APPENDIX A

UNITED STATES STEEL CORPORATION

APPENDIX A TO COMMENTS ON PRE-PUBLIC NOTICE DRAFT NPDES PERMIT NO. MN0057207

MINNESOTA ORE OPERATIONS – MINNTAC TAILINGS BASIN

This Appendix discusses in greater detail U. S. Steel's basis for its assertion that MPCA should not deem Admiral Lake, Sand River, or Little Sandy Lake and Sandy Lake (together the "Twin Lakes") to be waters used for the production of wild rice referenced in Comment 47 in its Comments on the Pre-Public Notice Draft.

U. S. Steel opposes the proposed Class 4A sulfate standard for wild rice (10 mg/L) for these waterbodies because it violates the purpose of the Wild Rice Statute, violates U. S. Steel's Due Process rights, has shown no established connection between the designated use and the criterion, fails to follow the rulemaking process, and triggers anti-backsliding requirements and anti-degradation review.

1. **<u>Violation of Purpose of Wild Rice Statute</u>: The legislature's stated purpose in enacting the law requiring a wild rice/sulfate study was that the study would be completed *before* regulated parties would have new requirements imposed based on the sulfate standards. MPCA's imposition in this permit of stringent sulfate limits on Admiral Lake, Sand River, and the Twin Lakes *prior* to completion of the study is premature and contravenes the legislature's intent.**

It is premature for the MPCA to determine that Admiral Lake, Sand River, or the "Twin Lakes" are "waters used for the production of wild rice." In order to effectively apply the 10 mg/L sulfate standard contained in Minnesota Rule 7050.0224, subpart 2, MPCA needs to determine whether a particular water is a "water used for the production of wild rice" ("WUFPOWR"). The process for making that determination was established in law in 2011. MPCA has not yet completed the required steps contained in that law to determine which bodies of water are subject to water quality standards applicable to wild rice.

MPCA and other interested groups worked with legislators in 2011 to establish a process to designate bodies of water to which wild rice water quality standards apply. That legislative activity arose from uncertainty regarding whether the sulfate standard in Minnesota Rule 7050.0224, subpart 2 applies to natural stands of wild rice (there is little disagreement over its

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applicability to cultivated wild rice). The final legislative language, which was negotiated and agreed to by MPCA, was passed by the legislature and signed into law by the Governor. It is contained in MN Session Laws 2011, First Special Session, Chapter 2, Article 4 ("2011 law").

This legislation required MPCA to initiate a process to amend the Minnesota Rules, chapter 7050 to: (1) address water quality standards for waters containing natural beds of wild rice, as well as for irrigation waters used for the production of wild rice; (2) designate each body of water, or specific portion thereof, to which wild rice water quality standards apply; and (3) designate the specific times of year during which the standard applies. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(a). However, the legislature made clear that the process to amend chapter 7050 was to begin only "[u]pon *completion* of the research referenced in paragraph (d)" (*Id.*) (emphasis added), which requires MPCA to "adopt and implement a wild rice research plan using the money appropriated to contract with appropriate scientific experts." *Id.* at Sec. 32(d). The legislature made the order of events very clear in the Wild Rice Rulemaking and Research statute. Only after the completion of the mandated scientific research on water quality and other environmental impacts on the growth of wild rice could MPCA seek to set wild rice water quality standards, designate the water bodies to which the standards would apply, and designate the times of year the standard would apply.

The Minnesota Court of Appeals has recognized MPCA's duty under the 2011 law to confirm in rule the applicability of the sulfate standard to natural stands of wild rice. When the Minnesota Chamber of Commerce challenged MPCA's application of the sulfate standard, the court refused to review MPCA's application of the standard due to the 2011 law. The court said:

> We decline to review any proposed interpretation or application of the Wild Rice Rule because the Chamber's claims as to the agency's application of the rule and its scope are essentially moot. The 2011 legislation directs the agency to amend the Wild Rice Rule to confirm that it applies to both natural and

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> commercial stands of wild rice and to specify the bodies of water to which the rule applies and the specific time period during which it applies. 2011 Minn. Laws 1st Spec. Sess. Ch. 2, art. 4, 32, at 71-73. We decline to consider the rule's application when the legislature has already addressed the issue.

