

TRUSTEES RESPONSE TO COMMENTS

on the

**ASSESSMENT PLAN FOR THE NATURAL RESOURCE DAMAGE ASSESSMENT
(NRDA) OF THE EAST BRANCH LITTLE CALUMET RIVER/BURNS WATERWAY
AND ASSOCIATED LAKE MICHIGAN ENVIRONMENTS**

TRUSTEES' RESPONSE TO "PUBLIC COMMENTS OF CLEVELAND-CLIFFS STEEL LLC ON DRAFT ASSESSMENT PLAN FOR THE NATURAL RESOURCE DAMAGE ASSESSMENT (NRDA) OF THE EAST BRANCH LITTLE CALUMET RIVER/BURNS WATERWAY AND ASSOCIATED LAKE MICHIGAN ENVIRONMENTS"

On June 8, 2021, Cleveland Cliffs Burns Harbor LLC (CCBH) submitted comments on the Trustees' Assessment Plan (Plan) issued on May 10, 2021, as part of the NRDA for natural resource injuries resulting from CCBH's permit exceedances into the Little Calumet/Burns Harbor Waterway in August 2019. Attached is an updated map showing CCBH's outfalls 011 and 001; this map comes from CCBH's most recent NPDES permit application. The following provides the Trustees' response to CCBH's comments, which have been grouped into two categories.

Issue No. 1-Scope of the NRDA

CCBH states that the Plan "goes far beyond what is necessary or appropriate to assess the extent of natural resource injuries and service losses and thus natural resource damages that resulted from the August 2019 releases of ammonia and cyanide that were the subject of the Preassessment Screen issued in October 2020." Comments of CCBH (Comments) at 1. Further, CCBH comments that "the NRDA should be focused on the impacts of the specific releases of ammonia and cyanide into the EBLCR from the ArcelorMittal Burns Harbor facility in August 2019." Comments at 2. CCBH notes that NRDA's goals of conducting a "cost-effective" damage assessment will not be met with "a broader evaluation of the assessment area unrelated to the August 2019 releases." Comments at 2. CCBH states that "injured resources and their services have or likely have returned to the baseline condition" following the acute August 2019 releases, and therefore a claim for damages to restore resources beyond addressing the interim losses is not appropriate for the NRDA. Comments at 3-4.

Response:

Notwithstanding CCBH's interpretation of the Plan, it is appropriately tailored to the Trustees' needs with respect to assessing the extent of the injuries that occurred because of the August 2019 releases, including an understanding of the of the systems that surround and support the area where the releases occurred. As the NRDA process moves forward, it is important that the Trustees have information related to the health and condition of the relevant area so that appropriate and cost-effective restoration alternatives can be identified and ultimately implemented. *See e.g.*, 43 C.F.R. 11.82(a) (requiring the identification of restoration alternatives to achieve baseline restoration, rehabilitation, replacement, and or acquisition of equivalent natural resources). To simply assess what occurred in August 2019 while turning a blind eye to the condition of the environments surrounding the releases, including any past and residual impacts occurring in the assessment area, would be inconsistent with the NRDA process and ultimately an ineffective expenditure of resources as restoration alternatives are identified and implemented. *See generally*, 43 CFR 11.82; 43 CFR 11.93. The Plan provides the necessary information and clarity to allow the Trustees to pursue assessment of injuries to the resources because of the August 2019 releases, including an understanding of the systems and environments surrounding the area where the releases occurred.

Issue No. 2-Self Reporting of Permit Exceedances

CCBH comments that the NRDA for this matter was initiated and the Preliminary Assessment Screen was issued “in response to releases of ammonia and cyanide in excess of the applicable wastewater permit effluent limitations by the Cleveland Cliffs Burns Harbor LLC (f/k/a ArcelorMittal Burns Harbor) facility **that were self-reported in August 2019.**” Comments at 1 (emphasis).

Response:

While CCBH eventually reported cyanide and ammonia exceedances in August 2019, the regulatory agencies first learned of the August 2019 incident when citizens reported dead fish in the East Branch of the Little Calumet River on August 12 and 13. An Indiana Department of Environmental Management investigation revealed the operational and equipment failures that led to the significant permit exceedances at the facility.

