STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

State of Minnesota *ex rel.*, Minnesota Center for Environmental Advocacy, Save Lake Superior Association and Save Our Sky Blue Waters,

Plaintiff,

vs.

Minnesota Pollution Control Agency,

Defendant.

COMPLAINT

Court File No.

INTRODUCTION

1. Minnesota Center for Environmental Advocacy, Save Lake Superior Association, and Save Our Sky Blue Waters (collectively "Conservation Organizations") bring this action to address ongoing and significant violations of the Clean Water Act (CWA) and state water quality standards at U.S. Steel's Minntac mining operation in Mountain Iron, Minnesota. Defendant Minnesota Pollution Control Agency (MPCA) is responsible for these violations because the National Pollutant Discharge Elimination System (NPDES) permit issued to U.S. Steel, which expired over twenty years ago, fails to protect the State's natural resources. In 1987, MPCA issued an NPDES permit with a five-year term that allowed U.S. Steel to discharge certain pollutants from its Minntac tailings basin into Minnesota groundwater and surface waters. In years since, uncontrolled pollution from the tailings basin has destroyed historically and culturally significant wild rice stands in the nearby Twin Lakes, and because MPCA has never taken action to update or modify the permit to control excessive pollution, it continues to allow significant and ongoing violations of surface water and groundwater quality standards in two

watersheds. This permit is therefore inadequate to prevent pollution, impairment, and destruction of water and other natural resources. The NPDES permit expired in 1992 and the agency has never reissued it, allowing the expired permit to administratively continue for twenty-four years.

2. The Minntac mining operation consists of an open pit taconite mine, crushing plant, concentrating plant, agglomerating plant, tailings basin and associated equipment and administrative facilities. After drilling, blasting, and removing waste rock, crude ore is trucked to the site's facilities for crushing, processing and pelletizing. Wet waste from these processes, called "tailings," is pumped into an 8,000-acre holding basin (the tailings basin), where it is held in place by dikes approximately 900 feet tall. This wastewater makes its way into surface waters by seeping through or under dike walls, and by overtopping the surrounding dams. It also seeps through the bottom of the unlined basin into groundwater, which then flows through a direct hydrologic connection into area surface waters. Because the permit is inadequate to prevent pollution, impairment, and destruction of water and other natural resources, the Conservation Organizations, on behalf of themselves and their thousands of members throughout Minnesota, seek declaratory and equitable relief, costs and attorneys' fees, and an order compelling MPCA to amend and reissue the Minntac NPDES permit to include enforceable discharge limitations that ensure compliance with all applicable state and federal water quality standards, pursuant to a court-ordered schedule.

PARTIES

3. The Save Lake Superior Association (SLSA), founded in 1969, is the oldest citizen group working to preserve and protect Lake Superior. It was organized to help stop the dumping of taconite tailings into Lake Superior by Reserve Mining, whose tailings were threatening human health and contaminating water and aquatic life. SLSA's mission to protect

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the lake includes the preservation of land in northern Minnesota. SLSA has an ongoing concern about the enforcement of environmental laws against existing sources of mining pollution. Violations of environmental standards by the mining industry are of importance to SLSA's mission and its members who live throughout northeast Minnesota. SLSA's mailing address is P.O. Box 101, Two Harbors, Minnesota 55616.

4. Save Our Sky Blue Waters (SOS) is a Duluth-based grassroots nonprofit public interest environmental education and advocacy organization dedicated to protecting our region's waters, forests, and wildlife. The health of northeast Minnesota's waterways is a key component of SOS's mission. SOS formed in response to proposed copper-nickel sulfide mining and exploration in Minnesota's Arrowhead region, the headwaters of Lake Superior, and throughout the Superior National Forest. Potential toxic mining discharges in northeast Minnesota have the potential to greatly impact SOS members and citizens across the region. SOS's mailing address is P.O. Box 3661, Duluth, Minnesota 55803.

5. Minnesota Center for Environmental Advocacy (MCEA) is a Minnesota nonprofit organization with statewide membership whose mission is to use law, science, and research to preserve and protect the State's natural resources, water and air quality, wildlife, and the health of its people. MCEA's Mining Program works to protect Minnesota's air and waters by ensuring that all mines in Minnesota operate in compliance with state and federal environmental laws. MCEA's Water Quality Program works to ensure that Minnesota's lakes and streams are protected by scientifically sound water quality standards, that these lakes and streams are tested to see if they meet these standards, and that pollutant discharge permits issued by the MPCA comply with the law and are as strict as possible. MCEA was established in 1974 and is located at 26 East Exchange Street, St. Paul, Minnesota 55101.

