

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,
STATE OF INDIANA,
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, and
STATE OF ILLINOIS

Plaintiffs,

v.

UNITED STATES STEEL
CORPORATION,

Defendant.

CASE NO.: 2:12-cv-304

ORDER

On April 10, 2019, the parties filed a Stipulation for First Modification of Consent Decree. [DE 142.] The Court previously had entered a Consent Decree in this case on March 30, 2017 [DE 135.] In doing so, the Court found the proposed Consent Decree, which served to end this long-running environmental litigation related to alleged violations of the Clear Air Act, to be reasonable. [*Id.*] For similar reasons, and because as the parties note that the modification sought is a non-material modification of the Consent Decree, I will approve the modification sought by the parties.

ACCORDINGLY: The Consent Decree [DE 135-1] is HEREBY MODIFIED in accordance with the terms contained within the parties Stipulation for First Modification of Consent Decree [DE 142] and attached hereto.

SO ORDERED on April 15, 2019.

/s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT

WHEREAS, under the School Lighting Replacement SEP, U. S. Steel is required to identify public schools in certain designated areas near the Gary Works and Great Lakes Works Facilities that use lighting ballasts containing PCBs, remove and properly dispose of such ballasts, and replace them with energy efficient, non-toxic bulbs;

WHEREAS, under the Consent Decree, the deadline to complete the School Lighting Replacement SEP is March 30, 2019;

WHEREAS, U. S. Steel has completed the part of the SEP requiring removal and replacement of PCB-containing ballasts in public schools within the Gary Community Schools Corporation in Gary, Indiana, near the Gary Works Facility, by the Consent Decree deadline;

WHEREAS, on February 21, 2019, U. S. Steel wrote EPA, the U. S. Department of Justice (DOJ) and MDEQ, explaining that U. S. Steel could not complete that part of the SEP requiring removal and replacement of PCB-containing ballasts in public schools in designated Michigan areas near the Great Lakes Works Facility, due primarily to the lack of PCB-containing ballasts within the public schools located in the designated Michigan areas identified in Appendix A, namely Ecorse, River Rouge and Southwest Detroit;

WHEREAS, in conversations among EPA, DOJ, and MDEQ, U. S. Steel explained that, despite diligent efforts during the last two years, its contractor was not able to locate any public schools in the designated areas -- Ecorse, River Rouge and Southwest Detroit -- in which PCB-containing lighting ballasts have not yet been removed and replaced with energy-efficient bulbs;

WHEREAS, U. S. Steel's contractor located two public schools within the Detroit area (albeit not Southwest Detroit) in which PCB-containing lighting ballasts have not yet been removed and replaced with energy-efficient bulbs, and, further, located five public recreation

centers in the Detroit area in which PCB-containing lighting ballasts have not yet been removed and replaced with energy-efficient bulbs;

WHEREAS, due to the infeasibility of completing the SEP in accordance with the requirements of Appendix A, U. S. Steel desired to perform another SEP as closely related as possible to the original SEP;

WHEREAS, U. S. Steel proposed, based on its contractor's recommendation, a variation of the original SEP for the Parties' consideration, in which U. S. Steel would remove and replace PCB-containing lighting fixtures in two public schools and five public recreation centers in the Detroit area;

WHEREAS, the Parties believe that the revised proposal maintains the spirit of the original SEP inasmuch as public facilities, serving both children and adults in mostly low-income, minority-populated areas, will be retrofitted to benefit public health and the environment for citizens in the general area of the Great Lakes Works Facility; and

WHEREAS, U. S. Steel believes that the revised proposal can be completed within one year from the original March 30, 2019 deadline, and the Parties believe that it is reasonable under the circumstances for U. S. Steel to be granted a one-year extension, until March 30, 2020, to complete the revised project.

WHEREAS, the Parties hereby stipulate to the revised joint federal/state School and Recreation Center Lighting Replacement SEP in Part II of Appendix A, agreeing that such a revision is a non-material modification of the Consent Decree under Paragraph 112 of the Decree, as follows:

Redlined Version of Modified School Lighting Replacement SEP, Renamed School and Recreation Center Lighting Replacement SEP, Showing Changes from the Original

II. Replacement of Lighting Ballasts and Light Bulbs in Public Schools in Gary, Indiana and in Public Schools and Public Recreation Centers in Detroit/Ecorse/River Rouge, Michigan