TRUSTEES’ RESPONSE TO CORRESPONDENCE RECEIVED FROM THE GENERAL PUBLIC ON THE ASSESSMENT PLAN

On May 13, 2021, the Trustees received electronic correspondence regarding the Assessment Plan. The correspondence noted pollution occurring in area waterways and Lake Michigan and urged more protection for these areas. The correspondence also noted several aspects of industrial activity in the area, including how government agencies are not doing enough to protect the environment.

Response:

The Trustees thank the member of the public for his comment. One of the primary duties of Trustees under CERCLA is to assess the extent of injuries to natural resources and determine appropriate restoration and compensation for those injuries. The NRDA for the CCBH incident referred to in the Assessment Plan is ongoing. As appropriate and pursuant to CERCLA, the public will be provided the opportunity to participate in the process going forward.

MAP INDICATING CCBH'S OUTFALL LOCATIONS

FIGURE R10-2



Green box	White box
Green box	White box
Green box	White box
Green box	White box
Green box	White box
Green box	White box
Green box	White box
Green box	White box
Green box	White box
Green box	White box

L. Michigan Intake Cribs

Outfall 002

Outfall 011

Outfall 001

CLIFFS Cleveland-Cliffs <small>CLEVELAND-CLIFFS INC.</small> Burns Harbor LLC	
SECTION 316(b) CWIS POSSIBLE LOCATIONS OF MECHANICAL DRAFT COOLING TOWERS (MDCTs)	DWG. DATE: 12/28/20 REVISION: 0

SUBMITTED COMMENTS

**PUBLIC COMMENTS OF CLEVELAND-CLIFFS STEEL LLC ON
DRAFT ASSESSMENT PLAN FOR THE NATURAL RESOURCE DAMAGE
ASSESSMENT (NRDA) OF THE EAST BRANCH LITTLE CALUMET RIVER/BURNS
WATERWAY AND ASSOCIATED LAKE MICHIGAN ENVIRONMENTS**

On October 1, 2020, the United States Fish and Wildlife Service (USFWS), the National Park Service (NPS), the Indiana Department of Environmental Management (IDEM), and the Indiana Department of Natural Resources (IDNR), collectively referred to as the Trustees, issued a “Preassessment Screen and Determination” for the East Branch of the Little Calumet River (EBLCR)/Burns Waterway in Porter County, Indiana. This Preassessment Screen was conducted in response to releases of ammonia and cyanide in excess of the applicable wastewater permit effluent limitations by the Cleveland Cliffs Burns Harbor LLC (f/k/a ArcelorMittal Burns Harbor) facility that were self-reported in August 2019. The Preassessment Screen identified natural resources and their services that were potentially affected by these releases, including “surface water, sediments, state and federal wildlife, and biota including fish and macroinvertebrates.” It also identified potential impacts from the August 2019 releases to “sport fishing, boating, other recreational uses, tourism, and passive values provided by wildlife areas, parks, waterways, and a healthy ecosystem.” Evidence of harmed resources and services cited by the Trustees included the loss of approximately 2,900 (as calculated using an applied expansion factor) fish following the releases and temporary closure of multiple nearby beaches.

On May 10, 2021, the Trustees issued for public comment a draft Assessment Plan (dated February 2021) for the natural resource damage assessment (NRDA) of the EBLCR, Burns Waterway, and associated Lake Michigan environments. Cleveland-Cliffs looks forward to working with the Trustees in a cooperative and science-based approach to determine the extent of natural resource damages (NRD) that resulted from the August 2019 releases. The draft Assessment Plan, however, in many respects goes far beyond what is necessary or appropriate to assess the extent of natural resource injuries and service losses and thus natural resource damages that resulted from the August 2019 releases of ammonia and cyanide that were the subject of the Preassessment Screen issued in October 2020.

