



TULANE LAW SCHOOL
TULANE ENVIRONMENTAL LAW CLINIC

October 27, 2021

Via Email and U.S. Mail

David Gray
Regional Administrator
U.S. Environmental Protection Agency
Region 6
1201 Elm Street
Suite 500
Dallas, Texas 75270

RE: OVERFILE REQUEST–Louisiana DEQ–Nucor Steel Louisiana LLC; LDEQ Part 70 Operating Permit No. 3086-V9

Dear Mr. Gray:

Myrtle Felton, Barbara Washington, Gail LeBeouf,¹ Inclusive Louisiana, and Louisiana Bucket Brigade (collectively, “Petitioners”), formally request that the U.S. Environmental Protection Agency (EPA) review the June 7, 2021 proposed settlement between the Louisiana Department of Environmental Quality (LDEQ) and Nucor Steel Louisiana LLC (Nucor) with regard to violations of Nucor’s Title V Permit, and to exercise its overfilling and supervisory authority pursuant to 42 U.S.C. § 7413(a)(1), (b) and (d),² order compliance with permit conditions, and impose penalties against Nucor for repeated permit violations, given the inadequacy of the proposed LDEQ-Nucor settlement.³ LDEQ has failed to take appropriate action to respond to Nucor’s compliance history, as illustrated by the proposed settlement detailed below. Because LDEQ has through its inaction allowed Nucor to continually violate its Title V permit at the expense of the health and property of the over 21,000 people living in St. James Parish, an environmental justice community inundated with heavy industry, the EPA must exercise its

¹ Ms. Felton, Ms. Washington and Ms. LeBeouf are residents of St. James Parish, Louisiana. Ms. Felton and Ms. Washington are residents of Romeville, which is adjacent to the Nucor property.

² Section 7413 provides the cornerstone of EPA overfilling enforcement. Per subsection (a)(1), “Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.” EPA has discretion pursuant to this authority to: (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit, (B) issue an administrative penalty order in accordance with subsection (d), or (C) bring a civil action in accordance with subsection (b).” 42 U.S.C. § 7413(a)(1).

³ Nucor Settlement on Permit Violations (“Settlement”), June 7, 2021, EDMS No. 12748630 (attached hereto as Exhibit A).

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enforcement authority and find Nucor in violation of its Title V permit and order compliance with permit conditions, issue an appropriate administrative penalty and, if necessary, bring a civil action against Nucor for its documented violations of the Clean Air Act.⁴

On July 20, 2021, Petitioners submitted to LDEQ a formal objection to the proposed settlement with Nucor, citing property damage and health complications caused by the toxic air generated by Nucor's emissions.⁵ Petitioners have requested that LDEQ reject the proposed settlement and instead require increased fence-line and community air monitoring, beneficial environmental projects that will benefit the communities directly affected by Nucor's emission violations, and greatly increased financial penalties. Since that time, Petitioners have had no response whatsoever from LDEQ, nor has LDEQ addressed Petitioners' formal objection in any comment or other public document.

For nearly a decade, Nucor has been and continues to emit increasingly high levels of toxic and hazardous pollutants in clear violation of the law, with LDEQ taking little or no action to enforce permit limitations and protect the health and environment of St. James Parish – particularly failing the environmental justice communities living nearest the facility. The penalty proposed in this pending settlement is almost meaningless and will do nothing to deter Nucor from continuing to flout the terms of its permit. Without the EPA's intervention, the Petitioners reasonably expect that LDEQ will allow Nucor to continue operating well beyond the scope of its permits, as appears to have become LDEQ's policy. Petitioners respectfully request that EPA step in to exercise its independent enforcement authority, open enforcement proceedings, and consider similar or additional penalties. Such penalties could include additional fence-line or community air monitoring, requiring technological upgrades to Nucor's equipment to prevent future violations, or enjoining further operations at Nucor until permit compliance is demonstrably achievable by the company. EPA overfiling is necessary to protect public health and the environment in St. James.

A. Nucor's History of Ongoing and Increasing Emissions Violations and Other Noncompliance Indicates Federal Enforcement Is Necessary.

