or acquire the equivalent of the injured Natural Resources and associated natural resource services.

C. For purposes of the settlement set forth in this Consent Decree, the Trustees have agreed among themselves to act jointly in carrying out their responsibilities as natural resource trustees on behalf of the public.

D. The Trustees initiated a natural resource damages assessment (“NRD Assessment” or “NRDA”) in accordance with the regulations found at 43 C.F.R. Part 11, for the purpose of evaluating the injury, destruction, or loss of Natural Resources resulting from the release of hazardous substances on or about August 2019 at the Site and developing a plan to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and associated natural resource services.

E. The Trustees have conducted preliminary estimates of injury to natural resources at the Site by the releases of ammonia and cyanide to the waters of, and to the habitats associated with, the East Branch of the Little Calumet River (“EBLCR”), the Burns Waterway, and Lake Michigan, including land within the boundaries of the Indiana Dunes National Park.

F. Each Trustee has incurred Assessment Costs in connection with the NRD Assessment for the Site.

G. In entering into this Decree, Defendants do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

H. The Parties to this Consent Decree recognize, and the Court by entering this Decree finds, that this Decree: (i) has been negotiated by the Parties at arms' length and in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii) will expedite restoration of injured Natural Resources; and (iv) is fair, reasonable, and in the public interest consistent with the statutory purposes of CERCLA and the Indiana Code.

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

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; 42 U.S.C. §§ 9607(a) and 9613(b); and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1331, 1345, 1391(b) and (c) and 1395(a); and 42 U.S.C. § 9613(b), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Defendants may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

## **III. PARTIES BOUND**

2. This Decree is binding upon the Plaintiffs and upon Defendants. Unless the United States and Indiana otherwise consent in a modification to this Decree, (a) any change in ownership or corporate or other legal status of any Defendant, or (b) any transfer of assets, including any transfer of the Site or any portion thereof, does not alter any of Defendants' obligations under this Decree. Defendants' responsibilities under this Decree may not be assigned except under a modification executed in accordance with Section XIX.

## **IV. DEFINITIONS**

3. Terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA, including 43 C.F.R. Part 11, have the meaning assigned to them in CERCLA or in such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, including attached Appendices, the following definitions shall apply:

a. "Assessment Costs" means the costs of natural resource damages assessment relating to the Site, including direct and indirect costs, incurred or to be incurred by

any of the Trustees that are recoverable pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

b. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

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

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

e. “Covered Natural Resource Damages” means any damages recoverable by the United States or Indiana, acting as trustees on behalf of the public, pursuant to section 107(a)(4)(C) of CERCLA and the Indiana Code, for injury to, destruction of, or loss of Natural Resources and the services provided by such Natural Resources resulting from releases of hazardous substances at the Site through the Date of Lodging relating to the events occurring at the Burns Harbor Facility in August 2019, including but not limited to: (i) Assessment Costs; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for loss of use, other lost or reduced natural resource services, or diminution in value of Natural Resources from the onset of injury until the completion of restoration or recovery; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

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

g. “Date of Lodging” means the day this Decree is lodged with the Court prior to the public comment process provided for in Section XVI.

h. “Defendants” shall mean present owner Cleveland-Cliffs Steel LLC and present owner operator Cleveland-Cliffs Burns Harbor LLC.

i. “DOI” means the United States Department of the Interior.

j. “EBLCR Properties” shall mean the two parcels to be donated as part of this Consent Decree. The EBLCR Properties are more particularly described by the property description attached as Appendix 1 to this Consent Decree, and are generally depicted on the map attached as Appendix 2 to this Consent Decree, which Appendices are incorporated herein by this reference.

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

l. “Federal Trustees” means DOI, acting through the USFWS and NPS.

- m. “IDEM” shall mean the Indiana Department of Environmental Management and any successor departments or agencies.
- n. “IDNR” shall mean the Indiana Department of Natural Resources and any successor departments or agencies.
- o. “Indiana” shall mean the State of Indiana.
- p. “Interest,” means interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- q. “Month” shall mean calendar month.
- r. “Natural Resource” or “Natural Resources” has the meaning provided in Section 101(16) of CERCLA, and includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State.
- s. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.
- t. “Restoration” means, unless the context requires otherwise, actions to restore, replace, rehabilitate, or acquire the equivalent of injured Natural Resources and associated services to people or the ecosystem.
- u. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- v. “Site” shall mean the area in Burns Harbor, Porter County, Indiana, where Natural Resources were allegedly injured as a result of the releases at the Burns Harbor Facility.
- w. “State” shall mean the State of Indiana.
- x. “State Trustees” shall mean IDEM and IDNR.
- y. “United States” shall mean the United States of America, acting on behalf of the Federal Trustees.

