U.S. Department of Justice

Environment and Natural Resources Division

90-5-2-1-06476/1

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 514-3446

CONFIDENTIAL SETTLEMENT COMMUNICATION

June 28, 2012

David W. Hacker
General Attorney
United States Steel Corporation
Law Department
600 Grant Street - Room 1500
Pittsburgh, PA 15219

VIA FED EX

Dear Mr. Hacker:

This letter is being sent pursuant to Paragraph 6 of the Third Tolling Agreement in this matter, to give notice of the termination of settlement discussions and to issue a demand letter prior to bringing suit on the United States' claims against U.S Steel Corporation ("U.S. Steel").[1]

As noted in the Third Tolling Agreement, the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), contends that it has causes of action pursuant to Sections 113 and 167 of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413 and 7477, against U.S. Steel for, *inter alia*, violations of the Prevention of Significant Deterioration and non-Attainment New Source Review provisions of the Act, 42 U.S.C. §§ 7470-92 and 7501-7515; National Emission Standards for Hazardous Air Pollutants provisions of the Act, 42 U.S.C. § 7412; Title V of the Act, 42 U.S.C. § 7661; and the State Implementation Plans adopted by the States of Indiana, Illinois and Michigan and approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, and implementing regulations, regarding the Gary Works Facility in Gary, Indiana; the Granite City Works Facility in Granite City, Illinois, and the Great Lakes Works Facility in Ecorse, Michigan.

On March 21, 2012, we met with you at EPA's Chicago office, along with State representatives from Indiana, Illinois and Michigan, to make a Power Point presentation outlining the alleged violations, as well as our proposed remedies for the violations should U.S. Steel wish to engage in productive settlement discussions rather than litigation. EPA had

[1] Relevant provisions of Paragraph 6 of the Third Tolling Agreement are as follows:

> Either Party may terminate settlement negotiations at any time upon provision of written notice. Upon termination of settlement negotiations, the United States may commence suit at any time, but not sooner than 30 days following provision of a demand letter by mail to and received by U.S. Steel. Where a Party elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for the duration set forth in Paragraph 1.

previously identified the alleged violations in NOVs issued to you on June 25, 2008, April 9, 2009 and June 17, 2011 (Gary Works); September 30, 2009 (Granite City Works); and September 30, 2009 and June 17, 2011 (Great Lakes Works). At the March 21 meeting, EPA signaled flexibility with regard to some of the proposed controls, such as the dry scrubbers to control SO_2, indicating that we would be open to alternative measures should U.S. Steel convince us of their feasibility and efficacy. Enclosed for your convenience is our March 21, 2012 Power Point presentation.

Following the meeting, counsel for U.S. Steel called us to state that the company was unwilling to negotiate a settlement unless, among other things, we took all of the NSR claims "off the table" before commencing formal settlement discussions. Over the last few months we have had several conversations with you in an attempt to address U.S. Steel's main concerns and make some accommodation for purposes of settlement. Ultimately, in a call on June 27, you stated that U.S. Steel's position remains unchanged. As the Tolling Agreement requires that a demand letter be sent and received 30 days before filing suit, we regrettably must terminate our informal settlement discussions and send you a demand letter. Barring a satisfactory response from you by July 13, we intend to file our action no later than August 1, 2012, in the U.S. District Court for the Northern District of Indiana. The States of Indiana, Michigan and Illinois intend to join the United States in this action as Co-Plaintiffs.

We did not provide you a penalty demand during the March 21 meeting, because we wanted to concentrate our initial discussions on injunctive relief. As you know, Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for the assessment of a civil penalty of up to $25,000 per day for each violation whenever any person violates any requirement of the Act. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2641, as amended by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701, required the U.S. EPA to adjust penalties for inflation on a periodic basis. Pursuant to 40 C.F.R. Part 19, the United States may seek civil penalties of up to $27,500 per day for each violation occurring January 31, 1997 through March 15, 2004; up to $32,500 per day for each violation occurring March 16, 2004 through January 12, 2009; and up to $37,500 per day for each violation occurring on or after January 13, 2009. At trial we will assess a penalty not greater than the statutory maximum amount, based on the penalty assessment criteria in 42 U.S.C. § 7413(e).

Although we wish that we had an opportunity to discuss EPA's penalty assessment in the context of a full exchange of information as part of on-going settlement discussions, the issuance of this demand letter necessitates the inclusion of a proposed penalty demand. Presently, the United States would be willing to settle the penalty claim for $39,517,500, in addition to an agreement for injunctive relief as outlined in our Power Point presentation of March 21 and enclosed herein. Also, one or more of the relevant States may have separate penalty and/or injunctive relief claims. As you know, any final agreement would need to be embodied in a consent decree approved by the U.S. Assistant Attorney General and other appropriate State and federal officials, and entered by the Court following public comment.

Please let me know no later than July 13th if U.S. Steel has changed its position and wishes to amicably resolve its long-standing violations of the Clean Air Act, by agreeing forthwith to engage in meaningful negotiations -- sans pre-conditions – on the basis of the proposed remedies identified in our March 21 presentation and the penalty demand in this letter.

Please feel me to call me if you have any questions about this matter.

Sincerely,

Arnold S. Rosenthal
Iva Ziza
Attorneys for the United States

Attachment

cc: Van Carson, Counsel for U.S. Steel (via fed ex)
Sabrina Argentieri, Counsel for EPA (via email)
Rob Thompson, Counsel for EPA (ditto)
Justin Barrett, Counsel for the State of Indiana (ditto)
Rachel Medina, Counsel for the State of Illinois (ditto)
Neil Gordon, Counsel for the State of Michigan (ditto)