STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of United States Steel Corporation for Review of Order No. 74-191 (NPDES Permit No. CA0005002) California Regional Water Quality Control Board, San Francisco Bay Region	Order No. WQ 76-10

BY THE BOARD:

On December 17, 1974, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Order No. 74-191 (NPDES Permit No. CA0005002), prescribing waste discharge requirements for the United States Steel Corporation, Pittsburg Works (petitioner). Pursuant to Water Code Section 13320, petitioner filed a petition with the State Water Resources Control Board (State Board)on January 15, 1975, seeking review of Order No. 74-191 and requesting a hearing.

By letter dated October 23, 1975, the petitioner was advised that the issues raised by its petition would be decided upon the record without a hearing, and that additional argument and comment could be submitted within twenty days. In response to that letter, petitioner requested that the petitioner's letters to Mr. Dierker dated March 4, 1975, and April 14, 1975, and Mr. Dierker's letter to petitioner dated May 13, 1975, be considered part of the record in this matter. The State Board concurs in this request. In addition, by a letter dated July 20, 1976, the petitioner and interested parties were advised that the State

Board would consider the following material in addition to the materials requested by petitioner, the Regional Board's file, the petition, and the transcript of the Regional Board hearing:

1. Self-monitoring data for phenol, flow, oil and grease, and pH for the period commencing on January 1, 1975, and terminating on March 31, 1976.

I. BACKGROUND

The petitioner operates a steel finishing plant located at Pittsburg. The Pittsburg plant manufactures a variety of products, including galvanized nails, pipe, sheets, and wire, tin plate, and wire rope. During the manufacturing process the petitioner utilizes a number of processes which include electrotinning, hot coat galvanizing, pickling with hydrochloric and sulfuric acids, cold rolling, and hot forming.

The petitioner presently discharges wastes containing pollutants at four locations. A description of each waste and its discharge point follows:

1. Waste 001 involves an average of twenty million gallons per day of combined process wastes, noncontact cooling water, water softener brines, and, during periods of wet weather, stormwater runoff. Treatment consists of pond equalization, lime and polymer addition, primary clarification and neutralization. This waste is discharged via an open channel to New York Slough, a navigable water of the United States. The point of discharge is approximately 1,000 feet easterly of the western end of the petitioner's shipdock.

2. Wastes 002 and 003 consist of combined stormwater runoff and process wastes which are treated by pond equalization primary clarification, and neutralization. These wastes are discharged directly to New York Slough only during the periods of wet weather. Waste 002 is discharged about 1,100 feet west of the discharger's shipdock, and Waste 003 is discharged near the western end of the discharger's shipdock. During other than periods of wet weather flow, the process wastes are combined with Waste 001.

3. Waste 004 involves an indeterminate amount of solid and semi-solid industrial wastes, including metallic slags, sludge residues from the waste treatment facilities and various inert materials, including demolition debris. This waste is discharged to a one-hundred-and-thirty-five acre area on a portion of the discharger's property.

Pursuant to Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), hereinafter the "Federal Act", and applicable provisions of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code commencing with Section 13000), the Regional Board, as previously indicated, adopted Order No. 74-191 on December 17, 1974, prescribing waste discharge requirements for the petitioner's Pittsburg plant. Final effluent limitations guidelines have not been promulgated by the U. S. Environmental Protection Agency (EPA) for plants, such as petitioner's, in the steel finishing subcategory.

Prior to adoption of Order No. 74-191, the petitioner had been subject to discharge requirements adopted in Resolution No. 594 on September 17, 1964, Resolution No. 70-88 adopted on November 4, 1970, and Cease and Desist Order No. 70-97. Recently, on May 4, 1976, the Regional Board adopted Cease and Desist Order No. 76-51 which rescinded Order No. 70-97. Since Order No. 74-191 provided that Resolution No. 594 and Resolution No. 70-88 should remain in effect until Order No. 70-97 was rescinded, Cease and Desist Order No. 76-51 in effect rescinded Resolutions Nos. 594 and 70-88. Consequently, there are at present two effective orders, Order No. 74-191 and Cease and Desist Order No. 76-51

II. CONTENTIONS AND FINDINGS

The petitioner has raised a number of factual and legal issues related to the terms of Order No. 74-191. These contentions and our findings relative thereto are as follows:

1. Contention: The Regional Board in Finding 3A specified that the 30-day average flow rate for Waste 001 was 22 mgd. Petitioner contends that such rate is incorrect and that the actual average daily flow rate for this discharge has been 26.5 mgd with maximum daily flow exceeding 30 mgd.