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6. The Conservation Organizations' members live and recreate throughout Minnesota. Many work, live, recreate, and use the water downstream from the Minntac facility. In addition, Plaintiffs' members use and enjoy the iconic vistas, public parks and trails, waters, and wilderness areas adjacent to, and downstream from, the Minntac facility for a variety of purposes. These include, but are not limited to, walking, jogging, hiking, camping, cycling, swimming, canoeing, sailing, sport boating, fishing, wading, bird and wildlife observation, ricing, collecting flowers and fruit, photography, personal and commercial research, aesthetic enjoyment, and spiritual and personal reflection.

7. The Conservation Organizations' interests and the interests of their members are directly and adversely affected by MPCA's failure to issue an NPDES permit to Minntac that includes enforceable limits on discharges of significant pollutants to the streams, lakes, rivers, wetlands and groundwater in the area—discharges including but not limited to sulfates, bicarbonates, hardness, specific conductance,[1] and total dissolved solids. By failing to fulfill its legal obligation to issue an NPDES permit that protects surface water and groundwater, MPCA is allowing the pollution, impairment, and destruction of the public places and environment that the Conservation Organizations' members have an interest in using and enjoying.

8. Defendant MPCA is charged with protecting Minnesota's waters and environment from pollution. Minn. Stat. § 116.02, subd. 1. Effective June 30, 1974, the U.S. Environmental Protection Agency (EPA) delegated authority to MPCA to administer Minnesota's NPDES operating permit system under the CWA. *See* U.S. EPA-Minnesota Memorandum of

[1] Scientifically speaking, hardness and specific conductance are measures of pollution caused by discharged substances but are not themselves discharged substances. For the sake of simplicity this complaint speaks generically of "discharge" of hardness and specific conductance as a shorthand for the discharge of water pollution that raises measurable impacts for hardness and specific conductance in receiving waters.

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Agreement for the Approval of State NPDES Permit Program, May 7, 1974; letter from Marvin Durning EPA Assistant Administrator for Enforcement to Gov. Perpich, Dec. 9, 1978; *see also* Approval of State Programs, 39 Fed. Reg. 26061 (July 16, 1974).[2] MPCA is located at 520 Lafayette Road North, St. Paul, Minnesota 55155.

STATUTORY BACKGROUND

The Clean Water Act

9. Congress enacted the CWA in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and declared "it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited[.]" 33 U.S.C. § 1251(a)&(a)(3). The CWA prohibits industrial discharges of pollution to waters of the United States without permission to do so. To further these policy goals, Congress obligated the EPA Administrator to create a comprehensive program for water pollution control, 33 U.S.C. § 1252, and authorized the Administrator to issue NPDES permits that allow for the legal limited discharge of certain pollutants. 33 U.S.C. § 1342. Authorized states may issue NPDES permits under this authority, but only in compliance with the CWA and the delegation of authority of the EPA. 33 U.S.C. § 1342(a)(5).

10. Pursuant to the CWA and the EPA's delegation of NPDES permitting authority, Minnesota has set water quality standards, each subject to EPA approval. 40 C.F.R. §§ 131.5–131.6. Once state water quality standards are approved by EPA, delegated states are bound to enforce them under the CWA. 33 U.S.C. § 1313(c), 40 C.F.R. § 131.3(i).

11. The CWA requires any facility seeking to discharge pollutants to surface waters from a "point source" to obtain an NPDES permit. 33 U.S.C. § 1311(a); *Arkansas v. Oklahoma*,

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[2] Both *available at* http://www.epa.gov/sites/production/files/2013-09/documents/mn-moa-npdes.pdf.

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503 U.S. 91, 102 (1992) ("Section 301(a) of the Act, 33 U.S.C. § 1311(a), generally prohibits the discharge of any effluent into a navigable body of water unless the point source has obtained an NPDES permit."). A point source is defined as any discrete conveyance "including but not limited to any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362.

