[ SHAPE * MERGE FORMAT ]

**INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
*We Protect Hoosiers and Our Environment.*
100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

**Eric J. Holcomb**
*Governor*

**Bruno Pigott**
*Commissioner*

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| STATE OF INDIANA<br><br>COUNTY OF MARION | ) SS:<br>)<br>) | BEFORE THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT |

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| COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,<br><br>Complainant,<br><br>v.<br><br>ARCELORMITTAL INDIANA HARBOR, LLC,<br><br>Respondent. | ) | Case No. 2017-24585-W |

## AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (IC) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

## I. FINDINGS OF FACT

1. Complainant is the Commissioner (Complainant) of the Indiana Department of Environmental Management (IDEM), a department of the State of Indiana created by IC 13-13-1-1.

2. Respondent is ArcelorMittal Indiana Harbor, LLC (Respondent), which owns and operates a steel mill, located at 3001 Dickey Road, East Chicago, Lake County, Indiana (the Site).

3. Respondent is authorized by National Pollutant Discharge Elimination System (NPDES) Permit Number IN0063711 (the Permit) to discharge wastewater, treated in accordance with the terms and conditions of the NPDES Permit, from its central wastewater treatment plant (WWTP) into waters of the State consisting of Lake

Michigan via Indiana Harbor Canal via Outfall 001. The Permit became effective on September 1, 2017 and expires on August 31, 2022.

4. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.

5. Respondent waives issuance of a Notice of Violation and to the settlement period of sixty (60) days as provided for by IC 13-30-3-3.

6. At the Site, Respondent uses oil in various capacities in its manufacturing processes and stores oil and petroleum products used in these processes in various locations.

7. The Site is located on both the Indiana Harbor Ship Canal and Lake Michigan.

8. The Indiana Harbor Ship Canal is a waterway consisting of two branch canals, which permit shipping traffic, that join to form the main canal, which connects directly to Lake Michigan and functions as both a harbor and a canal for shipping traffic. Lake Michigan serves as a navigable water for shipping traffic and also serves as a drinking water source for numerous cities and communities surrounding it.

9. On January 10, 2017, the National Response Center received an anonymous report of an oil release occurring from the Site into the Indiana Ship Harbor Canal.

10. On January 11, 2017, the United States Environmental Protection Agency (U.S. EPA) was notified by the United States Coast Guard (USCG) that a sheen of oil had been observed from Outfall 001.

11. On January 12, 2017, U.S. EPA and IDEM On-Scene Coordinators (OSCs) deployed to the Site and observed a sheen of oil emanating from Outfall 001. At the time, Respondent had deployed booms to contain the sheen.

12. On January 30, 2017, February 1, 2017, February 20, 2017, March 1, 2017, May 4, 2017, June 14, 2017, July 7, 2017, and August 10, 2017, an IDEM OSC observed an oil sheen emanating from the Outfall 001 that was being captured by absorbent booms inside the steel weir.

13. U.S. EPA issued a Notice of Federal Interest to Respondent on February 6, 2017.

14. U.S. EPA took samples from Outfall 001 on three occasions that indicated the presence of oil.

15. Pursuant to 327 IAC 2-1.5-8(b)(1), all surface waters within the Great Lakes system at all times and at all places, including waters within the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges:

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; and
e. which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

As noted during the IDEM and U.S. EPA inspection on January 12, 2017 and eight (8) subsequent IDEM OSC observations between January 30, 2017 and August 10, 2017, Respondent allowed oil, from an unknown source, via Outfall 001, into the Indiana Harbor Ship Canal, a water of the state. The oil was in an amount sufficient to be unsightly or deleterious, that produced color, odor, or other conditions in such a degree to create a nuisance, and/or which was in amounts to be acutely toxic to, or otherwise severely injure or kill aquatic life, or other animals, plants, or humans, in violation of 327 IAC 2-1.5-8(b)(1).