In St. James, Louisiana, Nucor operates one of the largest steel direct reduced iron facilities (DRI Facility) in the world and the only DRI Facility in the United States. Since its DRI Facility began operations on December 16, 2013, Nucor has consistently reported its emissions rates to be higher than permitted rates.⁶ Moreover, Nucor has exhibited a clear pattern of failing to abide by the terms of its permits and then attempting to increase allowable emissions in permit renewal applications, rather than exercise control over its mounting emission levels. These new permit limits are then disregarded in favor of emitting an even greater level of emissions. LDEQ has

⁴ 42 U.S.C. § 7413(a), (b) & (d); *see also* 40 C.F.R. 67.41.

⁵ Comment on DEQ Nucor Settlement, July 20, 2021 (attached hereto as Exhibit B).

⁶ Reports are available on EDMS, LDEQ's online database:

<https://edms.deq.louisiana.gov/edmsv2/quick-search>. Nucor's AI# is 157847. See Settlement, Exhibit A, pp. 2-22 for descriptions of various exceedances.

taken little enforcement action against Nucor for these violations, effectively encouraging the facility's unlawful behavior.

For example, Nucor admitted to releasing 139.53 tons of hydrogen sulfide between 2014 and 2018.⁷ According to the terms of Nucor's permits, it was not permitted to emit any amount of hydrogen sulfide. For that same time-period, Nucor reported releasing 21.26 tons of sulfuric acid, another chemical for which no amount was permissible according to Nucor's permits.⁸ None of these illegal emissions were addressed by the proposed Settlement with LDEQ.

Indeed, since 2014, Nucor has repeatedly exceeded its maximum allowable emissions rates, which Nucor has attributed to numerous technological failures.⁹ Nucor has also committed multiple recordkeeping violations, which indicate that Nucor's emissions violations are worse than they already appear. For example, twice in 2015, the required forms for reporting visible emissions were unlocatable while emissions from the DRI Facility's stack were visible.¹⁰ Nucor's failures to maintain equipment and operational data are clear violations of its permits.

In one particularly egregious series of incidents, Nucor decided to shut down its air quality monitoring station for 18 months (between January 1, 2017, through June 21, 2018), resulting in 18 months without any monitoring data and a total of 77 permit violations for failure to monitor air quality as calculated by the LDEQ in the Settlement.¹¹

Nucor's clear pattern of failing to operate within its permitted parameters are set out in detail in the Settlement. For example, on several occasions in 2015 and 2016, Nucor's DRI Reactor, which is not a permitted emissions source, released pressurized gases, including methane and hydrogen sulfide.¹² In response, Nucor promised to submit a permit modification application to address the reactor's emissions.¹³ Additionally, on several occasions, Nucor has operated an undescribed "emergency dump" for an extended period of time prior to permit modifications.¹⁴

B. Post-Settlement-Period Emissions Continue the Same Trend

While Nucor attributes its ongoing violations to technological issues, it is seeking to increase its allowed levels of emissions beyond what even counts as an exceedance under its current permit. Nucor's facility-wide emission rates projected in its July 2020 permit application exceed the

⁷ Letter from Nucor to LDEQ. Apr. 3, 2020. EDMS No. 12202353.

⁸ *Id.*

⁹ *See, e.g.*, EDMS Doc. No. 9328761 (May 29, 2014, letter explaining technical issues resulting in permit exceedances); 9712106 (March 31, 2015 report of 2014 Title V permit violations); 10295804 (March 31, 2016 report of deviations from 2Q 2015); 10958441 (Feb. 10, 2017 report of deviations from 2Q 2016); 1066802 (Mar. 29, 2018 report of deviations from 1Q 2017).

¹⁰ Settlement, Exhibit A.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

permitted rates for all but one chemical compound.¹⁵ Staggeringly, Nucor now projects emissions of 137.32 tons per year (TPY) of filterable particulate matter (PM) and 124.81 TPY of nitrous oxides (NOx).¹⁶ These numbers reflect the general trend of Nucor repeatedly producing greater emissions in clear violation of its Title V permit. Nucor's representatives have attributed the company's failure to reduce its emissions to various technological issues, yet also report being unable to resolve many of these issues.¹⁷ Nucor also has reported repeated failures to pass emissions stack testing in 2020 and 2021, as well as admitting to tons of unpermitted hydrogen sulfide and sulfuric acid mist emissions in April 2020 and July 2021.¹⁸

