

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ARCELORMITTAL BURNS HARBOR)
LLC,)
) Appeal No. 14-1412
)
) Petitioner,)
)
) SETTLEMENT AGREEMENT
)
STATE OF INDIANA, on behalf of the)
Indiana Department of Environmental)
Management,)
)
)
) Intervening Petitioner,)
)
)
)
) v.)
)
)
) U.S. ENVIRONMENTAL PROTECTION)
AGENCY and ANDREW R. WHEELER,)
)
) ACTING ADMINISTRATOR,)
)
)
) Respondents.)

This Settlement Agreement is entered into by ArcelorMittal Burns Harbor LLC (“ArcelorMittal”), the State of Indiana (“State”), and the United States Environmental Protection Agency (“EPA”) (collectively, the “Parties”).

WHEREAS, ArcelorMittal owns and operates a steel mill in Porter County, Indiana;

WHEREAS, on December 10, 2009, the State submitted a proposed revision to its Porter County, Indiana Sulfur Dioxide (“SO₂”) State Implementation Plan (“SIP”) to remove the emissions limit applicable to the Blast Furnace Flare at the ArcelorMittal Burns Harbor steel mill facility;

WHEREAS on December 27, 2013, EPA, pursuant to section 110 of the Clean Air Act, 42 U.S.C. § 7410, promulgated a final rule entitled “Approval and Promulgation of Air Quality Implementation Plans; Indiana; Disapproval of State Implementation Plan Revision for ArcelorMittal Burns Harbor,” published in the *Federal Register* at 78 Fed. Reg. 78720 (December 27, 2013) (the “Rule”), which disapproved the State’s request;

WHEREAS, Petitioner ArcelorMittal filed a petition for review challenging the Rule and the State has intervened in support of that challenge;

WHEREAS, the Parties wish to implement this Settlement Agreement resolving all of Petitioner’s challenges to the Rule and thereby avoid protracted and costly litigation and to preserve judicial resources, without any admission or adjudication of fact or law;

NOW, THEREFORE, the Parties, intending to be bound by this Settlement Agreement, hereby agree as follows:

1. The Parties agree and acknowledge that before this Settlement Agreement is final, EPA must provide notice in the *Federal Register* and an

opportunity for public comment pursuant to Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). To that end, after the last party signs this Settlement Agreement, EPA shall promptly transmit the required notice allowing for a 30-day public comment period to the Office of the Federal Register for publication in the *Federal Register*. After this Settlement Agreement has undergone this opportunity for notice and comment, the EPA Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold consent to the Settlement Agreement, in accordance with Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). EPA shall promptly provide written notice of such determination and, in the event EPA determines to proceed with this Settlement Agreement, this Settlement Agreement shall become final on the date that EPA provides written notice of such finality to the other parties.

2. No later than seven calendar days after this Settlement Agreement is final pursuant to paragraph 1 of this Settlement Agreement, the Parties shall file a joint motion with the Court in Appeal No. 14-1412 notifying the Court of this Settlement Agreement and requesting that the case be held in abeyance, if the Court has not already done so.

3. By June 14, 2019, the State shall issue a notice of intent to revise the Porter County SO₂ SIP regulations 326 IAC 7-4-14 to adopt the following emission limit and revisions and associated requirements:

(A) Revise Blast Furnace Flare limit from 0.07 lb SO₂/MMBtu to 0.50 lb SO₂/MMBtu

(B) Emission limit reductions whereby:

Sources	Current SO ₂ SIP Limits (lb/hr)	Revised SO ₂ SIP Limits (lb/hr)
Set of Nine (9) Horizontally Discharged Slab Mill Soaking Pits	482	0-permanent shutdown
Set of Twenty-three (23) Horizontally Discharged Slab Mill Soaking Pits	24	0-permanent shutdown
Set of Four (4) Vertically Discharged Slab Mill Soaking Pits	4	0- permanent shutdown
160 Inch Plate Mill In & Out Furnace No. 8	176	0-permanent shutdown
160 Inch Plate Mill Continuous Reheat Furnace No.1 and Boiler No. 1	299	29.9
160 Inch Plate Mill In & Out Furnaces Nos. 4 and 5	274	27.4
160 Inch Plate Mill In & Out Furnaces Nos. 6 and 7	274	27.4
110 Inch Plate Mill Furnaces Nos. 1 and 2 (Slab Reheat Continuous Walking Beam)	441	44.1
Power Station Boilers No. 8, 9, 10, 11, and 12	2,798	2,378