Findings: The application submitted by petitioner showed a total water usage of 20 mgd. The Regional Board staff calculated the average daily flow at 22 mgd, which is contained in the subject order, from data obtained during a 17-month period, January 1973 to May 1974. In a letter dated December 9, 1974,

the petitioner requested the Regional Board to revise the proposed finding on daily flow from 22 mgd to 30 mgd. This request was based on the actual flows from petitioner's plant during a recent six-month period. However, this issue was not specifically discussed at the Regional Board public hearing on December 17, 1974, and the Regional Board adopted the order with the daily flow finding as proposed. Subsequently, in a letter dated May 13, 1975, the Regional Board staff requested petitioner to explain the increased flows from its plant during 1974. The petitioner never provided a full explanation.

As earlier indicated, on July 20, 1976, the State Board advised petitioner that it would, among other things, consider the self-monitoring data on daily flow during the period commencing on January 1, 1975, and terminating on March 31, 1976. This data is contained in attached Exhibit A and it confirms the Regional Board finding on daily flow. The average daily flow did not exceed 22 mgd substantially except during the month of January 1975, and only slightly exceeded 22 mgd on two other occasions. In fact most average daily flows were substantially less than 22 mgd. Consequently, it is apparent that during the six-month period upon which petitioner relies, petitioner's plant was not operating in its normal manner and the Regional Board acted properly in adopting the average daily flow finding of 22 mgd which was developed from a more extensive data base.

2. Contention: The Regional Board acted improperly in adopting a requirement that the pH of the discharger should not be less than 6.5 nor greater than 8.5 because it is impossible to attain 100 percent compliance when monitoring is conducted continuously for 24 hours each day. The petitioner requests that

the pH range be changed from 6.0 to 9.0 and that no more than 95 percent compliance on a monthly average basis, as determined from continuously recorded pH monitoring, be required.

Findings: At the time the subject order was adopted, the applicable water quality control plan was the plan adopted by the Regional Board on June 4, 1971, and approved by the State Board in Resolution No. 71-20 on June 30, 1971. This plan sets the following limits on pH :

> "There shall be no significant change in the natural ambient pH value at any place in the main body of the receiving water, nor shall the pH of the waste itself exceed the range 7.0 to 8.5 or 6.5 to 8.5 when the natural ambient value is as low as 6.5." [Emphasis added.]

Water Code Section 13263(a) requires each Regional Board to implement applicable water quality control plans in the adoption of the waste discharge requirements.

In the present case, the Regional Board staff proposed and the Regional Board adopted pH limits of 6.5 to 8.5. The rationale for such limits was stated by a Regional Board staff member at the beginning of the Regional Board hearing as follows:

> "With regard to pH, the pH limit which is proposed of 6.5 to 8.5 is in the proposed basin plan [water quality control plan] and has been applied to all shallow water dischargers in the region."

This rationale is inappropriate and improper. First, we should point out that water quality control plans are not effective until approved by the State Board. (See Water Code Section 13245.) The Regional Board should not implement a proposed water quality control plan. With regard to the pH limits established by the

Regional Board, we find that the Regional Board could not implement the applicable water quality control plan for pH with limits of 6.5 to 8.5 unless it found that the ambient pH level of the receiving water was as low as 6.5. The Regional Board did not explicitly make such a finding and our review of self-monitoring data indicates that the pH of the receiving water is generally in the range of 7.0 to 8.5. Consequently, we conclude that the Regional Board action in establishing pH limits of 6.5 to 8.5 in the subject order was technically inappropriate at the time of adoption of Order No. 74-191.

However, it does not appear that the petitioner was in any way prejudiced by this error of the Regional Board. The pH limits which should have been imposed were 7.0 to 8.5, the limits actually imposed, 6.5 to 8.5, were less stringent and obviously to the benefit of the petitioner rather than to its prejudice.

We officially notice that the Regional Board adopted its final water quality control plan for the San Francisco Bay Basin and that this plan has been approved by the State Board. (See State Board Resolution No. 75-28.) This plan extensively revised the limitations on pH and these revisions are excerpted in Exhibit B attached to this order. A review of these revisions indicates that the Regional Board's Order No. 74-191 is in compliance with the present water quality control plan. Accordingly, we find that, although the Regional Board acted

improperly in adopting the subject order at the time of its adoption, a revision of the pH limits in Order No. 74-191 by the Regional Board is not necessary at the present time since Order No. 74-191 presently complies with the final water quality control plan and has complied with this plan since April 17, 1975, when the plan was approved by the State Board.