A. U. S. Steel shall provide for the removal and proper disposal of fluorescent lighting ballasts that may contain polychlorinated biphenyls (PCBs) and the replacement and installation of new energy-efficient, PCB-free replacement lighting ballasts and light bulbs for public schools within the Gary Community Schools Corporation, in Gary, Indiana, and public schools and public recreation centers in Ecorse, River Rouge, and/or ~~Southwest~~ Detroit in Michigan (“School and Recreation Center Lighting Replacement SEP”). The focus of the School and Recreation Center Lighting Replacement SEP is to protect the environment and public health by facilitating the safe identification, removal, and disposal of energy-inefficient lighting ballasts that may contain PCBs, and their replacement with energy efficient, non-toxic alternative lighting fixtures. The School and Recreation Center Lighting Replacement SEP shall: seek to reduce the use of lighting ballasts that may contain PCBs in schools housing children (persons under the age of 18), ~~including~~ day-care centers, ~~and~~ early childhood centers and/or recreation centers; ensure that equipment that may contain PCBs that is removed in this project is handled and disposed (removed from commerce) in accordance with applicable federal regulations under 40 C.F.R. Part 761; and reduce energy demand through installation of energy-efficient lighting that contributes towards reduction in compounded toxics in the energy sector.

B. U. S. Steel shall expend \$500,000 to implement this SEP for public schools in Gary, Indiana, and \$500,000 to implement this SEP for public schools and public recreation centers in Ecorse, River Rouge, and/or ~~Southwest~~ Detroit, Michigan.

C. U. S. Steel shall consult with the Gary Community Schools Corporation with respect to public schools in Gary, Indiana, and the City of Detroit General Services Department, the Detroit Public Schools Community District, and the Michigan Agency for Energy with respect to public schools and public recreation centers in Ecorse, River Rouge, and/or ~~Southwest~~ Detroit, Michigan, to identify and prioritize schools and/or recreation centers that will receive lighting ballast replacements due to the presence at such schools and recreation centers of lighting ballasts that may contain PCBs (likely for schools built before 1979 that have not had extensive lighting retrofits ~~since-between~~ 1979 and 1990 and are using T-12 magnetic lighting ballasts). Priority for lighting ballast replacement in schools should be given to those schools with a significant number of students who qualify for a reduced or free lunch program.

D. All replacement lighting ballasts and light bulbs shall be electronic and shall have an energy efficiency that is equivalent to or better than T-8 (based on energy efficiency standards set by the U. S. Department of Energy) with preference given to LED light fixtures, if feasible.

E. Lighting ballasts removed under this SEP shall be assumed to have PCB waste and shall be properly disposed of in accordance with 40 C.F.R. Part 761, unless such ballasts are clearly marked or labeled to have no PCBs.

F. The School and Recreation Center Lighting Replacement SEP in Gary shall be completed within two years after the Effective Date, provided that this date may be extended by mutual agreement of U. S. Steel, the United States, and Indiana, ~~and the Michigan Department of Environmental Quality~~ in writing. The School and Recreation Center Lighting Replacement SEP in Michigan shall be completed by March 30, 2020,

provided that this date may be extended by mutual agreement of U. S. Steel, the United States and the Michigan Department of Environmental Quality in writing.

G. In addition to the information specified in Paragraph 47 of the Decree, U. S. Steel shall provide in the School and Recreation Center Lighting Replacement SEP Completion Report:

- i. A detailed description of the School and Recreation Center Lighting Replacement SEP as completed, including the identification of the schools and/or recreation centers addressed under this Joint SEP along with the number of students and locations of the schools and/or recreation centers, a list of the expenditures of funds, and the number of fixtures with replaced lighting at each school or recreation center;
- ii. A description of the replacement lighting, including information on expected energy savings, if available; and
- iii. Records demonstrating that the lighting ballasts were properly disposed of in accordance with 40 C.F.R. Part 761.

Clean Version of Modified School Lighting Replacement SEP, renamed School and Recreation Center Lighting Replacement SEP

II. Replacement of Lighting Ballasts and Light Bulbs in Public Schools in Gary, Indiana and in Public Schools and Public Recreation Centers in Detroit/Ecorse/River Rouge, Michigan

A. U. S. Steel shall provide for the removal and proper disposal of fluorescent lighting ballasts that may contain polychlorinated biphenyls (PCBs) and the replacement and installation of new energy-efficient, PCB-free replacement lighting ballasts and light bulbs for

public schools within the Gary Community Schools Corporation, in Gary, Indiana, and public schools and public recreation centers in Ecorse, River Rouge, and/or Detroit in Michigan (“School and Recreation Center Lighting Replacement SEP”). The focus of the School and Recreation Center Lighting Replacement SEP is to protect the environment and public health by facilitating the safe identification, removal, and disposal of energy-inefficient lighting ballasts that may contain PCBs, and their replacement with energy efficient, non-toxic alternative lighting fixtures. The School and Recreation Center Lighting Replacement SEP shall: seek to reduce the use of lighting ballasts that may contain PCBs in schools housing children (persons under the age of 18), day-care centers, early childhood centers and/or recreation centers; ensure that equipment that may contain PCBs that is removed in this project is handled and disposed (removed from commerce) in accordance with applicable federal regulations under 40 C.F.R. Part 761; and reduce energy demand through installation of energy-efficient lighting that contributes towards reduction in compounded toxics in the energy sector.