Despite these clear admonitions from the legislature and judiciary, MPCA has told U. S. Steel that the waters to which they are discharging are sulfate-impaired and the agency intends to impose a 10 mg/L sulfate discharge limit in their NPDES permit, even though the receiving waters are not used for agricultural irrigation to produce wild rice.

MPCA's actions squarely contravene the intent of the Minnesota legislature. By proposing that these waters be deemed WUFPOWR and imposing the 10 mg/L discharge limit in NPDES permits, MPCA is doing the exact thing the legislature told it *not* to do: declare new rules regarding wild rice water quality standards, and where and when those standards will apply, *prior* to completing the statutorily required scientific studies. MPCA has not yet completed the wild rice research plan, much less the subsequent rulemakings to address wild rice water quality standards and designate each body of water to which wild rice water quality standards apply. The inclusion of a sulfate effluent limit in the permit based on the presence of wild rice in Twin Lakes is therefore premature. MPCA's actions are an unsupportable end-run around the legislature's directions in the Wild Rice Rulemaking and Research statute and are therefore unlawful.

2. <u>Violation of the Due Process Rights of U. S. Steel</u>: MPCA's Draft Recommendation proposing that Twin Lakes is a WUFPOWR and its consequent application of the resulting strict permit limits on U. S. Steel in this permit, when that standard has never been formally applied to specific waters under the regulations, violates U. S. Steel's right to due process.

The 1973 Wild Rice Rule at Minn. R. 7050.0224, subp. 2 establishes a water quality standard for sulfates of 10 mg/L per liter in water used for agricultural purposes, including irrigation, and states that the standard applies only to water "used for the production of wild rice

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during periods when the rice may be susceptible to damage by high sulfate levels." The rule does not define "when the rice may be susceptible to damage" or "high sulfate levels," or list any waters to which the rule applies.

After ignoring the rule for 37 years, MPCA began informing the regulated community in February 2010 that the rule applies not just to waters used for agricultural irrigation to produce wild rice when the rice may be "susceptible to damage from high sulfate levels," but to any water in which wild rice may be found. This is contrary to the plain language of the Wild Rice Rule as well as the Wild Rice Rulemaking and Research statute. MPCA also has issued this permit which imposes sulfate discharge limits based upon the Wild Rice Rule, even though the receiving waters have never been formally designated for a wild rice production use and are not used for agricultural irrigation to produce wild rice. MPCA has not imposed similar sulfate limits in permits issued to municipal wastewater treatment facilities and various other dischargers. Attempting to comply with these limits will result in substantial cost to U. S. Steel, with no guarantee that these expenditures will achieve compliance with the extremely low limits MPCA has proposed.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o State shall…deprive any person of life, liberty, or property, without due process of law." U. S. Const., Amend. 14 § 1. The Minnesota Constitution provides that "[n]o person shall be…deprived of life, liberty or property without due process of law." Minn. Const., Art. I § 7. As applied here, the Wild Rice Rule is impermissibly vague under both the federal and state due process provisions. Because its key terms and provisions are not clearly defined, the regulated community has not received fair notice of what the Wild Rice Rule really means and what conduct is actually prohibited. Furthermore, despite the fact that it is unclear as to

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what type of discharges are impermissible, there are significant criminal, civil, and administrative penalties for violating the discharge limitations imposed on the basis of the Wild Rice Rule. Yet these limitations and associated risks are being unilaterally imposed on U. S. Steel without rulemaking or recourse. For these reasons, the Wild Rice Rule is void for vagueness, and its imposition on U. S. Steel violates its substantive due process rights under federal and state law.