Finally, we would like to comment on the achievability of the pH limits of 6.5 to 8.5. This issue consumed most of the Regional Board's public hearing. It seems to be the general consensus of all concerned that more consistent compliance will most likely be achieved by petitioner when the petitioner provides equalization facilities. Limits on pH at 7.0 to 8.5 have been in existence since 1970. Despite these previous limits which are more stringent than those contained in Order No. 74-191, and notwithstanding the petitioner's knowledge that it was not utilizing a method that would assure the most consistent compliance possible with the pH limits, the petitioner retained its present method of pH treatment.[7] The self-monitoring data for pH during the period from January 1975 to March 1976 is contained in Exhibit A. While this data indicates that petitioner was in compliance only one month during the fifteen-month period, it

7. While the petitioner may presently utilize some very sophisticated, computerized equipment to control pH, it is obvious, and has been obvious for some time, that additional measures were required to meet effluent pH limits.

appears that the failure of the petitioner to meet its pH limits must be both the fault and the responsibility of the petitioner.

3. Contention: Petitioner generally objects to the self-monitoring program contained in the subject order and requests an opportunity to discuss changes.

Findings: We understand that, subsequent to the adoption of Order No. 74-191, the petitioner and the Regional Board have met concerning the self-monitoring program and that petitioner's concerns were resolved. Consequently, we will not address this contention in this order.

4. Contention: Petitioner contends that the Regional Board acted improperly because appropriate provisions of an agreement entered into during July, August and September of 1974, between petitioner and the United States Environmental Protection Agency (EPA) should have been further considered and incorporated into the Regional Board's order. In a letter dated November 11, 1975, the petitioner informed the State Board that the previous agreement had been superseded by an agreement dated December 16, 1974, between petitioner and EPA. Accordingly, petitioner requested that provisions of this subsequent agreement be incorporated into the State Board's order as appropriate. A copy of the December 16, 1974 agreement, designated Exhibit C, is attached.

Findings: The subject matter of the December 16, 1974, agreement concerns two general subject areas: (1) modification of existing NPDES permits by EPA to incorporate new or amendments to existing toxic standards established under Section 307 of the

Federal Act, and (2) the inclusion of a "force majeure" or "upset conditions" clause in an NPDES permit. In both subject areas, the agreement does not resolve the conflict on the legal issues between petitioner and EPA, but rather only establishes a procedural format to resolve future disputes on these issues concerning specific NPDES permits. The legal effect of this agreement was considered by EPA's General Counsel in Issue of Law No. VI in the Decision of the General Counsel on Matters of Law No. 22 (July 3, 1975), and the General Counsel concluded that "the Agency may only be bound to propose conditions for a permit consistent with the terms of the Agreement and to adopt such conditions in the issued permit unless it concludes, on the basis of the record...that such provisions are inconsistent with requirements of the Act."

In the present case, the Regional Board neither proposed conditions in the NPDES permit consistent with the terms of the Agreement, nor did it adopt such conditions in the issued permit, nor did it find that the adoption of such conditions would necessarily be inconsistent with the Federal Act. However, this fact does not by any means establish that the Regional Board acted improperly. First, the agreement by its own terms is only between EPA and petitioner and it only purports to bind EPA and petitioner. Second, the agreement only concerns NPDES permits issued by EPA and not NPDES permits issued by a state which has been delegated the NPDES permit program by EPA pursuant to the Federal Act. Third, even if the agreement purported to bind the states with delegated NPDES permit programs,

such agreement would be contrary to the Federal Act and of no force and effect. Section 510 of the Federal Act grants to states the right to establish any requirement respecting the control or abatement of pollution which is not less stringent than one under the Federal Act. Accordingly, the Regional Board had the discretion not to include the provisions requested by the petitioner and we find nothing improper in its exercise of discretion in this matter.[8]

5. Contentions: Petitioner contends that the Regional Board acted improperly because the terms and conditions of Order No. 74-191 are neither required by nor consistent with any applicable federal or state law or regulation and would, as applied to petitioner's Pittsburg works, be contrary to the provisions of the Federal Water Pollution Control Act of 1972, the California Water Code, and applicable regulations, and would deprive petitioner of property without due process of law.