16. Pursuant to IC 13-30-2-1, a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor either alone or in combination with contaminants from other sources, into the environment in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws.

As noted during the IDEM and U.S. EPA inspection on January 12, 2017 and eight (8) subsequent IDEM OSC observations between January 30, 2017 and August 10, 2017, Respondent discharged oil, from an unknown source, via Outfall 001, into the Indiana Harbor Ship Canal, in violation of 327 IAC 5-2-2 and 327 IAC 2-1.5-8(b)(1), rules of the water pollution control board, in violation of IC 13-30-2-1.

17. In recognition of the settlement reached, Respondent waives any right to administrative and judicial review of this Agreed Order.

## II. ORDER

1. This Agreed Order shall be effective (Effective Date) when it is adopted by Complainant or Complainant's delegate (as evidenced by signature), and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. In addition to addressing the violations cited in Paragraphs 15 through 16 of the Findings of Fact above, this Agreed Order also addresses any additional violations of these same rules that may have occurred subsequent to the January 10, 2017 U.S. EPA Inspection and prior to the Effective Date.

2. Immediately upon the Effective Date, Respondent shall determine the source(s) of the oil discharged from Outfall 001 and stop the discharge of oil from Outfall 001.

3. Immediately upon the Effective Date, Respondent shall take corrective actions to prevent future oil discharges from Outfall 001.

4. Immediately upon the Effective Date, Respondent shall implement the approved Compliance Plan and adhere to the included milestone dates in Section A and Section B (See Exhibit 1). Failure to meet any of the milestones in the approved plan will subject Respondent to stipulated penalties as described below.

5. Within thirty (30) calendar days from the Effective Date and every thirty (30) days thereafter, Respondent shall submit a written progress report. These reports must describe all significant developments during the preceding period, including work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

6. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

   Linda McClure, Enforcement Case Manager
   Office of Water Quality – IGCN 1255
   Indiana Department of Environmental Management
   100 North Senate Avenue
   Indianapolis, IN 46204-2251

7. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

| Paragraph | Violation | Stipulated Penalty |
|---|---|---|
| 4 | Failure to implement the approved Compliance Plan. | $1,000 per week, or part thereof. |
| 5 | Failure to submit a monthly progress report every thirty (30) calendar days. | $500 per week, or part thereof. |

8. Stipulated penalties shall be due and payable no later than the 30th day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30th day being a "Due Date." IDEM may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive IDEM's right to collect such stipulated penalty or preclude IDEM from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude IDEM from seeking additional relief against Respondent for a violation of this Agreed Order. Such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.

9. Stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2017-24517-W of this action and shall be mailed to:

   Office of Legal Counsel
   Indiana Department of Environmental Management
   IGCN, Rm N1307
   100 North Senate Avenue
   Indianapolis, IN 46204

10. This Agreed Order shall apply to and be binding upon Respondent and its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.

11. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance and any accrued interest at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. The interest shall continue to accrue on the first of each month until the civil penalty and any interest accrued are paid in full. Such interest shall be payable to the "Environmental Management Special Fund," and shall be payable to IDEM in the manner specified above.

12. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.

13. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.

14. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permit or any applicable Federal or State law or regulation.

15. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as

a result of Respondent's efforts to comply with this Agreed Order.

16. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the NOV.

17. Nothing in this Agreed Order shall prevent IDEM [or anyone acting on its behalf] from communicating with the U.S. EPA or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with EPA or any other agency or entity.

18. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: _____
Dave Tennis, Chief
Water Enforcement Section
Surface Water, Operations and
Enforcement Branch
Office of Water Quality

Date: _____

RESPONDENT:
ArcelorMittal Indiana Harbor, LLC

By: _____

Printed: _____

Title: _____

Date: _____

COUNSEL FOR RESPONDENT:

By: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT THIS _____ DAY OF _____, 20___.

For the Commissioner:

_____
Martha Clark Mettler
Assistant Commissioner
Office of Water Quality