3. **<u>There is No Established Connection Between the Designated Uses and the Criterion</u>: Under the Clean Water Act, uses are designated for waters, and then criteria are set to protect those assigned uses. MPCA has not formally designated any waters as "wild rice waters," in its use designation regulation. In the absence of such a use designation, the criterion of 10 mg/L sulfate established to support that use cannot be applied.**

The core purpose of the wild rice standards study, which is statutorily mandated to be completed prior to MPCA seeking amendments to the Wild Rice Rule, is to establish scientifically supportable water quality standards for wild rice, and an accurate designation of waterbodies where, and seasons during which, those standards should apply. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(a).[1] A bedrock principle of the Clean Water Act is that water quality standards serve the dual purposes of establishing water quality goals for the specific water bodies and serving as a regulatory basis for establishing water-quality-based treatment controls. 40 C.F.R. § 131.2. Indeed, the Wild Rice Rulemaking and Research statute provides:

> *Before designating waters containing natural beds of wild rice as waters subject to a standard*, the commissioner of the Pollution Control Agency *shall establish criteria for the waters* after consultation with the Department of Natural Resources, Minnesota Indian tribes, and other interested parties and after public notice and comment. The criteria shall include, but not be limited to,

[1] The current PCA approach on permitting, which we assume will carryover to the listing process, is that the relevant growing season for wild rice during which the standard applies is April to September. No basis has been provided for that decision. In fact, the legislature specifically mandated a decision on this issue *after* the wild rice sulfate study was complete. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(a)(3).

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> history of wild rice harvests, minimum acreage, and wild rice density.

Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(b) (emphasis added).

A water must be designated for a particular use before the criterion needed to protect that use can be applied. For example, Minnesota rules provide for specific water quality standards for Class 2 waters of the state for the use of "aquatic life and recreation." Minn. R. 7050.0222. The numeric and narrative criteria to attain these water quality standards are also identified. *Id.* Many waterbodies of the state and their designated uses are expressly listed in the rules, including, for example, those designated as Class 2 waters. *See, e.g.,* Minn. R. 7050.0470. Even waters not specially listed in part 7050.0470 have been assigned designated uses and criterion to meet those uses under the rules. Minn. R. 7050.0425 and 7050.0430. Thus, there is a clear process for designating uses and associated criteria that allows transparency and predictability for dischargers. On the other hand, imposing a discharge limit for a particular waterbody for a use that has not been designated for that waterbody will be arbitrary and capricious.

Further, MPCA has not established the required connection between classifying waters as "wild rice waters," in its use designation, and the need for, and accuracy of, the 10 mg/L sulfate limit to protect that designated use. The 10 mg/L standard was adopted in 1973 in Minn. R. 7050.0224, subp. 2 based on observations made by Dr. John Moyle in the early 1940s. Dr. Moyle himself did not adhere to this standard only two years later when he testified in a 1975 contested case hearing that a 20 mg/L sulfate standard was appropriate for a discharge to water containing wild rice. There are numerous studies that dispute Dr. Moyle's 1944 conclusions regarding sulfate concentration impacts on wild rice, and even the few studies that support his findings discuss other factors affecting wild rice growth, such as water depth, and provide no supporting data that sulfate concentrations over 10 mg/L affect wild rice. Since 1975, numerous

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scientific studies have found 10 mg/L to be overly conservative and have demonstrated no harm to wild rice from sulfate concentrations ranging from 22 mg/L to 3,000 mg/L. Until June 2010, MPCA's only application of the Wild Rice Rule came in a 1975 permit issued to the Minnesota Power and Light Clay Boswell Steam Electric Station facility in Cohasset, Itasca County, Minnesota. Even in that case, MPCA did not apply 10 mg/L for waters used for the production of wild rice; rather, it allowed 40 mg/L for late April to mid-June and up to 60 mg/L during all other months. Before June 2010, the Clay Boswell permit represented the only occasion on which MPCA relied upon the Wild Rice Rule to establish a sulfate discharge limitation. For 37 years from the adoption of the 10 mg/L standard in the rules, no wastewater discharger in Minnesota was subject to that standard. The 10 mg/L standard, and the science behind it, are simply outdated.