Findings: In support of its contention, petitioner cites several cases which generally stand for the propositions that governmental power may not be exercised in an arbitrary or unreasonable manner or impose unnecessary or unreasonable restrictions, that due process of law is violated if a governmental regulation forbids the performance of an act in terms so indefinite as to require that reasonable men guess at its meaning,

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8. See footnote 5 regarding previous determinations by the State Board related to the requirement of an "upset condition" term in NPDES permits.

and that the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. However, petitioner does not specify how the Regional Board's order is not consistent with the Federal Act, the California Water Code, or in what manner the Regional Board's order deprives petitioner of property without due process of law. In the absence of such argument, we will not respond to such a contention. To do so would require us to speculate as to the meaning intended by petitioner and then to respond to such speculation. Such an exercise would serve no purpose.

6. Contention: Petitioner contends that the Regional Board acted improperly because the subject order denies petitioner of due process of law. Petitioner contends that the receiving water limitations set forth in Conditions B1 and B2 are so vague and uncertain as to make ascertainment of their meaning impossible and therefore that these limitations involve a denial of due process.

Findings: Petitioner's contention generally raises constitutional issues of void-for-vagueness and overbreadth under the due process clause of the Fourteenth Amendment. The void-for-vagueness and overbreadth issues are normally presented in the context of a defense to a criminal prosecution and the questions are whether the criminal statute under consideration is void-for-vagueness or overbroad "as applied" to the alleged criminal conduct of the defendant and whether the criminal statute is void-for vagueness or overbroad "on its face". Although these constitutional doctrines are normally asserted

in the context of criminal prosecutions, they are not so limited. They have also been applied in situations involving violations of police departmental rules of conduct [Bence v. Breier, 501 F.2d 1185 (7th Cir. 1974) cert denied, 419 U. S. 1121, 95 S.Ct. 804, Muller v. Conlisk, 429 F.2d 901 (7th Cir. 1974)], and for violation of rules of conduct in effect for university students [Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969)]. The rationale for this application of these constitutional doctrines is simply that administrative rules may be equally effective as a deterrent to the exercise of constitutional rights as a penal statute [Bence v. Breier, supra at 1188.] While we are not aware of a case applying these doctrines to an administrative order similar to the present one, we believe they may apply. An administrative order such as the present one, which may be enforced by a penal sanction under Water Code Sections 13265 and 13387 may be equally effective as a deterrent to the exercise of constitutional rights as a penal statute.

In the present situation, since a particular occurrence or act by petitioner is not alleged to be in violation of these provisions, the issues regarding void-for-vagueness or overbroad "as applied" are not raised and, therefore, petitioner's contention is narrowed to the issue that these provisions of the order are void-for-vagueness or overbroad "on their face". As a policy matter, the U. S. Supreme Court has permitted only litigants to challenge penal statutes "on their face" in a very limited number of circumstances. The principal exception has

been established in the area of the First Amendment. [Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116 (1965)]. As the Court noted in a more recent case:

> "Litigants, therefore, are permitted to challenge a statute not because of their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." [Broadrick v. Oklahoma, 413 U.S. 601, 612, 93 S.Ct. 3908, 2916 (1973).]

Such claims of facial overbreadth have been entertained in cases involving statutes regulating "only spoken words" [Gooding v. Wilson, 405 U.S. 518, 520, 92 S.Ct. 1103, 1105 (1972)], regulating the time, place, and manner of expressive or communicative conduct, [Grayned v. City of Rockford, 405 U.S. 104, 105, 92 S.Ct. 2294, 2297 (1972).], and regulating the rights of association when the statue by its broad sweep might result in burdening innocent associations. [Aptheker v. Secretary of State, 378 U.S. 500, 84 S.Ct. 1659 (1964).] Similarly, claims of void-for vagueness on their face have been entertained in cases involving statutes subjecting the right of assembly to an unascertainable standard. [Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686 (1971).] As indicated earlier petitioner is presently discharging a pollutant to a navigable water of the United States. While expressive conduct has been included within the shield of the First Amendment protection, the discharge of pollutants can hardly be characterized as "expressive conduct" in any form. Accordingly, we conclude that the provisions in question are not appropriately reviewed "on their face".

Finally, we have examined the provisions in question and conclude that they are neither vague nor overbroad.