C. The Proposed Settlement's Fails to Remedy, Mitigate, or Even Discourage Nucor's Violations.

Nucor's long history of violations qualifies it for serious penalties, yet the proposed settlement offers to wipe Nucor's slate clean with minimal money paid, total denial of liability, and no agreement to ensure future compliance. Nucor's proposed settlement with LDEQ, dated June 7, 2021, lists approximately 20 pages of Title V/Part 70 permit violations from 2014 to 2018. Despite having originally reported many of these violations itself, Nucor, in its recent settlement with LDEQ, denies both committing any violations and having liability for any fines, forfeitures, and/or penalties. This settlement is a weak attempt, at best, to enforce Nucor's compliance with its permits and does little to dissuade further violations. To the contrary, by allowing Nucor off the hook for its violations at a fraction of the dollar cost that it would have to pay now to upgrade its facility (or in the past to avoid violations), LDEQ is effectively encouraging Nucor's ongoing violations.¹⁹

The settlement proposes that Nucor pay LDEQ only \$89,760.32 for all its violations from 2014 through 2018, including the illegal hydrogen sulfide and sulfuric acid emissions Nucor admits occurred but the LDEQ does not address in the settlement. \$89,760.32 is not adequate compensation for Nucor's repeated failure to comply with the terms of its permits, nor will this deter Nucor from committing further violations. In contrast, the SEC reported earnings of \$25,067,279 in sales and \$2,481,084 in net earnings by Nucor's Louisiana facility in 2018

¹⁵ Nucor Title V Air Permit Renewal, Significant Modification, and PSD Application, July 29, 2020, EDMS No. 12293282. Nucor's most recent air modeling data, from April 2019, already predicted huge exceedances of particulate matter (PM 2.5) and nitrogen dioxide (NO₂) above the National Ambient Air Quality Standards ("NAAQS") under the 2019 permit limits. The modeled 2019 PM_{2.5} emissions were almost double the NAAQS, while the modeled NO₂ hourly rate was more than 6 times the NAAQS. EDMS Doc. No. 12252342, p. 7 (June 23, 2020, Title V Regular Permit Modification; 3086-V9).

¹⁶ Settlement, Exhibit A.

¹⁷ July 28, 2021, letter from Nucor to DEQ, "Outstanding Enforcement Items to be Resolved." EDMS No. 12830204.

¹⁸ Letter from Nucor to LDEQ. Apr. 3, 2020. EDMS No. 12202353; July 28, 2021 letter from Nucor to DEQ, "Outstanding Enforcement Items to be Resolved." EDMS No. 12830204

¹⁹ July 28, 2021, letter from Nucor to DEQ, "Outstanding Enforcement Items to be Resolved." EDMS No. 12830204 (reporting amounts by Nucor spent on attempts to understand Nucor's emissions profile).

alone.²⁰ While penalties should be measured based on the gravity of the violations, among other things, rather than company profits, it is clear that this penalty amount is both inadequate to address the seriousness of the years-long violations and to impact Nucor in any meaningful way. This settlement will allow Nucor to pay a nominal fee and continue to emit unchecked quantities of pollutants without formally accepting responsibility for its permit violations, as Nucor still denies that these violations occurred in the language of the proposed settlement.

Moreover, the proposed settlement does nothing to aid the environmental justice community affected by Nucor's over-pollution. According to the EPA EJ SCREEN report, St. James Parish is in the 80th USA percentile and 74th State percentile for the National Scale Air Toxics Assessment (NATA) Air Toxics Cancer Risk. St. James Parish is in the 73rd USA percentile and 66th State percentile for NATA Respiratory Hazard Index. Over 21,000 people live in St. James Parish and are exposed to significantly higher-than-average carcinogenic air pollutants daily, such that the term "Cancer Alley" has been applied to the area. Of this number, nearly 200 people live in Romeville, a historically Black community within St. James Parish located only a mile from Nucor's facility and suffering greatly from Nucor's negligence. Members of this community, suffering damage to their homes, cars and gardens from these emissions, utilized the public comment period available from the LDEQ and submitted a formal objection to the proposed settlement with Nucor, citing their damages from Nucor's emissions.²¹ Months have elapsed without response or further updates from LDEQ, causing Petitioners to file this petition and request that the EPA, rather than LDEQ, exercise enforcement authority over Nucor.