Under the Wild Rice Rulemaking and Research statute, MPCA must create an advisory group to provide input to the commissioner on a protocol for scientific research to assess the impacts of sulfates and other substances on the growth of wild rice, review research results, and provide other advice on the development of future rule amendments to protect wild rice. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(c). MPCA advisory committee members have been engaged in this process. Among other things, the advisory committee has explained that MPCA's current approach for the potential 303(d) listing of impaired waters for the production of wild rice does not take into consideration other factors which affect the health and vitality of wild rice including: life cycles, water levels, competition and shading from other aquatic macrophytes, predation, invasive species, and other factors. Other issues raised by the advisory committee include: (a) healthy dense stands of wild rice appear in multiple water bodies where the concentration of sulfate is greater than 10 mg/L; (b) river morphology and landforms

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appear to play an important role in water-level stability; (c) MPCA and EPA guidance on conducting assessment of biological impairments is not being followed by MPCA; and (d) MPCA is using the wrong statistical approaches.

The upshot is that MPCA has not established the required connection between classifying waters as "wild rice waters," in its use designations, and the need for, and accuracy of, the 10 mg/L sulfate limit to protect that designated use. The advisory group has brought many flaws in the current approach to MPCA's attention. Yet, in this permit the agency has proceeded to apply a sulfate limit of 10 mg/L based on research that is nearly 70 years old and largely discredited. The failure to establish this connection *before* attempting to issue permit limits based on protection of wild rice contravenes the Clean Water Act, is arbitrary and capricious, and flies in the face of the express purpose of the Wild Rice Rulemaking and Research statute.

4. **<u>Failure to Follow the Rulemaking Process</u>: Defining waters as WUFPOWR in a Draft Recommendation, based on wild rice protection, and applying permit limits based on this designation are actions by MPCA that have substantial practical impacts. Therefore, MPCA should follow a standard rulemaking process before taking these actions.**

The Minnesota Administrative Procedure Act (APA) is intended to provide oversight of the powers and duties delegated to administrative agencies, including MPCA. Minn. Stat. § 14.001(1). Under the APA, "'[r]ule' means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Minn. Stat. § 14.02, Subd. 4. Agencies must follow the rulemaking procedures in the APA: "Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.001 to 14.69 [i.e., the APA], and only pursuant to authority delegated by law and in full compliance with its duties and obligations....Except as provided in

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section 14.06, sections 14.001 to 14.69 shall not be authority for an agency to adopt, amend, suspend, or repeal rules." Minn. Stat. § 14.05, Subd. 1. In proposing a rule, the agency must prepare, review, and make available for public review a statement of the need for and reasonableness of the rule. Minn. Stat. §§ 14.131, 14.23.

MPCA's statements that the Wild Rice Rule applies not just to waters used for agricultural irrigation to produce wild rice when the rice may be "susceptible to damage from high sulfate levels," but to any water in which wild rice may be found undoubtedly qualifies as a "rule" under the APA. Similarly, MPCA's stated intentions to impose 10 mg/L sulfate discharge limits even to receiving waters of the state that are not used for agricultural irrigation to produce wild rice, also qualify as rules under the APA. These are "agency statement[s] of general applicability and future effect, including amendments… adopted to implement or make specific the law enforced or administered by that agency." Minn. Stat. § 14.02, Subd. 4. The effect of MPCA's unilateral rules are new discharge control requirements on waters that have never been designated for wild rice purposes. The real-world impacts of these agency actions include substantial costs to U. S. Steel in its attempt to comply with standards that may be shown to be scientifically unsupportable when the sulfate studies are complete. Compounding the problem, if these rules are allowed to stand, U. S. Steel may have no opportunity to modify the unduly stringent discharge limits due to the antibacksliding and antidegradation prohibitions discussed below.