## **V. PAYMENTS BY DEFENDANTS**

4. Payment for Restoration of Natural Resources. Within 30 Days after the Effective Date, Defendants shall pay \$409,533 plus Interest accrued on that amount from the Date of Lodging through the date of payment, to the United States as a joint recovery of natural resource damages by the Plaintiffs. The amount paid shall be deposited in the DOI NRDAR Fund for the joint benefit and use of the Trustees in accordance with Section VIII.

5. Payments to the United States.

a. DOI Assessment Costs. Within 30 Days after the Effective Date, Defendants shall pay \$590,173, plus Interest accrued on that amount from the Date of Lodging through the date of payment, to the United States for reimbursement of Assessment Costs incurred by DOI. Subject to the deduction required by 1994 CJS Appropriations Act, this recovery shall be deposited in the NRDAR Fund.

b. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Northern Indiana will provide to Defendants, in accordance with Paragraph 37, instructions for making the payment under Paragraphs 4 and 5.a, including a Consolidated Debt Collection System (“CDCS”) reference number. Defendants shall make such payments at <https://www.pay.gov> in accordance with the FLU’s instructions, including references to the CDCS Number.

c. Defendants shall send notice of the payment under Paragraph 4 to each Plaintiff in accordance with Section XIV (Notices). Defendants shall send notice of the payments under Paragraph 5.a to the United States in accordance with Section XIV (Notices).

6. Payments to the State. Within 30 Days after the Effective Date, Defendants shall pay \$74,279, plus Interest accrued on that amount from the Date of Lodging through the date of payment, to the State of Indiana for reimbursement of Assessment Costs incurred by the State. Defendants shall make this payment in accordance with instructions provided by the State. Defendants shall send notices of the payment to the State in accordance with Section XIV (Notices).

7. Defendants’ obligations to pay amounts due under this Decree (including any stipulated penalties due under Section VII) are joint and several. In the event of the insolvency of any Defendant or the failure by any Defendant to participate in making a payment under the Decree, the remaining Defendant shall make the payment.

**VI. CONVEYANCE OF INTERESTS IN PROPERTY**

8. As provided by this Section, Defendants shall, at their sole expense, cause fee title to the EBLCR Properties to be conveyed to a qualified land trust organization, upon which a conservation easement providing for the protection of Natural Resources and assuring the EBLCR Properties’ availability for conservation purposes and recreational uses, in perpetuity, will be created and granted to the State of Indiana.

9. Within 30 Days after the Effective Date, Defendants shall submit to the United States and the State for review:

a. A draft deed that is enforceable under the laws of the State of Indiana providing for conveyance of the EBLCR Properties to the qualified land trust organization free and clear of liens and encumbrances, with all taxes due and owing paid (the “Deed”), and which shall include a notice in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY WILL BE SUBJECT TO A CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF INDIANA

10. Within 15 Days after the acceptance of the Deed by the State of Indiana and the United States, Defendants shall cause the approved Deed to be delivered to the qualified land trust organization, with a copy to the United States and the State.

## **VII. STIPULATED PENALTIES**

11. In the event any payment required by Paragraph 4 is not made when due, Defendants shall pay to Plaintiffs stipulated penalties of \$5,000 per day from the date the payment was due through the date of full payment. Stipulated penalties owed under this Paragraph shall be allocated in equal shares between the Plaintiffs and shall be paid separately to each Plaintiff.

12. In the event any payment required by Paragraphs 5 or 6 is not made when due, Defendants shall pay to the Plaintiff owed the late payment stipulated penalties of \$5,000 per day from the date the payment was due through the date of full payment.

13. For each failure to comply with the requirements of Section VI, Defendants shall pay stipulated penalties of \$1,000 per violation per day. Stipulated penalties owed under this Paragraph shall be allocated in equal shares between the Plaintiffs and shall be paid separately to each Plaintiff.

14. Demand and Payment of Stipulated Penalties. Any Plaintiff may send Defendants a demand for stipulated penalties owed to Plaintiffs under Paragraphs 11 or 13 or any stipulated penalty owed to that Plaintiff under Paragraph 12. The demand should include a description of the noncompliance and should specify the amount of the stipulated penalties owed, to each Plaintiff. Defendants shall pay the amount demanded within 30 days after receipt of the demand, in accordance with the payment instructions provided by each Plaintiff under Section V. Defendants shall send notices of any payment under this Section to each Plaintiff receiving a payment in accordance with Section XIV (Notices). Any such notice shall identify the payment as a stipulated penalty paid under this Decree.