D. EPA Overfiling is Necessary to Protect Public Health and the Environment

There is an immediate need for serious and meaningful enforcement of Nucor's permit terms by the EPA. Nucor continually emits far more chemicals than its permits allow, and it is only reasonable to assume that it will continue to do the same.²² To that end, in its July 2020 Title V permit application, Nucor requested raising the permissible emission rates for all but one air pollutant. Over a full year after receiving the application, LDEQ had not made a final decision regarding this permit application, although it did release the proposed Settlement with Nucor in June of 2021. Then, on July 27, 2021, Nucor submitted to LDEQ an addendum seeking to replace the July 2020 permit application with a new version.²³ (Nucor continued to exceed permitted emission limits during this time period between Title V permit application submissions.²⁴) The new application proposes even further increases of hourly and annual emissions of sulfur dioxide, carbon monoxide, and volatile organic compounds, while allowing

²⁰ In addition, Nucor's parent corporation is widely reported to have paid no federal corporate income taxes on 2020 profits. See <https://itep.org/55-profitable-corporations-zero-corporate-tax/> ; <https://www.washingtonpost.com/business/2021/07/21/no-tax-companies-infrastructure/>

²¹ Comment on DEQ Nucor Settlement, July 20, 2021 (attached hereto as Exhibit B).

²² Letter from Nucor to LDEQ. Apr. 3, 2020. EDMS No. 12202353; July 28, 2021, letter from Nucor to DEQ, "Outstanding Enforcement Items to be Resolved." EDMS No. 12830204.

²³ Addendum to the July 2020 Title V Air Permit Renewal, Significant Modification, and PSD Modification Application, July 27, 2021, EDMS No. 12820367.

²⁴ Title V 2021 1st Semiannual Monitoring Report, with deviations, September 30, 2021, EDMS No. 12932271 (noting that Nucor conducted a performance test on January 14, 2021 which indicated potential exceedances of emissions limits).

emissions of hydrogen sulfide and sulfuric acid. Nucor also proposes significantly increasing annual emissions of greenhouse gases (CO₂e).²⁵

The community of St. James Parish - and particularly the remaining residents of Romeville - will continue to suffer from worsening health effects and property damage if Nucor continues its operations in this manner, especially if LDEQ accepts Nucor's proposed increases in toxic air emissions by granting the pending permit application.

LDEQ has failed to take adequate enforcement action by EPA standards. Its abdication of responsible enforcement of a known repeat offender has allowed Nucor to generate a high level of toxic emissions at the expense of the health and property of the over-21,000 people living in St. James Parish. Since commencing operations in 2013, Nucor has profited without any regard for the surrounding communities, which continue to suffer from the toxic chemicals generated by the facility. The proposed settlement does nothing to deter Nucor from continuing its pattern and practice of permit violations and uncontrolled emissions.

In conclusion, the many violations by Nucor have been well documented by both Nucor and LDEQ. Accordingly, Petitioners formally request that the U.S. Environmental Protection Agency review the June 7, 2021, proposed settlement between the LDEQ and Nucor. Petitioners further request that the EPA exercise its authority under the Clean Air Act to investigate and assess significant civil penalties against Nucor for violations of its Title V air permit and ensure that such penalties are appropriate to ensure that Nucor will abide by permit conditions going forward. Petitioners respectfully request that EPA consider and impose all relevant penalties, including requiring of additional monitoring, mandating technological upgrades to Nucor's equipment to prevent future violations or enjoining further operations at Nucor until permit compliance is demonstrably achievable by the company.

Petitioners respectfully also request a meeting with or hearing before Region 6 and the EPA's Office of Enforcement and Compliance Assurance to discuss the need to address Nucor's emissions history and to effectively enforce permit limits.

²⁵ Also, on July 28, 2021, Nucor submitted a letter to LDEQ in response to a 2019 compliance order not included in the above-proposed settlement. The July 28 letter attempts to explain Nucor's inability to install or use planned improved emission controls as well as its repeated inability to pass emissions stack testing, and concludes by noting that, "Unless LDEQ prefers an earlier schedule, we are planning to submit an updated settlement shortly after a draft permit is used, which will give us a better sense of whether Nucor's proposal will be fully implemented along the lines described in this letter." July 28, 2021, letter from Nucor to DEQ, "Outstanding Enforcement Items to be Resolved." EDMS No. 12830204, p. 2. This language suggests that Nucor, not LDEQ, is proposing settlement terms.

Thank you for your attention to this matter.

Sincerely,


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cc: EPA Office of Enforcement and Compliance Assurance
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St. James Parish Council