It is clear that MPCA's actions required formal rulemaking procedures. Rulemaking allows the regulated community and the general public to ask questions and participate in the formulation of the administrative rules; it increases public access to governmental information;

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increases MPCA's accountability; and ensures a uniform minimum procedure, among other things. Minn. Stat. § 14.001. Indeed, Minnesota's regulatory policy expressed in the APA states:

> [T]he legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

Minn. Stat. § 14.002. MPCA's unilateral actions are contrary to this policy in that they are clearly overly prescriptive and inflexible, and will undoubtedly increase costs to U. S. Steel and the regulatory community without sound scientific support. Accordingly, MPCA is required by the APA to proceed through the rulemaking process before attempting to apply the Wild Rice Rule in the manner in which it which it has declared.

Second, the entire point of the Wild Rice Rulemaking and Research statute – as indicated by its name – was to set forth an orderly process for MPCA to study wild rice water quality standards and initiate the rulemaking process to amend the Wild Rice Rule based upon the results of those studies. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(a). Put another way, the legislature has already specifically told MPCA that it must engage in rulemaking to amend the Wild Rice Rule.[2] There are important public policy, technical, and economic reasons why amendments to the Wild Rice Rule need to developed and adopted through the rulemaking process. *See* Minn. Stat. §§ 14.001, 14.002. MPCA cannot make an end-run around the statute or the APA to cut-off dialogue, avoid public scrutiny, and ignore the process mandated by the legislature. Instead, it is required to engage in formal rulemaking.

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[2] The legislature was clear that before implementing standards as to waters containing natural beds of wild rice, a rulemaking was required. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(a), (b). The current regulations only apply to production water and should not apply at all to waters containing natural beds of wild rice.

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5. **<u>No Showing that Use is Attainable</u>: Under the Clean Water Act and its regulations, designated uses need to be "attainable." MPCA has made no showing that the wild rice designated use is attainable for Twin Lakes, to which it has applied its wild rice/sulfate standards.**

EPA's regulations explain that water quality standards serve the dual purposes of establishing water quality goals for specific water bodies and serving as a regulatory basis for establishing water-quality-based treatment controls. 40 C.F.R. § 131.2. However, EPA's purpose statement clearly emphasizes that attainability of those standards is required: water quality standards "should, *wherever attainable*, provide water quality for the protection and propagation of fish, shellfish and wildlife…." *Id.* (emphasis added). In addition, each state "must specify appropriate water uses to be *achieved* and protected." 40 C.F.R. § 131.10(a) (emphasis added). EPA's WQS implementation regulations further define for states when a use is "attainable," stating:

> At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source controls.

40 C.F.R. § 131.10(d). MPCA's rules also recognize an element of achievability associated with its state WQS, stating: "The agency shall determine an exceedance of water quality standards or an impaired condition based on pollution of the waters of the state from point and nonpoint sources that has resulted in degradation of the physical, chemical, or biological qualities of the water body to the extent that *attainable* or previously existing beneficial uses are actually or potentially lost." Minn. R. 7050.0150 Subp 1 (emphasis added). In addition, "[a]ny person may present evidence to the agency that a beneficial use assigned to a water body in this chapter does not exist or is not *attainable* and petition the agency to consider a reclassification of that water body under Minnesota Statutes." Minn. R. 7050.0405 Subp. 1 (emphasis added).

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There is a certain logical sequence associated with the Clean Water Act's and EPA's water quality standards requirements. States are required to develop water quality standards in order to set water quality goals and design NPDES permits. The states must revisit these WQS every three years, hold public hearings, and, as appropriate, revise those standards. 40 C.F.R. § 131.20. During this review process, a state must determine if its WQS then would support one of the uses established by the Act. If so, the state must revise its standards to protect that use. *Id.* In other words, the attainability of a use, particularly those enumerated by the CWA, is the triggering mechanism for establishing more stringent standards.