12. Each NPDES permit must include limits on pollution amounts in the facility's discharge water to ensure receiving waters will not become polluted, and instead will meet applicable water quality standards. As the Supreme Court explained:

> The Clean Water Act . . . . provides for two sets of water quality measures. "Effluent limitations" are promulgated by the EPA and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. See [33 U.S.C.] §§ 1311, 1314. "[W]ater quality standards" are, in general, promulgated by the States and establish the desired condition of a waterway. See [33 U.S.C.] § 1313. These standards supplement effluent limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels." *EPA v. California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L. Ed. 2d 578 (1976).

Arkansas, 503 U.S. at 101.

Minnesota's NPDES Program for Surface Water

13. EPA has delegated to the MPCA the authority to issue NPDES permits. *See* ¶ 8. EPA authorization for states to administer NPDES permits is defined by CWA Section 402 (b), 33 U.S.C. § 1342, and 40 C.F.R. § 123. "The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State." 33 U.S.C. § 1342(a)(5). Minnesota Statute § 115.03, subd. 1 & 5

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requires MPCA to implement and comply with the requirements of the CWA and the NPDES program.

14. By assuming authority over the NPDES program through delegation, MPCA is obligated to issue NPDES permits that comply with all CWA requirements. In order to comply with the CWA, state-issued NPDES permits must: ensure compliance with water quality standards; only be for a maximum term of five years; and be terminable for violation of the permit, misrepresentation, or changed circumstances. 33 U.S.C. § 1342(b)(1); *see also* Minn. Stat. § 115.03, subd. 1(l) (stating five-year limit on NPDES permit validity). Furthermore, a state NPDES permit program must provide notice and consultation rights to the public, federal agencies, and other states, and the state must "abate violations of the permit or the permit program" using legal means at its disposal. 33 U.S.C. § 1342(b)(3)–(7).

15. Under the CWA, water quality standards are comprised of three components: designated uses, water quality criteria, and anti-degradation. "Designated uses" refers to the state's designation of the purpose for which a waterbody should be preserved. MPCA has therefore divided Minnesota's navigable waterways into different use classes numbered 1 through 7. *See* Minn. R. 7050.0220. The Minnesota classes' descriptions are consistent with the intent of Congress that all U.S. waters be clean enough to be "fishable and swimmable" by 1983. 33 U.S.C. § 1251(a)(2).[3] Once a use has been designated, the State must establish water quality criteria (also often referred to as "water quality standards") that define the level of water quality needed to protect these designated uses. 33 U.S.C. § 1313(c). So, for example, if a water body is

[3] Friends of the Earth v. Gaston Copper Recycling, 204 F.3d 149, 156 (4th Cir. 2000) ("One of the well-recognized aims of the [Clean Water] Act is to ensure that the nation's waterways are 'fishable and swimmable.'" (citation omitted)); Mississippi Comm. on Natural Resources v. Costle, 625 F.2d 1269, 1277 (5th Cir. 1980) (refusing to estop EPA enforcement in excess of an approved CWA standard because: "This position overlooks the congressional goal of attaining fishable and swimmable waters by 1983.").

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designated for use as drinking water, the water quality criteria would define the level of degradation from a given pollutant that is tolerable for a drinking water source. State criteria or standards for each class of waters can be narrative or numeric, but must be sufficient to protect the waters for their designated use. 40 C.F.R. § 131.6(c). *In re Alexandria Lake Area Sanitary Dist. NPDES/SDS Permit*, 763 N.W.2d 303, 309 (Minn. 2009); *Minn. Envt'l. Sci. and Econ. Review Bd. v. Minn. Pollution Control Agency*, 870 N.W.2d 97, 99 (Minn. App. 2015). Applicable water quality standards for each water apply based on the classes assigned to the waterbody by MPCA. The final component of water quality standards, anti-degradation, is a requirement to protect clean waters from pollution, even when water quality standards are being met.

16. Federal law requires that NPDES permits must limit the discharge of pollutants as necessary to achieve compliance with state water quality standards. 40 C.F.R. § 122.44(d). Under state law this requirement is even broader: an NPDES permit "must contain conditions necessary for the permittee to achieve compliance with applicable Minnesota or federal statutes or rules[.]" Minn. R. 7001.1050, subp. 2. MPCA issues NPDES permits to control discharges of industrial wastewater, municipal wastewater, stormwater runoff, and other discharges from major, minor, and specific types of facilities. *See generally* Minnesota Pollution Control Agency, Water permits and forms, https://www.pca.state.mn.us/water/water-permits-and-forms (last visited Oct. 31, 2016). NPDES permits must also control discharges to groundwater if groundwater is hydrologically connected to surface waters and the pollution could affect those surface waters.