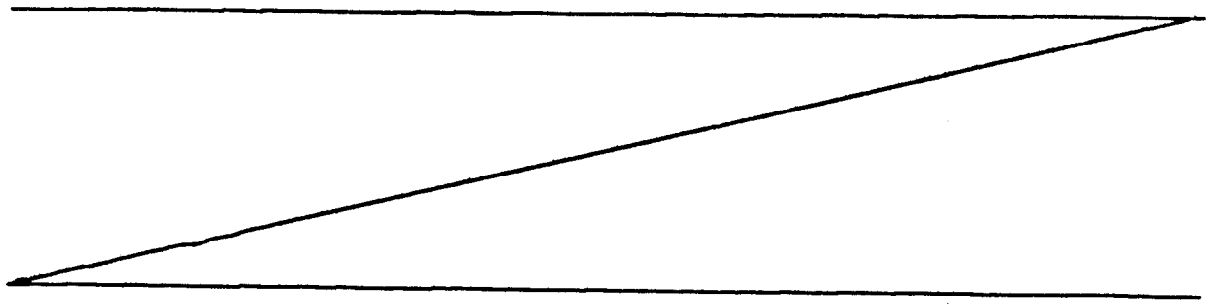
7. Contentions: Petitioner contends that the Regional Board acted improperly in maintaining Resolution No. 594 (1964), Order No. 70-88 (1970), and Resolution No. 70-97 in effect upon adoption of Order No. 74-191. Petitioner is further aggrieved because petitioner is required to comply with several different sets of requirements which may or may not be consistent.

Findings: The Regional Board upon adoption of Order No. 74-191 was compelled to maintain the previous waste discharge requirements in effect, if it was to keep the existing cease and desist order (Resolution No. 70-97) in effect, because of the relationship between a cease and desist order and a waste discharge requirement. A cease and desist order orders a discharger to "cease and desist" violating a waste discharge requirement. (See Water Code Section 13301.) Consequently, the effect of a cease and desist order depends upon the existence of the waste discharge requirements. In addition, a cease and desist order should not be rescinded until the violation of requirements which were the basis for adopting the order have ceased and consistent compliance with those requirements has been achieved. The Regional Board upon adoption of Order No. 74-191 evidently did not believe that the rescission of the cease and desist order (Resolution No. 70-97) was appropriate at that time. Therefore, to retain Resolution No. 70-97 in effect, the Regional Board was required to keep the previous orders in effect. Any inconsistency in the several orders

was avoided by the inclusion of a provision that if any conflict exists between the above orders, the terms of this order shall prevail. The Regional Board acted properly in this regard.

III. CONCLUSIONS

After review of the record, and consideration of the contentions of the petitioner and for the reasons discussed, we have concluded that although the action of the Regional Board in adopting Order No. 74-191 failed to implement the pH limitations contained in the appropriate water quality control plan at the time of adoption Order No. 74-191, Order No. 74-191 in this respect is appropriate and proper since it is in compliance with the revised and presently effective water quality control plan. In all other aspects, the adoption of Order No. 74-191 by the Regional Board was appropriate and proper.



IV. ORDER

IT IS, THEREFORE, ORDERED that the petition for review of Order No. 74-191 is denied.

Dated: AUG 19 1976

/s/ John E. Bryson
John E. Bryson, Chairman

/s/ Don Maughan
W. Don Maughan, Vice Chairman

/s/ W. W. Adams
W. W. Adams, Member

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Jean Auer
Jean Auer, Member

EXHIBIT A

Flow (mgd)

1975	Minimum	Average	Maximum
January	15.0	24.2	27.8
February	16.8	22.7	25.6
March	16.3	22.4	28.1
April	16.2	21.9	24.5
May	15.6	21.1	25.0
June	16.1	21.4	25.3
July	14.9	20.7	24.2
August	14.6	19.8	24.7
September	14.7	21.6	24.6
October	12.8	18.6	21.8
November	9.7	15.7	21.0
December	10.4	17.3	20.8
1976			
January	13.5	18.3	20.7
February	13.7	18.7	20.6
March	12.9	18.5	21.6

pH

1975	Minimum	Average	Maximum
January	5.9	-	10.7
February	3.3	7.4	11.2
March	3.2	7.5	9.8
April	5.4	7.4	10.3
May	2.8	7.5	9.8
June	3.3	7.3	10.0
July	3.5	7.4	11.3
August	6.0	7.5	9.7
September	3.4	7.3	9.4
October	3.7	7.4	11.3
November	3.7	7.4	9.3
December		No Data	
1976			
January	6.6	7.5	8.5
February	6.2	7.7	10.1
March	5.9	7.3	9.9

EXHIBIT B

Objectives for Inland Surface Waters, Enclosed Bays and Estuaries

The following objectives apply to all inland surface waters, enclosed bays and estuaries of the Basin.