EPA has addressed issues arising in the WQS program in a number of guidance documents. One document that devotes considerable attention to attainability issues is focused on municipal combined sewer overflows, but the concepts discussed there are generally applicable. *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* (EPA-833-R-01-002, July 31, 2001). In that document, EPA states: "In designating uses for a water body and adopting criteria to protect those designated uses, States consider the attainability of those uses, often weighing the environmental, social and economic consequences of their decisions." *Id.* at 15. This concept, of considering attainability before adopting standards, was implemented by EPA itself, in addressing WQS issues for the Chesapeake Bay. *Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability*; EPA 903-R-03-004 (October 2003) (hereinafter "TSD"). In that document, EPA finds that the current designated uses in the Chesapeake Bay "do not fully reflect natural conditions and are too broad" to support the future adoption of more specific WQS. *Id.* at 6. Thus, EPA developed the TSD to document several issues: why it appears that the designated uses cannot be attained; the rationale and scientific basis for new or refined designated uses; the

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probability that new uses will be attained; and technical information for the affected states to use in developing future use attainability analyses. *Id.* at 4. In discussing the new, refined designated uses, EPA states that "it is logical to ask if the designated uses are affordable." *Id.* at 11.

Further, under Minnesota law, MPCA must give "due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors and material matters affecting the feasibility and practicability" of any proposed action. Minn. Stat § 116.07, Subd. 6. MPCA must also "take or provide for such action as may be reasonable, feasible, and practical under the circumstances." *Id.* Any water quality standard or discharge limitation that MPCA establishes under the Minnesota Water Pollution Control Act must be "reasonable." Minn. Stat. § 115.03, Subd. 1(c).

In sum, under the Clean Water Act's system for setting and implementing water quality standards, states should assess, before adopting such standards, whether they are attainable. To adopt standards without such analysis, or in the face of evidence that the standards cannot be attained, would be inconsistent with the basic logic of the program, under which binding requirements are developed that will help bring about attainment of the standards. If attainment cannot be reached, then the basis for any water quality-based control requirements that have been imposed would be thrown into question. The proper way to avoid that result is to look at attainability issues beforehand, so that the standards that are developed can be reached, and so that any control requirements that are imposed have an adequate legal basis. Here, MPCA has made no showing that the wild rice designated use is attainable for the waters to which it has applied the historical 10 mg/L sulfate limit under the Wild Rice Rule. This violates the federal

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and state requirements outlined above and undermines the scientific and legal basis for MPCA's proposed imposition of a 10 mg/L sulfate discharge limit on NPDES permit holders.

6. **<u>Triggering of Antibacksliding Restrictions</u>: MPCA's Draft Recommendation that the Twin Lakes are WUFPOWR, based on protecting wild rice, has resulted in overly stringent permit limits. If these limits are built into the final permit, it will be very difficult to ever change them, due to antibacksliding requirements. That is the case even if the sulfate study shows that sulfate standards should be much less stringent than MPCA's current level.**

MPCA's Draft Recommendation that the Twin Lakes are WUFPOWR and imposition of 10 mg/L sulfate discharge limitations in this NPDES permit will cause serious practical impacts on U. S. Steel. MPCA itself recognized the consequences in its latest *Guidance Manual for Assessing the Quality of Minnesota Surface Waters for Determination of Impairment: 305(b) Report and 303(d) List* (2012 Assessment Cycle) where it stated: "The possible erroneous placement of a waterbody on the 303(d) impaired list is a concern because of the regulatory and monetary implications of the 303(d) listing." *Id.* at 10.

