



OFFICE OF THE MAYOR
CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

October 14, 2019

Jeffrey Bossert Clark
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
601 D St NW
Washington, DC 20579

Cathy Stepp
Region 5 Administrator
U.S. Environmental Protection Agency
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, IL 60604-3590

Bruno L. Pigott
Commissioner
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

Dear Assistant Attorney General Clark, Regional Administrator Stepp and Commissioner Pigott,

We write to request immediate action in addressing the serious and ongoing threats to one of our greatest natural resources, Lake Michigan, from chemical spills committed by industrial facilities in northwest Indiana. These spills violate the Clean Water Act, threaten drinking water quality, and diminish an irreplaceable source of recreation and enjoyment for millions of Illinois and Indiana residents and visitors. The companies located along Lake Michigan, along with government regulators tasked with oversight, must do much more to prevent spills, mitigate damage when spills do occur, and timely notify the public and local governments, so that we can take the actions necessary to protect Chicago's drinking water, Surfrider Foundation's members, and the public at large.

Indiana and Federal regulators must also do more. We call upon you to improve oversight of permitted industrial facilities, to engage in robust enforcement of the Clean Water Act and other environmental laws, and to require real reform from serious and repeat violators through more impactful penalties and enhanced oversight from regulators.

Nearly two years ago, following a major spill of toxic hexavalent chromium and other illegal water pollution from U. S. Steel's Portage facility, we filed lawsuits seeking significant changes at the facility to reduce the number and likelihood of such spills. We were concerned that the company, as well as Indiana and federal regulators, were not committed to appropriate accountability. Two years later, we are frustrated to see that our concerns remain well-founded and unaddressed.

The State of Indiana and the U.S. government also filed a lawsuit against U. S. Steel based on the 2017 chromium spills, and they proposed a consent decree to resolve the lawsuit; however, IDEM records and media reports demonstrate that U. S. Steel violated its Clean Water Act permit multiple times in May, August, and September of this year and in November and December of last year. All of these violations occurred as your lawsuit is pending. More disturbing is that these violations occurred after U. S. Steel reported to your agencies that its Portage facility was complying with your proposed consent decree.

In their written, publicly-available reports, IDEM inspectors have indicated that U. S. Steel actively misled them during an investigation in response to illegal water pollution, that U. S. Steel's wastewater treatment practices continue to be dangerously mismanaged, and that U. S. Steel continues to refuse to take appropriate steps to prevent, investigate and respond to violations of law. IDEM inspectors have specifically connected these recent violations by U. S. Steel to the same behaviors and policies of the company that preceded your proposed consent decree. Clearly, the consent decree as it currently stands is inadequate. This problem needs to be immediately remedied.

U. S. Steel's violations involved brash and unacceptable conduct, showing disregard for both of your agencies. This is not our judgment; this is the judgment of IDEM's own inspectors, who have made the following observations in their inspection reports over the past few months, even while your lawsuit is pending:

- "The Operations Manual for Final [Wastewater] Treatment needs to be revised or rewritten."
- Important sampling results related to chromium wastewater were "recorded on temporary paper notes" in a location where they could become wet.
- Because U. S. Steel failed to test appropriately its wastewater during a violation, "the true extent of the event could not be determined." "The delay of waiting for IDEM to request additional sampling allowed the incident to continue, primarily untested...."
- "The public statement [issued by U. S. Steel only after IDEM's specific request] was not timely, was not directed to potentially affected downstream users, and did not detail the actual problems at the site..."

- “Withholding pertinent information over the course of an investigation is an unacceptable practice.”

Neither the City of Chicago nor the Surfrider Foundation can accept the consent decree in its current form because it does not solve the many problems associated with U. S. Steel’s Portage operations. Nor does it adequately address the public’s and local governments’ need for timely notification of spills.

U. S. Steel Portage is clearly not the only facility of concern in northwest Indiana. ArcelorMittal’s Portage facility violated its Clean Water Act permit in August when it spilled cyanide and ammonia into the Little Calumet River, a Lake Michigan tributary, with reports indicating thousands of dead fish and numerous other impacts. The City’s Department of Water Management learned of this incident, a spill of an acutely toxic substance, days after the fact through media reports. And there are other industrial facilities in the region with checkered compliance with the Clean Water Act and other environmental statutes. The State of Indiana issues these permits and is supposed to oversee compliance, and U.S. EPA is supposed to oversee the State of Indiana, but neither is sufficiently regulating the permittees to protect Lake Michigan, its beaches, and the public.

While we seek your immediate action in the context of your pending consent decree with U. S. Steel, we also request that you convene a discussion of stakeholders to address these larger concerns, including changes that can ensure entities like the City’s Department of Water Management and members of the public directly threatened by a spill receive immediate notification when incidents occur. We look forward to your response on both the consent decree and a stakeholder process. Please feel free to contact Corporation Counsel Mark A. Flessner and Staley Prom of Surfrider Foundation.

Regards,



Mayor
City of Chicago



Chad Nelsen
Chief Executive Officer,
Surfrider Foundation

cc: Arnold S. Rosenthal, U.S. Department of Justice
Tom Martin, U.S. EPA Region 5
Beth Admire, Indiana Department of Environmental Management
Rebecca McClain, Office of the Indiana Attorney General