B. U. S. Steel shall expend \$500,000 to implement this SEP for public schools in Gary, Indiana, and \$500,000 to implement this SEP for public schools and public recreation centers in Ecorse, River Rouge, and/or Detroit, Michigan.

C. U. S. Steel shall consult with the Gary Community Schools Corporation with respect to public schools in Gary, Indiana, and the City of Detroit General Services Department, the Detroit Public Schools Community District, and the Michigan Agency for Energy with respect to public schools and public recreation centers in Ecorse, River Rouge, and/or Detroit, Michigan, to identify and prioritize schools and/or recreation centers that will receive lighting ballast replacements due to the presence at such schools and recreation centers of lighting ballasts that may contain PCBs (likely for schools built before 1979 that have not had extensive

lighting retrofits between 1979 and 1990 and are using T-12 magnetic lighting ballasts). Priority for lighting ballast replacement in schools should be given to those schools with a significant number of students who qualify for a reduced or free lunch program.

D. All replacement lighting ballasts and light bulbs shall be electronic and shall have an energy efficiency that is equivalent to or better than T-8 (based on energy efficiency standards set by the U. S. Department of Energy) with preference given to LED light fixtures, if feasible.

E. Lighting ballasts removed under this SEP shall be assumed to have PCB waste and shall be properly disposed of in accordance with 40 C.F.R. Part 761, unless such ballasts are clearly marked or labeled to have no PCBs.

F. The School and Recreation Center Lighting Replacement SEP in Gary shall be completed within two years after the Effective Date, provided that this date may be extended by mutual agreement of U. S. Steel, the United States and Indiana in writing. The School and Recreation Center Lighting Replacement SEP in Michigan shall be completed by March 30, 2020, provided that this date may be extended by mutual agreement of U. S. Steel, the United States and the Michigan Department of Environmental Quality in writing.

G. In addition to the information specified in Paragraph 47 of the Decree, U. S. Steel shall provide in the School and Recreation Center Lighting Replacement SEP Completion Report:

- i. A detailed description of the School and Recreation Center Lighting Replacement SEP as completed, including the identification of the schools and/or recreation centers addressed under this Joint SEP along with the number of students and locations of the schools and/or recreation centers, a list of the expenditures of funds, and the number of fixtures with replaced lighting at each school or recreation center;

- ii. A description of the replacement lighting, including information on expected energy savings, if available; and
- iii. Records demonstrating that the lighting ballasts were properly disposed of in accordance with 40 C.F.R. Part 761.

WHEREAS, under the Consent Decree, one of the Illinois State-only Supplemental Environmental Projects, described in Part III of Appendix B of the Consent Decree, applicable to the Granite City Works Facility, is the Granite City Greenway Project;

WHEREAS, in accordance with the Granite City Greenway Project, U. S. Steel was to provide for funding for the creation of a greenway, including tree planting and other landscaping, along the Nameoki Ditch and other areas within Granite City, and the creation and maintenance of a transit bike trail as part of the greenway;

WHEREAS, under the Consent Decree, the deadline to complete the Granite City Greenway Project is March 30, 2019;

WHEREAS, in the course of designing the project, it became apparent that the creation of a greenway, including tree planting and a transit bike trail, would be detrimental to maintaining the integrity of the levees that were located in the area along and near the Nameoki Ditch, and therefore it was infeasible to perform the Granite City Greenway Project;

WHEREAS, due to the infeasibility of completing the Granite City Greenway Project in accordance with the requirements of Appendix B, U. S. Steel desired to perform another Illinois State-only SEP as closely related as possible to the original SEP;

WHEREAS, U. S. Steel, after consulting with the Granite City Parks and Recreation Department, proposed a variation of the original project for the Parties' consideration, consisting

of funding for the planting of trees and related tree maintenance in several park areas within the Granite City Park District;

WHEREAS, the State of Illinois and U. S. Steel believe that the revised proposal maintains the spirit of the original SEP inasmuch as tree planting and related tree maintenance in several park areas within the Granite City Park District will benefit public health and the environment for citizens in the general area of the Granite City Works Facility; and

WHEREAS, U. S. Steel believes that the revised proposal can be completed by January 31, 2020, and the State of Illinois believes that it is reasonable under the circumstances for U. S. Steel to be granted a ten-month extension, until January 31, 2020, to complete the revised project.