If and when waters are listed as impaired, the listings will lead to the need for TMDLs for the listed water bodies. In turn, this will lead to waste load allocations and reduced discharge limits for permit holders and applicants discharging into those waterbodies. Imposing the 10 mg/L numeric limit in the current NPDES permit is also highly problematic in that antibacksliding prohibitions may prevent such limits from *ever* being increased, even if the scientific studies mandated by the legislature establish that the limit should be substantially above 10 mg/L. Minnesota's rules prohibit backsliding in an NPDES permit unless the permittee can satisfy certain limited exceptions. Minn. R. 7053.0275. The rules also expressly address the reissuance of permits: "In a reissued permit the commissioner shall establish effluent limitations, standards, or prohibitions that are at least as stringent as the effluent limitations, standards, or prohibitions or conditions in the previous permit unless the commissioner establishes less

stringent effluent limitations, standards, or prohibitions in accordance with part 7050.0212." Minn. R. 7001.1080 Subp. 9. (Note that 7050.0212 has been repealed.) Once a permit limit is considered effective, it is rare that backsliding will be allowed.

Accordingly, MPCA's attempt to circumvent the Wild Rice Rulemaking and Research statute will have catastrophic and *irrevocable* consequences on U. S. Steel. MPCA's own guidance document was correct in recognizing the regulatory and monetary implications of the agency improvidently listing waters and setting standards without sufficient factual or scientific support. If these limits are not removed, U. S. Steel will suffer the real-world consequences of being obligated to spend a substantial amount of capital to attempt to reduce sulfate discharges and may still not achieve compliance due to the overly-stringent, unproven limits. Antibacksliding rules could prohibit these limits from ever being increased, even if clearly justified by the new sulfate studies. This is exactly the result the legislature sought to avoid in the Wild Rice Rulemaking and Research statute. Laws of Minnesota, 2011 First Special Session, Ch. 2, Art.4, Sec. 32(e).

7. **<u>Triggering of Antidegradation Requirements</u>: Because MPCA has placed such stringent limits into this permit, based on its Draft Recommendation that the Twin Lakes are WUFPOWR, any increase in those limits will likely be subject to antidegradation review. That is the case even if the sulfate study has shown that the correct sulfate limits should be much less stringent than the levels that were put in the permit.**

Minnesota's antidegradation rules provide that existing beneficial uses and the water quality necessary to protect the existing uses must be maintained and protected from point and nonpoint sources of pollution. Minn. R. 7050.0185 Subp. 1. It is the policy of the state to protect all waters from significant degradation from point and nonpoint sources and wetland alterations and to maintain existing water uses and aquatic and wetland habitats. *Id.* Existing

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beneficial uses and the water quality necessary to protect the existing uses must be maintained and protected from point and nonpoint sources of pollution. *Id.*

Further, it is the policy of MPCA that water quality conditions that are better than applicable water quality standards and are better than levels necessary to support existing beneficial uses must be maintained and protected unless the commissioner finds that, after full satisfaction of the state's antidegradation rules, a lowering of water quality is acceptable. *Id.* In allowing a lowering of water quality, the existing beneficial uses must be fully maintained and protected and the minimum treatment requirements required by the rules must be satisfied. *Id.*

Therefore, similar to antibacksliding, because MPCA has placed stringent limits into this NPDES permit based on the Wild Rice Rule, an increase in those limits may be subject to antidegradation review and, as a result, could be prohibited. This is true even if the statutorily-mandated sulfate study has shown that the correct sulfate limits should be much less stringent than the levels that were put in the permit. Once again, U. S. Steel will suffer the real-world impacts of being obligated to spend a substantial amount of time and money to attempt to achieve an unproven sulfate limit and be forever stuck with those limits notwithstanding what the science dictates as the correct limit. All of these irrational consequences can be avoided if MPCA removes this stringent standard and simply follows the systematic and orderly approach set forth in the Wild Rice Rulemaking and Research statute.

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