(C) A blast furnace gas testing protocol as found in Attachment A

(D) Except for the alternative SO₂ emission limits included in the SIP at 326 IAC 7-4-14(1)(C), which may be removed from the revised SIP as unnecessary, aspects of the SIP affecting ArcelorMittal not directly implicated by the terms of this Settlement Agreement (including, without limitation, other emission limits, recordkeeping, and other requirements) will not be altered in the State's proposed SIP revision.

4. By October 1, 2019, the State shall publish notice of the SIP revision proposed rulemaking in the *Indiana Register* that includes terms that are substantially consistent with, and includes numeric emission limits and testing protocol identical to, those in Paragraph 3, and shall provide an opportunity for public comment pursuant to IC 4-22-2 and IC 13-14-9. Neither ArcelorMittal nor EPA shall file any adverse comments on any portion of the proposed rule under Paragraph 3, above, that includes terms that are substantially consistent with, and includes numeric emission limits and a testing protocol identical to, those in Paragraph 3. This does not preclude ArcelorMittal or EPA from commenting on any portion of the proposed rule not expressly addressed in this Settlement Agreement nor does this limit or modify the discretion to act on any SIP revision accorded EPA by the Clean Air Act.

5. By January 1, 2020, the State shall submit a SIP revision to EPA that includes terms that are substantially consistent with, and includes numeric emission limits and testing protocol identical to, those in Paragraph 3.

6. Provided that the SIP revision is submitted by the State by the date specified in paragraph 5 and has been deemed complete, EPA shall sign, as expeditiously as practicable, but in any case no later than 12 months following the State's SIP submittal in Paragraph 5, a notice of proposed rulemaking, proposing to approve the portion of the SIP revision that includes terms that are substantially consistent with, and includes numeric emission limits and testing protocol identical to, those in Paragraph 3. Once signed, the notice of proposed rulemaking shall be promptly transmitted to the Office of the Federal Register to be published in the *Federal Register*.

7. Neither ArcelorMittal nor the State shall file any adverse comments on any portion of the proposed rule under Paragraph 6, above, if it includes terms that are substantially consistent with, and includes numeric emission limits and testing protocol identical to, those in Paragraph 3. This does not preclude Petitioners from commenting on any portion of the proposed rule not expressly addressed in this Settlement Agreement.

8. If EPA signs a final rule approving the portion of the SIP revision that includes terms that are substantially consistent with, and includes numeric

emission limits and testing protocol identical to, those in Paragraph 3, then after that final rule has been published in the *Federal Register*, the Parties shall promptly file an appropriate pleading for the dismissal of Appeal No. 14-1412 with prejudice in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure, with each party to bear its own costs and attorneys' fees. Further, ArcelorMittal and the State waive any right to challenge in any court or administrative proceeding, any portion of that final rule that includes terms that are substantially consistent with, and includes numeric emission limits and a testing protocol identical to those in Paragraph 3. This does not preclude ArcelorMittal or the State from challenging (1) any portion of a final rule not expressly addressed in this Settlement Agreement and/or (2) any portion of a final rule that is addressed in this Settlement Agreement to the extent terms are not substantially consistent with, or do not include numeric emission limits and a testing protocol identical to, those in Paragraph 3.

9. If EPA does not sign a final rule by the deadline set forth in section 110(k)(2) of the Clean Air Act, 42 U.S.C. § 7410(k)(2), that includes terms that are substantially consistent with, and includes numeric emission limits and a testing protocol identical to those in Paragraph 3, then Petitioner's sole remedy with respect to the rule under review in this case shall be the right to ask the Court to lift the stay of proceedings for Appeal No. 14-1412.

10. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law. Nothing in this Settlement Agreement shall be construed to constitute EPA prejudgment of any public comment process. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. Furthermore, nothing in the terms of this Settlement Agreement shall be construed to limit EPA's authority to alter, amend or revise any final rule EPA may issue pursuant to Paragraphs 8 and 9 or to promulgate superseding regulations or guidance.

11. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the obligations of ArcelorMittal to obtain permits pursuant to state and federal law to implement the provisions of this Settlement Agreement, or to otherwise comply with any other Clean Air Act provision.

12. The Parties may modify this Settlement Agreement by a written agreement executed by counsel for the Parties.

13. Each party shall bear its own costs, including attorneys' fees, in this litigation, including attorneys' fees and costs associated with monitoring, overseeing, or implementing this Settlement Agreement, and including

participation in any administrative proceedings contemplated by this Settlement Agreement.

14. This Settlement Agreement with Attachment A constitutes the complete and entire agreement among the Parties. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Settlement Agreement and may not be used by the Parties to vary or contest the terms of this Settlement Agreement or as evidence of the Parties' intent in entering into this Settlement Agreement.

15. The undersigned representatives of each party certify that they are fully authorized by the party that they represent to bind that respective party to the terms of this Agreement.

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Attachment A

Blast Furnace Gas Testing Protocol:

- (1) Conduct blast furnace gas (“BFG”) fuel sampling at a representative location downstream of the gas cleaning system of both C and D Blast Furnaces.
- (2) Have the fuel sample analyzed for:
 - a. BTU content (ASTM D 3588)
 - b. Fuel composition analysis (ASTM D 1946)
 - c. Fuel sulfur analysis (ASTM D 6228)
- (3) BFG sampling will be performed on a quarterly basis.
- (4) BFG sampling will be conducted during representative performance of the blast furnace(s) operating during the quarter (i.e., performance based on normal operating conditions).
- (5) Compliance will be determined by the average of at least 3 one-hour integrated samples during the quarter.
- (6) Fuel samples shall either be collected in Silonite coated “fuel bombs” (evacuated cylinders) or shall be analyzed within 12 hours of being collected
- (7) The following calculation methodology will be utilized:

$$E_{lb/mm\text{btu}} = C_{gr/dscf} \left(\frac{1 \text{ lb } S}{7000 \text{ gr}} \right) \left(\frac{1 \text{ lb} - \text{mol } S}{32 \text{ lb } S} \right) \left(\frac{1 \text{ lb} - \text{mol } SO_2}{1 \text{ lb} - \text{mol } S} \right) \left(\frac{64 \text{ lb } SO_2}{1 \text{ lb} - \text{mol } SO_2} \right) F_d$$

Where:

$E_{lb/mm\text{btu}}$ = The emission rate in units of the standard (lb/mmBTU)

$C_{gr/dscf}$ = The sulfur concentration, as measured by ASTM D 6228 in units of grains per dry standard cubic feet

F_d = Volume of combustion components per unit of heat content in units of scf/mmBTU

$$F_d = 10^6 \frac{[3.64(\%H) + 1.53(\%C) + 0.57(\%S) + 0.14(\%N) - 0.46(\%O)]}{GHV}$$

Where:

F_d = Volume of combustion components per unit of heat content in units of scf/mmBTU

$\%H$ = Concentration of hydrogen from ultimate analysis of fuel, weight percent.

$\%C$ = Concentration of carbon from ultimate analysis of fuel, weight percent.

$\%S$ = Sulfur content of as-fired fuel, dry basis, weight percent

$\%N$ = Concentration of nitrogen from ultimate analysis of fuel, weight percent.

$\%O$ = Concentration of oxygen from ultimate analysis of fuel, weight percent.

GHV = Gross calorific value of the fuel determined by ASTM D 3588, BTU/lb

The equation above presumes that sulfur concentration will be measured in gr/dscf. If sulfur is measured in ppm, the equation will require an adjustment using STP defined as 68F and 1 atm.

- (8) ArcelorMittal Burns Harbor may request IDEM and EPA approval of an alternative sampling or analysis methodology or alternative sampling frequency which is of equivalent accuracy as those specified in this Protocol. If approved by IDEM and EPA, ArcelorMittal Burns Harbor may utilize the approved alternative methodology or alternative sampling frequency for purposes of demonstrating compliance with the applicable emission limits in the Porter County SO₂ SIP regulations at 326 IAC 7-4-14.