I. Comments to Chapter 2 – Entitled “Background Information”

The draft Assessment Plan follows the structure of the U.S. Department of the Interior’s NRDA regulations in 43 CFR Part 11, including procedures for injury determination, service reduction quantification, and damage determination. Much of the draft Assessment Plan, including the section entitled “Background Information,” gives the impression that the assessment will constitute an NRDA under those regulations for the whole EBLCR based on historical releases of hazardous substances and oil from a variety of sources – i.e., a typical NRDA for an industrial area with multiple historical sources. For example, the draft Assessment Plan’s descriptions of the (1) geographic scope of the assessment area, (2) industrial development within that area (including the identification of potentially responsible parties (PRPs)), (3) hazardous substances and oil present in that area, and (4) natural resources in that area (pages 11-20 of draft plan), all suggest that the assessment is designed to broadly evaluate any and all impacts from releases of various contaminants from any source over time. Indeed, the draft Assessment Plan states that the Trustees are “concerned that natural resources in the

assessment area may have been exposed to a variety of oils and hazardous substances” and that the NRDA is intended “to assess the cumulative injuries resulting from exposure to multiple contaminants” (page 20). That scope is overbroad. Consistent with the limited short-term releases from a single source that triggered the need for the NRDA and with the Trustees’ own Preassessment Screen, the NRDA should be focused on the impacts of the specific releases of ammonia and cyanide into the EBLCR from the ArcelorMittal Burns Harbor facility in August 2019.

II. Comments to Chapter 3 – Entitled “Injury Determination and Quantification”

a. Injury Determination (Tasks 1 to 4)

The first step identified in the draft Assessment Plan – the injury determination phase – does not appear to limit the assessment to determining the injuries resulting from the August 2019 releases of ammonia and cyanide, as provided for in the Preassessment Screen. For example, the draft plan includes broad statements well beyond the scope of the Preassessment Screen, which focused on the August 2019 event. The draft Assessment Plan states that the evaluation “will be based on a review of available information documenting past and current operating and disposal practices, as well as information regarding regulatory enforcement actions, at the facilities located within the assessment area” (page 23). While the draft Assessment Plan properly recognizes that injuries should be measured from the baseline conditions of the injured resources, it does not explicitly define baseline conditions as the conditions had the specific August 2019 releases not occurred. Instead, the NRDA states that the baseline conditions should take into account the impacts of all other releases and industrial activity.

The draft Assessment Plan’s discussions of the Trustees’ plans to determine injuries to the various types of resources – i.e., surface water, sediment, benthic invertebrates, and fish (pages 24-32) – all indicate a focus on determining general injuries in the assessment area, not those that specifically resulted from the August 2019 releases compared to baseline. As a threshold matter, we agree with the draft Assessment Plan that the Trustees should maximize the use of existing data, including those being gathered by the PRP in ongoing investigations. But, the Trustees also indicate that it intends to collect additional data, such as sampling of sediment and soil and performance of toxicity tests without explaining how these data will be used to determine the specific injuries from the August 2019 ammonia and cyanide releases. Although difficult to decipher from the report, our understanding is that these data will most likely be used to determine impacts of nearby industrial activities on the assessment area more broadly, such as impacts from oil and metals, to evaluate baseline conditions (i.e., those that would have been present in the area in the absence of the August 2019 ammonia and cyanide releases) and feasible restoration options, if appropriate. We believe the injuries from the August 2019 releases can simply be determined by identifying any changes from the baseline conditions that were caused by those releases. We do not see how conducting a broader evaluation of the assessment area unrelated to the August 2019 releases furthers the NRDA’s goal of a “cost-effective” damage assessment.

b. Injury Quantification (Pgs. 34-38)

Upon completion of the injury determination phase, the draft Assessment Plan states that the Trustees will attempt to quantify the effect of the discharges on the services provided by those injured natural resources. Again, the draft Assessment Plan does not make clear that this quantification phase should be related to the August 2019 releases by comparing the post-release level of services to the injured natural resources' baseline services, which comprise of "conditions that would have been expected at the assessment area had [the August 2019 releases] not occurred, taking into account both natural processes and those that are the result of human activities" (43 CFR 11.72(b)(1)). The draft Assessment Plan's discussion of the lost human uses of recreational resources (pages 34-35) is more appropriately focused on the specific August 2019 releases in question than prior sections of the plan. But, the sections entitled "Injuries to Surface Water and Geologic Resources" and "Injuries to Biological Resources" do not appear to limit their scope to just the August 2019 releases.