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

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

17. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be

construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

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

19. Nothing in this Decree limits the authority of any Plaintiff to seek any other remedies or sanctions available by virtue of a violation of this Consent Decree by Defendants.

### **VIII. USE OF PAYMENTS FOR NATURAL RESOURCE RESTORATION**

20. All funds received under Paragraph 4 shall be used to restore, rehabilitate, replace and/or acquire the equivalent of the Natural Resources alleged to be injured as a result of releases or the threat of release of hazardous substances at or from the Site in accordance with this Decree. The activities for which restoration funds may be applied include: (a) mussel restoration activities in the EBLCR; (b) recreational and human use restoration activities within the applicable State and Indiana Dunes National Park boundaries; (c) restoration planning, including any further assessment needed to develop and finalize restoration plans; (d) implementation of restoration projects; (e) administrative expenses and indirect costs related to restoration planning or implementation; and (f) operation, maintenance, and monitoring of completed restoration projects and adaptive management to reinstate or enhance the effectiveness of restoration in accordance with 43 C.F.R. § 11.81, 42 U.S.C. §§ 9607(f) and 9611(i).

21. Decisions regarding any use of funds under this Section shall be made by agreement of the Trustees. Defendants may not challenge or dispute, in any forum or proceeding, any decision by the Trustees regarding the use of restoration funds under this Section or the selection or implementation of restoration relating to the Site, except that they may participate in opportunities for public comment on Trustee proposals that are formally noticed for comments by the general public.

### **IX. COVENANTS NOT TO SUE BY PLAINTIFFS**

22. Except as specifically provided in Section X (Reservations of Rights by Plaintiffs), Plaintiffs hereby covenant not to sue or to take any civil judicial or administrative action against Defendants to recover Covered Natural Resource Damages. This Covenant Not to Sue (a) shall take effect upon the Effective Date of this Decree, and (b) is conditioned upon the satisfactory performance by Defendants of their obligations under this Decree. This Covenant Not to Sue extends to the successors of each Defendant only to the extent that the alleged liability of the successor is based solely on its status as a successor of the Defendant, and does not extend to any other person.

### **X. RESERVATION OF RIGHTS BY PLAINTIFFS**

23. General Reservations. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Defendants regarding the following:

- a. Liability for failure by Defendants to meet a requirement of this Decree;

b. Liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA;

c. Liability for costs incurred or to be incurred by Plaintiffs that are not within the definition of Covered Natural Resource Damages under Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A), or any other applicable federal or state law concerning removal or remedial actions relating to hazardous substance or oil releases, and (ii) costs of any health assessment or health effects study under Section 107(a)(4)(D) of CERCLA; 42 U.S.C. § 9607(a)(4)(A).

d. Any liability arising from a Defendant's transportation, treatment, storage, or disposal, or arrangement for the transportation, treatment, storage, or disposal of hazardous substances at or in connection with the Site after the Date of Lodging; and

e. Criminal liability.

24. Additional Reservation Regarding Natural Resource Damages. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against Defendants in this action or in a new action seeking recovery of Covered Natural Resource Damages based on: (a) conditions unknown to the Trustees as of the Date of Lodging that result in releases of hazardous substances at the Site that cause or contribute to new or additional injury to, destruction of, or loss of Natural Resources; or (b) information received by the Trustees after the Date of Lodging that, together with any other relevant information, indicates that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type unknown or a magnitude substantially greater than was known to the Trustees as of the Date of Lodging.

a. The information and the conditions known to the Trustees as of the Date of Lodging include only those documented in (i) information collected or developed by or for any of the Trustees for purposes of the Natural Resource Damages Assessment for the Site prior to the Date of Lodging, including any sampling data or other data and any analyses, diagrams, maps, reports, or surveys relating to the Site in the possession or control of any Trustee.

b. The re-exposure, resuspension, or migration solely by natural causes of hazardous substances known to be present and unconfined in the sediment, soils, or groundwater at the Site as of the Date of Lodging does not create a basis for action by the Trustees under this Paragraph.