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Protection of Groundwater Resources

17. The CWA applies to pollutant discharges to surface waters. State law establishes similar protections for groundwater. The Minnesota Clean Water Legacy Act is meant "to protect groundwater from degradation, by providing authority, direction, and resources to achieve and maintain water quality standards for groundwater . . . including the standards required by section 303(d) of the federal Clean Water Act, . . . and other applicable state and federal regulations." Minn. Stat. § 114D.10. Groundwater policy in the state is governed by Minnesota Statute § 103A.204, which requires MCPA to protect groundwater from nonagricultural chemical contaminants. MPCA has enacted its groundwater quality standards in Minnesota Rules chapter 7060. MPCA regulates groundwater discharges through the State Disposal System (SDS) permit program. In this case, Minntac's NPDES permit is also an SDS permit, which means that it must comply with state groundwater quality protections in addition to the federal standards for surface water.

Water Quality Standards Applicable To this Lawsuit

18. The watersheds at issue in this matter are the Dark River Watershed and the Sand River Watershed. On the Dark River side, polluted water from the tailings basin enters the Dark River and then flows through a designated trout stretch several miles downstream. On the Sand River side, the tailings basin's polluted water discharge flows through two lakes named Little Sandy Lake and Sandy Lake (collectively "Twin Lakes"). As will be discussed below, the Twin Lakes are historically a wild rice habitat. The water quality standards for the Dark River, Twin Lakes, and groundwater that are applicable to this lawsuit are:

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a. In both the Dark River and Twin Lakes, pollution cannot surpass the Class 4A[4] bicarbonates water quality standard of 250 mg/l (stated in the regulations as 5 milliequivalents per liter). Minn. R. 7050.0224, subp. 2.

b. In both the Dark River and Twin Lakes, pollution cannot surpass the Class 3B[5] hardness water quality standard of 250 mg/l. Minn. R. 7050.0223, subp. 3.

c. In both the Dark River and Twin Lakes, pollution cannot surpass the Class 4A specific conductance water quality standards of 1000 micromhos per centimeter at 25°C. Minn. R. Minn. R. 7050.0224, subp. 2.

d. In the stretch of Dark River designated as a trout stream, pollution cannot surpass the Class 1B[6] and 2A[7] sulfate surface water quality standard of 250 mg/l. Minn. R. 7050.0220 (A)(30).

e. In the stretch of Dark River designated as a trout stream, pollution cannot surpass the Class 1B and 2A total dissolved solids (TDS) water quality standard of 500 mg/l. Minn. R. 7050.0220, subp. 3a(A)(34).

f. In the groundwater around the tailings basin, pollution cannot surpass the groundwater[8] sulfate water quality standard of 250 mg/l. Minn. R. 7060.0200 & 7060.0500; 40 C.F.R. § 143.3.

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[4] Class 4 waters at issue in this case are maintained for use by vegetation and by wildlife. "The quality of Class 4A waters of the state shall be such as to permit their use for irrigation without significant damage or adverse effects upon any crops or vegetation usually grown in the waters or area . . ." Minn. R. 7050.0224, subp. 2. "The quality of Class 4B waters of the state shall be such as to permit their use by livestock and wildlife without inhibition or injurious effects." Minn. R. 7050.0224, subp. 3.

[5] Class 3B waters are surface waters maintained to a certain level of cleanliness and quality for potential industrial uses. "The quality of Class 3B waters of the state shall be such as to permit their use for general industrial purposes, except for food processing, with only a moderate degree of treatment." Minn. R. 7050.0223, subp. 3.

[6] Class 1B waters are drinking water, subject to federal standards for water intended for domestic consumption. "The quality of Class 1B waters of the state shall be such that with approved disinfection, such as simple chlorination or its equivalent, the treated water will meet both the primary (maximum contaminant levels) and secondary drinking water standards issued by the [EPA] . . ." Minn. R. 7050.0221, subp. 3.

