

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**



In the Matter of:	)	Docket No. CAA-05-2024-0022
	)	
Cleveland-Cliffs Burns Harbor LLC	)	Proceeding to Assess a Civil Penalty
Burns Harbor, Indiana	)	Under Section 113(d) of the Clean Air Act,
	)	42 U.S.C. § 7413(d)
Respondent.	)	
_____	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Cleveland-Cliffs Burns Harbor LLC (Burns Harbor), formerly known as ArcelorMittal Burns Harbor LLC, a corporation doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Integrated Iron and Steel at 40 C.F.R. §§ 63.7780 through 63.7852.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 63.7780 through 63.7852 by May 22, 2006.

11. The NESHAP for Integrated Iron and Steel applies to, among other things, basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility.

12. Subpart FFFFF at 40 C.F.R. § 63.7781 provides that you are subject to this subpart if you own or operate an integrated iron and steel manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAP) emissions. Your integrated iron and steel manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

13. Subpart FFFFF at 40 C.F.R. § 63.7782, among other things, applies to each new and existing affected source, including a basic oxygen process furnace (BOPF) shop, at an integrated iron and steel manufacturing facility. A BOPF shop, among other things, is considered existing if you commenced construction or reconstruction of the affected source before July 13, 2001.

14. Subpart FFFFF at 40 C.F.R. § 63.7790(a), requires that you must meet each emission limit and opacity limit in Table 1 to Subpart FFFFF that applies to you.

15. Table 1 of Subpart FFFFF requires, among other things, that for each existing BOPF shop, you must not cause to be discharged to the atmosphere any secondary emissions that exit an opening in the BOPF shop or any other building housing the BOPF or BOPF shop operation that exhibits opacity greater than 20 percent (3-minute average).

16. Subpart FFFFF at 40 C.F.R. § 63.7790(b), requires you must meet each operating limit for capture systems and control devices in paragraphs (b)(1) through (3) of this section that applies to you.

17. Subpart FFFFF at 40 C.F.R. § 63.7790(b)(1), requires, among other things, you must operate each capture system applied to emissions from secondary emissions from a BOPF at or above the lowest value or settings established for the operating limits in your operation and maintenance plan.

18. Subpart FFFFF at 40 C.F.R. § 63.7800(a), requires you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the requirements in § 63.7810(d).

19. Subpart FFFFF at 40 C.F.R. § 63.7800(b), requires you must prepare and operate at all times according to a written operation and maintenance plan for each capture system or control device subject to an operating limit in § 63.7790(b). Each plan must address the elements in paragraphs (b)(1) through (7) of this section.

20. Subpart FFFFF at 40 C.F.R. § 63.7800(b)(1), requires monthly inspections of the equipment that is important to the performance of the total capture system (*e.g.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance

of the equipment (*e.g.*, presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). The operation and maintenance plan also must include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

21. Subpart FFFFF at 40 C.F.R. § 63.7800(b)(2), requires preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

22. Subpart FFFFF at 40 C.F.R. § 63.7800(b)(3), requires, among other things, operating limits for each capture system are applied to secondary emissions from a BOPF.

23. Subpart FFFFF at 40 C.F.R. § 63.7800(b)(4) requires, among other things, corrective action procedures for baghouses equipped with bag leak detection systems or continuous opacity monitoring systems (COMS).

24. Subpart FFFFF at 40 C.F.R. § 63.7800(b)(5) requires corrective action procedures for venturi scrubbers equipped with continuous parameter monitoring systems (CPMS). In the event a venturi scrubber exceeds the operating limit in § 63.7790(b)(2), you must take corrective actions consistent with your site-specific monitoring plan in accordance with § 63.7831(a).

25. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.

26. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. *See 57 Fed. Reg.* 32250 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

27. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

28. On December 4, 2001, EPA granted full approval of Indiana's Title V operating permit program, set forth at 326 Indiana Administrative Code (IAC) 2-7. *See 66 Fed. Reg.* 62969.

29. On May 31, 2019, the Indiana Department of Environmental Management issued Air Emission Permit No. 127-40675-00001 (the Title V Permit) to Cleveland-Cliffs (formerly known as ArcelorMittal Burns Harbor LLC).

30. The Title V Permit at Section A.1 states that the "permittee owns and operates a stationary steel works plant for the production of coke, limited coal chemical, molten iron, molten steel, steel slabs, hot rolled steel, steel coils, steel plates, cold rolled and/or coated steel sheet and plate," and is a Major Source under Section 112 of the CAA.