## **XI. COVENANTS NOT TO SUE BY DEFENDANTS**

25. Subject to the reservation in Paragraph 26, Defendants covenant not to sue or otherwise assert any claim or cause of action regarding Covered Natural Resource Damages against Plaintiffs under CERCLA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or common law, including any claims for reimbursement of sums paid under this Decree from the Hazardous Substance Superfund established under Section 9507 of the Internal Revenue Code.

26. Defendants' Reservation. If a Plaintiff brings a cause of action or takes administrative action pursuant to the reservations in Paragraph 24 (Additional Reservation Regarding Natural Resource Damages), Defendants' covenant not to sue will not apply to claims by Defendants that arise from the same damages that the United States or the State is seeking pursuant to the applicable reservation.

## **XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

27. The Parties agree and the Court finds that: (a) the Complaint filed by the United States and the State in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which each Defendant has, as of the Effective Date, resolved its liability to the United States and the State within the meaning of Sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) each Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Decree. The "matters addressed" in this Decree are Covered Natural Resource Damages, provided, however, that if the Plaintiffs exercise rights under the reservations in Paragraph 24 (Additional Reservation Regarding Natural Resource Damages), the "matters addressed" in this Decree will no longer include those natural resource damages that are within the scope of the exercised reservation.

28. Each Defendant shall, with respect to any suit or claim brought by it for contribution provided by Section 113(f)(2) of CERCLA or for matters related to Defendants' obligations under this Decree, notify the United States and the State no later than 60 days prior to the initiation of such suit or claim. Each Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify the United States and the State within 30 days after filing an appearance in response to service of the complaint on such Defendant. In addition, each Defendant shall notify the United States and the State within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

29. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated against any Defendant by the United States or the State for injunctive relief, recovery of response costs or natural resource damages, or other appropriate relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case.

30. Nothing in this Decree diminishes the right of the United States or the State under section 113(f)(2) and (3) of CERCLA or applicable State laws to pursue any potentially liable person not a party to this Decree to obtain additional relief (including response action, response costs, and natural resource damages) to the extent that less than complete relief has been obtained by this Decree and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2). Each Defendant shall reserve the right to seek contribution from any potentially liable person not a party to this Decree pursuant to CERCLA 113(f)(3)(B).

### **XIII. RETENTION OF RECORDS**

31. Defendant Certification. Each Defendant certifies individually that to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed or otherwise disposed of any documents and electronically stored information relating to its potential liability under CERCLA for Covered Natural Resource Damages regarding the Site, since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding a NRDA for the Site.

32. Retention of Records and Information. Defendants shall retain, and instruct their contractors and agents to retain, the following non-identical copies of all documents and electronically stored data, except voicemail messages or text messages created after the Effective Date, (“Records”) in their possession or control, or that come into their or their contractors’ or agents’ possession or control until three years after the Effective Date:

a. All records regarding Defendants’ performance of their obligations under this Decree;

b. All records created or generated in accordance with this Decree.

33. Defendants shall provide to Trustees, upon request, copies of all Records and information required to be retained under this Section.

34. Privileged and Protected Claims. Defendants may assert that all or part of a record requested by Trustees is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall comply with Federal Rule of Civil Procedure 26(b)(5) regarding claims of privilege. Defendants shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Defendants are required to create or generate in accordance with this Decree.

35. Business Confidential Claims. Defendants may assert that all or part of a record provided to Trustees under this Section is business confidential to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Defendants shall segregate and clearly identify all records or parts thereof submitted under this Decree for which Defendants assert business confidentiality claims, labeling each page or each electronic file “confidential business information” or “CBI.” Records that Defendants claim to be confidential business information will be afforded the protection specified in 40 C.F.R. part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to Trustees, or if a Trustee has notified Defendants that the records are not confidential under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to Defendants.

36. Notwithstanding any provision of this Decree, the Trustees retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### **XIV. NOTICES**

37. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing and addressed as follows. Any notification, submission, or communication required to be made to the United States shall be made to the United States Department of Justice, DOI, USFWS, and NPS. Any notification, submission, or communication required to be made to Indiana shall be made to IDEM and IDNR.