WHEREAS, the Parties hereby stipulate to the revised Illinois State-only SEP, the Granite City Tree-Planting Project, in Part III of Appendix B, agreeing that such a revision is a non-material modification of the Consent Decree under Paragraph 112 of the Decree, as follows:

Redlined Version of Modified Granite City Greenway Project, Renamed Granite City Tree-Planting Project, Showing Changes from the Original

III. ILLINOIS – Granite City ~~Greenway Tree Planting~~ Project

A. U. S. Steel shall provide funding to the City of Granite City Parks and Recreation Department for ~~the creation of a greenway consisting of~~ tree planting and related tree maintenance in several ~~other landscaping along the Nameoki Ditch and other~~ areas, ~~if appropriate,~~ within the Granite City Park District, ~~and the creation and maintenance of a transit bike trail as part of the greenway~~ (Granite City ~~Greenway Tree Planting~~ Project).

B. U. S. Steel shall expend \$50,000 on the implementation of this Project.

C. U. S. Steel shall make the funding contingent on:

- i. the funds being spent by no later than ~~two years from the Effective Date~~ January 31, 2020; and
- ii. the recipient providing sufficient documentation to identify the locations and contents of all activities associated with the ~~greenway tree planting project~~.

D. The Granite City ~~Greenway Tree Planting~~ Project shall be complete upon the State's approval of the Completion Report for this Project and U. S. Steel's meeting all other conditions of Paragraph 50.

Clean Version of Modified Granite City Greenway Project, renamed Granite City Tree-Planting Project

III. ILLINOIS – Granite City Tree Planting Project

A. U. S. Steel shall provide funding to the City of Granite City Parks and Recreation Department for tree planting and related tree maintenance in several areas within the Granite City Park District (Granite City Tree Planting Project).

B. U. S. Steel shall expend \$50,000 on the implementation of this Project.

C. U. S. Steel shall make the funding contingent on:

- i. the funds being spent by no later than January 31, 2020; and
- ii. the recipient providing sufficient documentation to identify the locations and contents of all activities associated with the tree planting project.

D. The Granite City Tree Planting Project shall be complete upon the State's approval of the Completion Report for this Project and U. S. Steel's meeting all other conditions of Paragraph 50.

THEREFORE, by this Stipulation, the Parties hereby agree to this First Modification of the Consent Decree as set forth above.

Respectfully submitted,

FOR THE UNITED STATES

KAREN S. DWORKIN
Deputy Section Chief

s/ Arnold S. Rosenthal
ARNOLD S. ROSENTHAL
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D. D. 20044-7611
(202) 514-3446

OF COUNSEL

TOM MARTIN
Associate Regional Counsel
U. S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, IL 60604

FOR THE MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

DANA NESSEL
Michigan Attorney General

s/ Neil D. Gordon
NEIL D. GORDON
Assistant Attorney General
Michigan Department of Attorney General
Environment, Natural Resources, and Agriculture
Division
P.O. Box 30755
Lansing, MI 48909
Tel: (517) 335-7664

s/ Mary Ann Dolehanty
MARY ANN DOLEHANTY
Director, Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, MI 48909
Tel: (517) 284-6791

FOR THE STATE OF ILLINOIS

KWAME RAOUL, Attorney General
of the State of Illinois

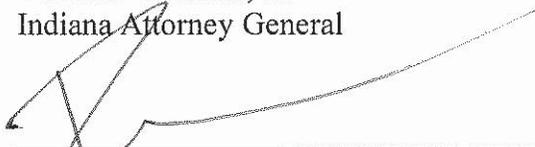
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

s/ Elizabeth Wallace
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

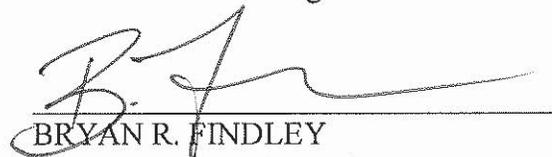
FOR THE STATE OF INDIANA

ON BEHALF OF THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT:

CURTIS T. HILL, Jr.
Indiana Attorney General



PATRICIA ORLOFF ERDMANN
Chief Counsel of Litigation



BRYAN R. FINDLEY
Deputy Attorney General
Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 W. Washington St.
Indianapolis, IN 46204-2770

FOR U. S. STEEL CORPORATION

s/ David W. Hacker
DAVID W. HACKER
Senior Counsel - Environmental
United States Steel Corporation
600 Grant Street, Suite 1500
Pittsburgh, PA 15219

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2019, a copy of the foregoing First Modification of Consent Decree was filed electronically. Notice of this filing will be automatically sent to counsel of record on the ECF system.

s/ Arnold S. Rosenthal
Arnold S. Rosenthal
U. S. Department of Justice