31. The Title V Permit at Section E.3.1 States that the "permittee shall comply with the provisions of 40 CFR Part 63, Subpart A – General Provisions, which are incorporated by reference as 326 IAC 20-1, including among other things, the BOPF shop operation located in the Steelmaking Department.

32. The Title V Permit at Section E.3.2 states the permittee shall comply with the provisions of the NESHAP including, among other things, 40 C.F.R. § 63.7790(a) – (b), Table 1 emission limits for its BOPF shop and 40 C.F.R. § 63.7800(a), (b)(1)-(5), and (7) maintain operation and maintenance requirements.

33. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$57,617 per day of violation up to a total of \$460,926 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

34. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

35. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### **Factual Allegations and Alleged Violations**

36. Burns Harbor owns and operates an integrated iron and steel manufacturing facility (Facility), which includes its BOPF Shop (BOF Shop), at 250 U.S. Highway 12 in Burns Harbor, Indiana.

37. The Facility is a major source of HAP emissions and is subject to requirements at 40 C.F.R. §§ 63.7780-7852.

38. The BOF Shop at the Facility is subject to the opacity limit of existing BOPF Shops in Table 1 of the NESHAP.

39. The BOF Shop at the Facility is subject to the general provisions regarding operation and maintenance (O&M) of Capture and Control Equipment in existing BOPF Shops in the Facility's Title V Permit.

40. Burns Harbor operates a Secondary Emission Capture System (MACT Baghouse) that captures and controls emissions from the BOF Furnaces during hot metal charge and tapping in the BOF Shop.

41. Burns Harbor operates a Primary Emission Capture System (PECS) at the BOF Shop, that controls emissions from BOF Furnaces during the oxygen blow.

42. The BOF Shop at the Facility is subject to the opacity limit of existing BOPF Shops in the Facility's Title V Permit.

43. On May 20 and 21, 2020, EPA conducted offsite observations in accordance with EPA Alternative Method 082 on the BOF Shop roof monitor at the Facility. EPA observed visible emissions in the afternoon on both days from the BOF Shop roof monitor. Visible emissions during the observation on May 21, 2020 were analyzed in accordance with EPA Alternative Method 082. The opacity measured on May 21, 2020 was 48%, 37%, 28%, and 81% (3-minute average).

44. On October 21, 2020, EPA conducted offsite observations in accordance with EPA Alternative Method 082 on the BOF Shop roof monitor at the Facility. EPA observed visible emissions in the afternoon from the BOF Shop roof monitor. Visible emissions during the observation on October 21, 2020 were analyzed in accordance with EPA Alternative Method 082. The opacity measured was 27% (3-minute average).

45. On November 13, 2020, EPA conducted offsite observations in accordance with EPA Alternative Method 082 on the BOF Shop roof monitor at the Facility. EPA observed visible emissions in the afternoon from the BOF Shop roof monitor. Visible emissions during the observation on November 13, 2020 were analyzed in accordance with EPA Alternative Method 082. The opacity measured was 26% (3-minute average).

46. EPA has conducted offsite compliance monitoring in accordance with EPA Alternative Method 082 on the BOF Shop roof monitor at the Facility a total of 14 days. On three of those 14 days EPA observed violations, and on one of those 14 days, observed multiple violations. EPA observed excess opacity violations from the BOF Shop roof monitor 21% of the days that EPA conducted offsite observations, demonstrating a pattern of on-going noncompliance at the Facility.

47. Burns Harbor reported 10 O&M deviations of the MACT Baghouse. Burns Harbor reported these 10 deviations in each of its Semi-annual Deviation and Compliance Monitoring Reports required by the Facility's Title V Permit during 2018 and 2019. These O&M deviations are related to the operation and maintenance of the BOF Shop.

48. Burns Harbor reported four O&M deviations in each of its 2018 and 2019 Quarterly Continuous Gas Cleaning System Monitoring Report Basic Oxygen Furnace Number 3 Reports (see Appendix A) during 2018 and 2019. These O&M deviations are related to the inspection and maintenance of the BOF Shop.

49. On January 21, 2021, EPA issued to Burns Harbor a finding of violation (FOV) alleging that it violated the opacity limitations of Table 1 of Subpart FFFFF and of its Title V Permit requirements for its BOF Shop and 40 C.F.R. § 63.7800(a), (b)(1)-(5), and (7) for O&M deviations.

50. On February 24, 2021, representatives of Burns Harbor and EPA discussed the January 21, 2021 FOV.

51. On April 6, 2021, Burns Harbor identified slopping, extended hot metal charge rate and charge time, and uncontrolled smoking ladles during transfer within the BOF Shop as sources of the excess emissions listed in the FOV.