As to the United States  
Department of Justice:

[eesdcopy.enrd@usdoj.gov](mailto:eesdcopy.enrd@usdoj.gov)  
Re: DJ # 90-5-1-1-12268/2

As to DOI:

U.S. Department of the Interior  
Natural Resource Damage Assessment  
and Restoration Program  
Attn.: Restoration Fund Manager  
1849 C Street, NW  
Mail Stop 4449  
Washington, DC 20240

As to USFWS:

Dan Sparks  
U.S. Fish and Wildlife Service  
620 S. Walker St.  
Bloomington, IN 47403

As to NPS:

National Park Service  
Associate Director for Natural Resource  
Stewardship and Science  
Attn: Resource Protection Branch Supervisor  
1849 C St, NW  
Washington, DC 20240

As to IDEM:

Elizabeth Admire  
State Natural Resource Co-Trustee  
Indiana Department of Environmental Management  
100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, IN 46206-6015

As to IDNR:

Christopher A. Smith  
State Natural Resource Co-Trustee  
Indiana Department of Natural Resources  
402 W. Washington Street, Room W-256  
Indianapolis, IN 46204

As to Defendants:

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

With copy to:

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

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

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

#### **XV. SIGNATORIES/SERVICE**

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

41. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on its behalf. Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

42. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States, after consultation with the State, reserves the right to withdraw or withhold consent if the

comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

43. Defendants consent to entry of this Consent Decree without further notice and shall not challenge any provision of this Decree unless the United States has notified Defendants in writing that it no longer supports entry of the Decree. If for any reason this Court declines to approve this Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval or entry, this Decree is voidable at the sole discretion of any Party and, if so voided, the terms of the Decree may not be used as evidence in any litigation between the Parties.

#### **XVII. EFFECTIVE DATE**

44. This Consent Decree will be effective upon the approval and entry of the Decree by the District Court.

#### **XVIII. INTEGRATION**

45. This Consent Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Decree.

#### **XIX. MODIFICATION**

46. Any material modification to this Consent Decree must be in writing, signed by the Parties, and shall be effective upon approval by the Court. Any non-material modification to this Consent Decree also must be in writing and shall be effective when signed by the Parties and filed with the Court. Unless all Parties to the Consent Decree agree on a modification, a party seeking a judicial order to modify the Decree bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XX. APPENDICES**

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

Appendix 1 – Description of EBLCR Properties

Appendix 2 – Map of EBLCR Properties

#### **XXI. FINAL JUDGMENT**

48. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

---

UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF INDIANA

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

**FOR THE UNITED STATES OF AMERICA:**

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

11/08/2023

Date

*Nicholas McDaniel*

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

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

**FOR THE STATE OF INDIANA:**

9/27/2023  
Date

Elizabeth Admire  
Elizabeth Admire, IDEM  
State Natural Resource Co-Trustee

9/27/23  
Date

Nancy King  
Nancy King, IDEM  
General Counsel

9/27/2023  
Date

Chris Smith  
Chris Smith, IDNR  
State Natural Resource Co-Trustee

9/27/23  
Date

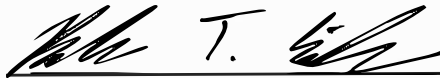
David Bausman  
David Bausman, IDNR  
General Counsel

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

**FOR THE STATE OF INDIANA:**

9/13/23

Date



Blake T. Erickson

Deputy Attorney General

Administrative & Regulatory Enforcement Litigation

Office of the Indiana Attorney General

Date

Date

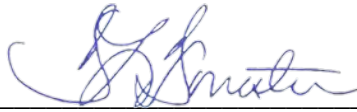
Signature Page for the Consent Decree in *United States and State of Indiana v. Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC* (N.D. Ind.):

**FOR CLEVELAND-CLIFFS STEEL LLC:**

August 25, 2023

---

Date

A handwritten signature in blue ink, appearing to read "Traci Forrester", is written over a horizontal line.

---

Traci Forrester, Executive Vice President,  
Environmental and Sustainability

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

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

August 25, 2023

---

Date

A handwritten signature in blue ink, appearing to read "Traci Forrester", is positioned above a horizontal line.

---

Traci Forrester, Vice President, Environmental and Sustainability

**Appendix 1 – Description of EBLCR Properties**

**Parcel 1:** Parcel Number 64-03-32-154-004.000-024, Shadyside Road, Chesterton, IN 46312

Legal Description: Par In W199 E1500 S600 S1/2 S1/2 Nw 32-37-6 Desc D#2003-20943 In Sch-A Par 2 1.030A

The Property is approximately 1.03 acres. It is located to the south of Route 12 Dunes Highway and to the north of I-94 in Chesterton, Indiana shown as Parcel 1 in Appendix 2. The East Arm Little Calumet River abuts the southern boundary of the property. The Property consists of a mix of woodlands and is classified as an industrial vacant land.