[7] Class 2A waters are waters maintained to be suitable for cold water fish and recreation, as well as for drinking water. Minn. R. 7050.0222, subp. 2.

[8] Minnesota groundwater standards are based on EPA's federal drinking water standards. Minn. R. 7050.0221 subp. 1(B). MPCA's policy is to maintain all state groundwater as suitable for potable water consumption, and does not allow an unpermitted degradation of groundwater by industrial or other waste. Minn. R. 7060.0200 & 7060.0500.

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g. In the groundwater around the tailings basin, pollution cannot surpass the groundwater TDS water quality standard of 500 mg/l. Minn. R. 7060.0200 & 7060.0500; 40 C.F.R. § 143.3.

19. All of the above standards are intended to protect the environment in the form of Minnesota's water resources, to the benefit of the uses associated with each Class. Violations of these standards are "considered indicative of a polluted condition which is actually or potentially deleterious, harmful, detrimental, or injurious with respect to designated uses or established classes of the waters of the state." Minn. R. 7050.0220, subp. 1. "The ready availability nearly statewide of underground water constitutes a natural resource of immeasurable value which must be protected as nearly as possible in its natural condition." Minn. R. 7060.0200.

20. The following table summarizes the relevant water quality standards set by MPCA and approved by EPA, laid out by the relevant classes in Minnesota regulations in Minn. R. 7050 & 7060.

Constituent	**Class**	**Standard**
Bicarbonates	4A	5 milliequivalents/liter (which converts to 250 mg/l)
Hardness	3B	250 mg/l
Specific Conductance	4A	1000 micromhos per centimeter at 25°C
Sulfate	1B, 2A, groundwater	250 mg/l
Total Dissolved Solids	1B, 2A, groundwater	500 mg/l

Minnesota Environmental Rights Act

21. In enacting the Minnesota Environmental Rights Act (MERA), the legislature declared:

> [E]ach person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present

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> and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.

Minn. Stat. § 116B.01.

22. MERA provides for a civil action for declaratory or equitable relief against any agency where the nature of the action is a challenge to an environmental quality license or permit that is "inadequate to protect the air, water, land, or other natural resources located within the state from pollution, impairment, or destruction," and "for which the applicable statutory appeal period has elapsed." Minn. Stat. § 116B.10, subd. 1 & 2. In other words, if a permit is issued that is insufficient to protect Minnesota's natural resources, but a statute of limitation prevents an administrative or judicial appeal of the permit, MERA provides separately for judicial review.

23. "Natural resources" is defined broadly. "'Natural resources' shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." Minn. Stat. Ann. § 116B.02.

24. "Pollution, impairment or destruction" may, under the statute, be proven in one of two ways. First, "pollution, impairment, or destruction" is any conduct by any person that violates, or is likely to violate, any environmental quality standard, limitation, or rule of the state that was issued prior to the date the alleged violation occurred or is likely to occur. Minn. Stat. § 116B.02, subd. 5. Second, "pollution, impairment or destruction" is any conduct which materially adversely affects or is likely to materially adversely affect the environment. *Id.*

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FACTUAL BACKGROUND

History of the Facility and Permit

25. Northern Minnesota has long been rich in natural resources, clean water, and plant and animal life. The area around this facility has been used for hundreds of years as grounds for hunting and gathering, and the ecosystem supports a wide diversity of species. People in the area not only rely on groundwater and surface water for their drinking water supplies, they continue to gather rice and engage in hunting and fishing consistent with state law. Recognizing the importance of these resources, Minnesota has enacted special protections for waters that support cold water fisheries and those that have the characteristics necessary to sustain wild rice. These resources are directly valuable to the people of the region who harvest them, but they also support the overall ecosystem and allow for many other positive outdoor uses and public health impacts for all society.

26. U.S. Steel owns the Minntac facility. Minntac is an iron ore mining and processing operation that began operation in 1967 in Mountain Iron, Minnesota. The facility's processing produces both ore and mineral waste product, referred to as tailings. Its tailings basin was built prior to the passage of the CWA and modern environmental review laws. As a result, the Minntac tailings basin did not undergo environmental review under state or federal law when built. The tailings basin is designed to store Minntac's fine tailings, sent to the basin in a wet slurry form. U.S. Steel appropriates some water from the tailings basin for use as process water in the processing plant, but much of the water in the tailings basin discharges to nearby lakes, rivers, streams and wetlands. The water in the tailings basin escapes in several ways. First, it discharges through surface points where it overtops the surrounding dams. Second, it seeps to

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surface water through or under dike walls. Third, it seeps through the bottom of the unlined basin and into groundwater with a direct hydrologic connection to surface water.