52. On June 14, 2021, Burns Harbor proposed to conduct a BOF Shop study and evaluate ranges of pour times and pour rates during HM charging, establish minimum hold times for ladles, and conduct visible emission observations of the BOF Shop Roof Monitor by a third party and other egress points in accordance with EPA Method 9 to demonstrate that the changes implemented are sufficient to assure compliance with the opacity limit for the BOF Shop.



53. On October 4, 2021, EPA approved the BOF Shop study plan based on comments and discussion with Burns Harbor regarding the scope and process for collecting data.
54. On November 15, 2021, Burns Harbor began the BOF Shop Study.
55. On March 4, 2022, Burns Harbor concluded the initial BOF Shop Study after requesting an extension.
56. On April 4, 2022, Burns Harbor submitted to EPA the results of the BOF Study. The results of the BOF Shop study were used to establish the operational limits listed below to ensure compliance with applicable visible emissions limitations during slopping, HM charge, and ladle transfer within the BOF Shop.
57. On August 23, 2022, Burns Harbor submitted subsequent communication indicating an additional 18-heat compliance study without the operation of the PECS. The purpose of the first supplemental 18-heat Method 9 compliance study was to demonstrate that the PECS is not necessary to achieve visible emission limits at the BOF roof monitor.
58. On January 11, 2023, and April 17, 2024, Burns Harbor again submitted communication indicating additional 18-heat compliance studies without the operation of the PECS. The goal of these additional heats was to establish the appropriate MACT Baghouse damper positions and flow rate average that demonstrates compliance with the visible emission limits at the BOF roof monitor during HM charge.
59. Since being contacted by EPA, Burns Harbor has completed a BOF Shop Study and has revised its O&M plan and procedures to ensure compliance with Subpart FFFFF opacity limitations and O&M requirements.

60. EPA alleges that at its BOF Shop, Burns Harbor violated the following requirements: the opacity limitations of Table 1 of Subpart FFFFF on May 21, 2020, October 21, 2020, and November 13, 2020; the O&M requirements in 40 C.F.R. § 63.7800(a), (b)(1)-(5), and (7) on February 3, 2018, April 7, 2018, November 18, 2018, November 23, 2018, November 25, 2018, March 29, 2019, June 30, 2019, August 26, 2019, September 27, 2019, and September 30, 2019; and the corresponding provisions of these regulatory requirements in its Title V Permit.

### **Civil Penalty**

61. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and other factors, Complainant has determined that an appropriate civil penalty to settle this action is \$248,396.

62. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of \$248,396 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver            ABA: 051036706            Account Number: 310006, Environmental Protection Agency            CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York            ABA: 021030004            Account Number: 68010727            SWIFT address: FRNYUS33            33 Liberty Street            New York, NY 10045            Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through <a href="https://pay.gov">Pay.gov</a></p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express &amp; Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> <li>• Go to <a href="https://pay.gov">Pay.gov</a> and enter “SFO 1.1” in the form search box on the top left side of the screen.</li> <li>• Open the form and follow the on-screen instructions.</li> <li>• Select your type of payment from the "Type of Payment" drop down menu.</li> <li>• Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</li> </ul>
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For <b>standard delivery</b>:</p> <p>U.S. Environmental Protection Agency            Fines and Penalties            Cincinnati Finance Center            P.O. Box 979078            St. Louis, Missouri 63197-9000</p> <p>For <b>signed receipt confirmation</b> (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency            Government Lockbox 979078            3180 Rider Trail S.            Earth City, Missouri 63045</p>

63. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[R5airenforcement@epa.gov](mailto:R5airenforcement@epa.gov)

Mary McAuliffe  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

64. This civil penalty is not deductible for federal tax purposes.

65. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

66. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10

percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

67. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [wise.milton@epa.gov](mailto:wise.milton@epa.gov), within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

### **General Provisions**

68. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov) (for Complainant), and [douglas.mcwilliams@squirepb.com](mailto:douglas.mcwilliams@squirepb.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.
69. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.
70. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
71. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 69, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.
72. Respondent certifies that it is complying fully with 40 C.F.R. §§ 63.7780 through 63.7852.
73. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).
74. The terms of this CAFO bind Respondent, its successors and assigns.

75. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
76. Each party agrees to bear its own costs and attorney's fees in this action.
77. This CAFO constitutes the entire agreement between the parties.

**Cleveland-Cliffs Burns Harbor LLC, Respondent**

7/26/24

Date



Mark Dutler, Senior General Manager  
Cleveland-Cliffs Burns Harbor LLC



**United States Environmental Protection Agency, Complainant**

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Cleveland-Cliffs Burns Harbor, LLC**  
**Docket No. CAA-2024-05-0022**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5