**Parcel 2:** Parcel Number 64-03-32-177-001.000-024 Shadyside Road, Chesterton, IN 46312

Legal Description: Tri Par In W187 E1301 S600 S1/2 S1/2 Nw32-37-6DESCD#20943 In Sch-A Par 1 1.077A

The Property is approximately 1.08 acres. It is located south of Route 12 Dunes Highway and north of I-94 in Chesterton, Indiana shown as Parcel 2 in Appendix 2. The East Arm Little Calumet River abuts the southern boundary of the property. The Property consist of a mix of woodlands and is classified as an industrial vacant land.

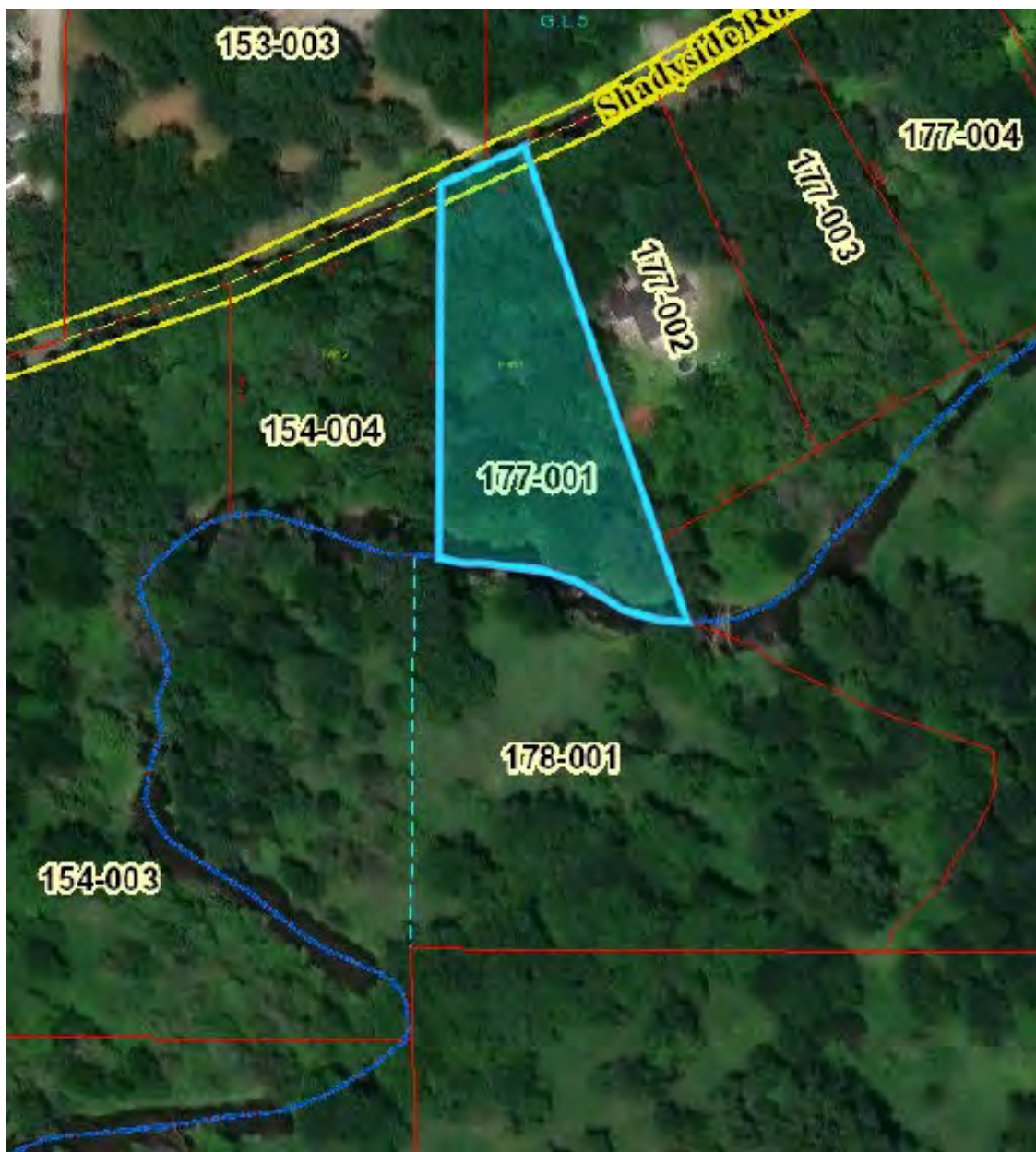
**Appendix 2 – Map of EBLCR Properties**

Parcel 1\*



\*Highlighted in blue

Parcel 2\*



\*Highlighted in blue