* * *

pH

The pH shall not be depressed below 6.5 nor raised above 8.5.

Changes in normal ambient pH levels shall not exceed 0.2 units in waters designated marine (MAR) beneficial uses nor 0.5 units in fresh waters with designated COLD or WARM beneficial uses.

The above objective encompasses the pH range usually recommended by the Department of Fish and Game and is consistent with the 0.2 limit of pH change in the California Ocean Plan. A greater maximum deviation is allowed in fresh waters which characteristically exhibit greater pH variation than well-buffered estuarine or marine waters. This increase in pH variation is not considered harmful within the overall limits specified. (Water Quality Control Plan, San Francisco Bay Basin, pages 4-12, 4-13.)

EXHIBIT C

A G R E E M E N T

U.S. STEEL CORPORATION - U.S. ENVIRONMENTAL PROTECTION AGENCY

United States Steel Corporation (the Permittee) and the United States Environmental Protection Agency (the Agency) hereby stipulate and agree to the provisions set forth herein. Any NPDES permit issued heretofore or hereafter under the Water Pollution Control Act Amendments of 1972 (the Act) for facilities of Permittee by the U.S. Environmental Protection Agency, shall be considered to be subject to the terms and provisions of this Agreement notwithstanding any contrary provisions contained in such permit.

1. The Agency believes that the Federal Water Pollution Control Act Amendments of 1972 authorizes the Agency to include in an NPDES permit a condition authorizing modification of an issued NPDES permit in order to include conditions to ensure compliance with any toxic standard established under Section 307 of the Act if such standard is more stringent than any limitation in the permit.

2. The Permittee believes that the Act authorizes the modification of an issued NPDES permit to include such standard only in the case of a toxic pollutant injurious to human health.

3. The Permittee shall not raise with U.S. Environmental Protection Agency this issue of the Agency's authority under Sections 402 and 307 until such time as (1) toxic standards are established and, (2) the Agency seeks to modify a permit issued to the Permittee in order to include such toxic standards. This paragraph 3 shall in no way limit Permittee's right under Section 509 of the Act to contest the promulgation of any toxic standard.

4. On the matter of toxic pollutants, all U.S. Steel permits shall be subject to the following provision. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in the permit, and the Agency seeks to revise or modify the permit in accordance with the toxic standard or prohibition, the Permittee shall have notice and opportunity for hearing, with right of appeal, on the method of application of the toxic standard or prohibition if such application requires the use of discretion, judgment or calculation by the permitting Agency.

5. If the Agency seeks to modify an NPDES permit in order to impose a toxic standard established under Section 307 of the Act, the Permittee shall have the right at that time to raise in an administrative and judicial review of such matter the issue of whether the Act authorizes the Agency to so modify an issued NPDES permit. The Permittee may petition for a stay while seeking any administrative and judicial review hereunder.

6. The Permittee believes that the following clause is necessary to carry out the provisions of the Act and should be inserted in an NPDES permit:

> "The Agency stipulates that the Permittee retains the right to raise force majeure defenses such as an act of God, strike, flood, material shortage or other event over which the Permittee has little or no control."

7. The Agency believes that the insertion of a "force majeure" clause in an NPDES permit such as that noted in clause 6 above is not necessary to carry out the provisions of the Act.

8. If the Agency seeks to enforce any provision of any NPDES permit issued to the Permittee by any permitting Agency the Permittee may raise at that time the question of whether it is entitled to such "force majeure" defenses under the constitution, statute, or decisional law.

9. The Agency does not stipulate that such "force majeure" defenses exist under the constitution, statute, or decisional law.

This Agreement shall supercede the Agreement signed by Messrs. Mallick, Kirk and Corkin dealing with the same subject matter and dated August 13, 1974, July 31, 1974, and September 17, 1974, respectively.

Dated by the last signatory hereto: December 16, 1974

Alan G. Kirk II
Assistant Administrator for
Enforcement and General Counsel
U.S. Environmental Protection Agency

Charles Corkin II
Counsel for Administrative Litigation
U.S. Environmental Protection Agency

Earl W. Mallick
Vice President
U.S. Steel Corporation