III. Comments to Chapter 4 - Entitled "Damage Determination"

The final phase of an NRDA is the damage determination phase, which should estimate the monetary damages resulting from the August 2019 ammonia and cyanide wastewater discharges based on information derived in the prior phases. In describing this phase, the draft Assessment Plan indicates that the NRDA will first identify restoration alternatives and then select a restoration option that will return the natural resources and their services to their baseline conditions (pages 40-42). It further states that the costs of this primary restoration will be a key component of the NRD calculation. This approach, however, fails to consider that the injured resources and their services have already returned to the baseline condition. The acute nature of the August 2019 releases, coupled with the passage of time, suggests that the affected resources likely would have already recovered to baseline conditions (or that, if not, the costs of such restoration would be only a very minor component of the NRD). The damages should be based on "compensable value" – namely, the value of the natural resource services lost or impaired during the period between the releases and the recovery of those services to their baseline condition.

The draft Assessment Plan discusses the economic techniques that will be used to assess compensable value – namely, compensation for the interim loss of recreational use at Indiana Dunes National Park, the interim loss of fishing opportunities, and the interim loss of natural resource habitat services (pages 43-46). This discussion focuses on the appropriate basis for NRD. We do not believe that damages should be based on primary restoration unless it is determined that there are any natural resource services that have not already returned to their baseline condition (i.e., their condition in the absence of the specific August 2019 releases).

IV. Conclusion

The Preassessment Screen identified the ammonia and cyanide released in wastewater into the EBLCR in August 2019 as the contaminants of concern for this NRDA. However, based on communication with the Trustees, we understand that other hazardous substances such as metals and oil may also be sampled so that potential natural resource restoration activities can be

fully evaluated in light of potential impacts by historical releases that are part of baseline conditions and are not directly addressed in the injury determination and quantification phases. Moreover, even though the ammonia and cyanide releases that occurred in August 2019 are not anticipated to persist in the environment, our understanding is that the assessment will evaluate soil and sediment contamination and its potential impact on invertebrate communities. The objective of soil and sediment sampling and evaluation of invertebrate communities should not be to identify resource injuries that need to be addressed through restoration efforts under this NRDA, such as through the use of dredging. Instead, the objective should be to assess the chemical suitability of the substrate for certain types of potential restoration/enhancement activities that may be funded by the damages recovered, such as construction of mussel habitat. In order for the NRDA to be cost-effective, we understand that these evaluations may occur concurrently, particularly given that significant portions of the injury determination and quantification phases may rely on existing data.

In short, the purpose of these investigation activities, including sampling for additional chemical parameters and evaluation of certain environmental media, should be to help identify any potential impacts from the August 2019 releases as compared to baseline and to consider what type of restoration projects may be appropriate given the industrial nature of the surrounding area. This purpose, however, is not made sufficiently clear in the draft Assessment Plan. Without the benefit of additional context not currently provided in the Plan, the scope of the investigation would appear to be unnecessarily broad to evaluate potential damages associated with the August 2019 releases.

[EXTERNAL] Re: Government seeks input on plan to assess damage from spills into Porter County waterways

Jon Miller <[REDACTED]>

Thu 5/13/2021 11:19 PM

To: Remek, Anne <aremek@idem.in.gov>; Sparks, Daniel <daniel_sparks@fws.gov>

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I think it is complete and total bullshit that these corporations are allowed to dump ANY toxic waste into our waterways and into Lake Michigan. What kind of horseshit is it that they are allowed to dump toxic waste at all? You don't think it accumulates over time??? It is ridiculous that they only get in trouble when they exceed a limit. The limit should be 0. The water is a public resource and they have no right to do that. I am sick and tired of feckless organizations like IDEM doing nothing about this. I don't know who is heading it now, but, it used to be a former US Steel manager. That is blatant corruption if you ask me. You should do something about the giant flame coming out of the steel mill 24/7 too. I have reported this before and you don't do jack shit about it. Why should I conserve or do anything to help the environment and combat global warming when these scumbags do that? How much CO2 is that pumping out? Expect things to get worse because we have a completely feckless and corrupt government who never holds these polluters accountable. As far as I'm concerned, IDEM is a joke. You let the corporations do whatever they want. The politicians are all a bunch of bought criminal goons also.

Jon