27. Issued in 1987, U.S. Steel-Minntac's NPDES/SDS permit[9] (the NPDES permit) does not limit the discharge of most pollutants from the tailings basin. The permit only limits the discharge of oil & grease, pH, and total suspended solids—pollutants identified in the first version of the permit and never updated in subsequent amendments. The permit term was five years, as allowed by the Clean Water Act. The permit expired in 1992. To this day Minntac continues to operate under the expired permit pursuant to Minnesota Rule 7001.0160, which allows a permittee to "continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action on the application" as long as the permittee applied for reissuance at least six months before the original permit expired. In 2015 MPCA issued a draft of a new NPDES permit but never finalized it. Because it has not been updated for current water quality standards the 1987 NPDES permit does not limit the discharge of sulfates, bicarbonates, hardness, specific conductance, and total dissolved solids, as required by state water quality standards. The lax terms of the Minntac NPDES permit have had significant and severe consequences on surrounding water resources. As shown more specifically below, none of the surface waters adjacent to this facility meet water quality standards. Indeed, for some pollutants, the standards are exceeded by more than five times the surface water standard. In this remote area of the state, there is no question that the source of these pollutants is Minntac's tailings basin, as there are no other point sources discharging to these waters.

[9] U.S. Steel holds NPDES/SDS Permit No. MN 0057207 for the Minntac tailings basin's point source and groundwater discharges.

28. During this administrative continuance, MPCA has amended the expired NPDES permit several times at the behest of the permit holder without ever "re-opening" the permit to allow for the public and affected parties to comment on the permit as a whole. The original permit called for the monitoring of two large discharge points. The current version of the permit, amended in 2012, only limits discharge of these pollutants from a single discharge point of the tailings basin, a large seep (SD001) on the Dark River side. Since Minntac began operating a seepage collection and return system on the Sand River side, the NPDES permit no longer requires monitoring of a large seep on that side (at what was sampling location SD002),[10] but MPCA records continue to reflect monitoring at that point and seepage pollution continues. Although the NPDES permit includes only one monitored discharge point, the 2012 amended permit acknowledges there are other seepage discharge points that are not monitored and for which no effluent limits are imposed.

29. The Sand River seepage collection and return system was designed to limit only surface discharges, while water continues to seep out under the dikes and through the bottom of the tailings basin on both sides. The attempted elimination of surface discharge points has by no means stopped the tailings basin from polluting lakes, rivers, streams and wetlands. Polluted water continues to seep from the perimeter dike. Thus, a system designed only to cure surface discharge only addressed a portion of the problem. Also, as discussed below, it has not even performed as well as it was expected to, nor prevented recent discharge over the basin wall.

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[10] One of the challenges of Minntac's tailings basin is that water leaves the basin through discharge points above- and below-ground, all of which impact surface water in the area. Under the first version of the NPDES permit, the tailings basin had two regulated discharge points, one of which was eliminated when the seepage collection and return system was constructed on the east/Sand River side.

30. MPCA has proof that the seepage collection and return strategy already used at Minntac is only marginally effective. When it approved the proposed seepage and collection return system on the Sand River side of its tailings basin, MPCA noted that the proposal was *not* sufficient to meet the requirements of the facility's Schedule of Compliance because it would not result in compliance with the sulfate standard for wild rice. MPCA stated that the system would only collect 55 to 60 percent of the seepage, while over 95 percent of seepage would need to be collected to meet the applicable standard. MPCA concluded that although the seepage collection and return was insufficient to meet water quality standards, some progress is better than no progress, and approved construction of the proposed design.

Applicable Surface Water Classes

31. The tailings basin sits at the headwaters of two watersheds—its discharge feeding the Dark River to the Northwest and the Sand River to the Northeast.[11]

[11] Since the tailings basin sits at the headwaters of these two rivers, the impacts in the stream segments discussed in this complaint cannot be attributed to any other point- or nonpoint-source in the area.

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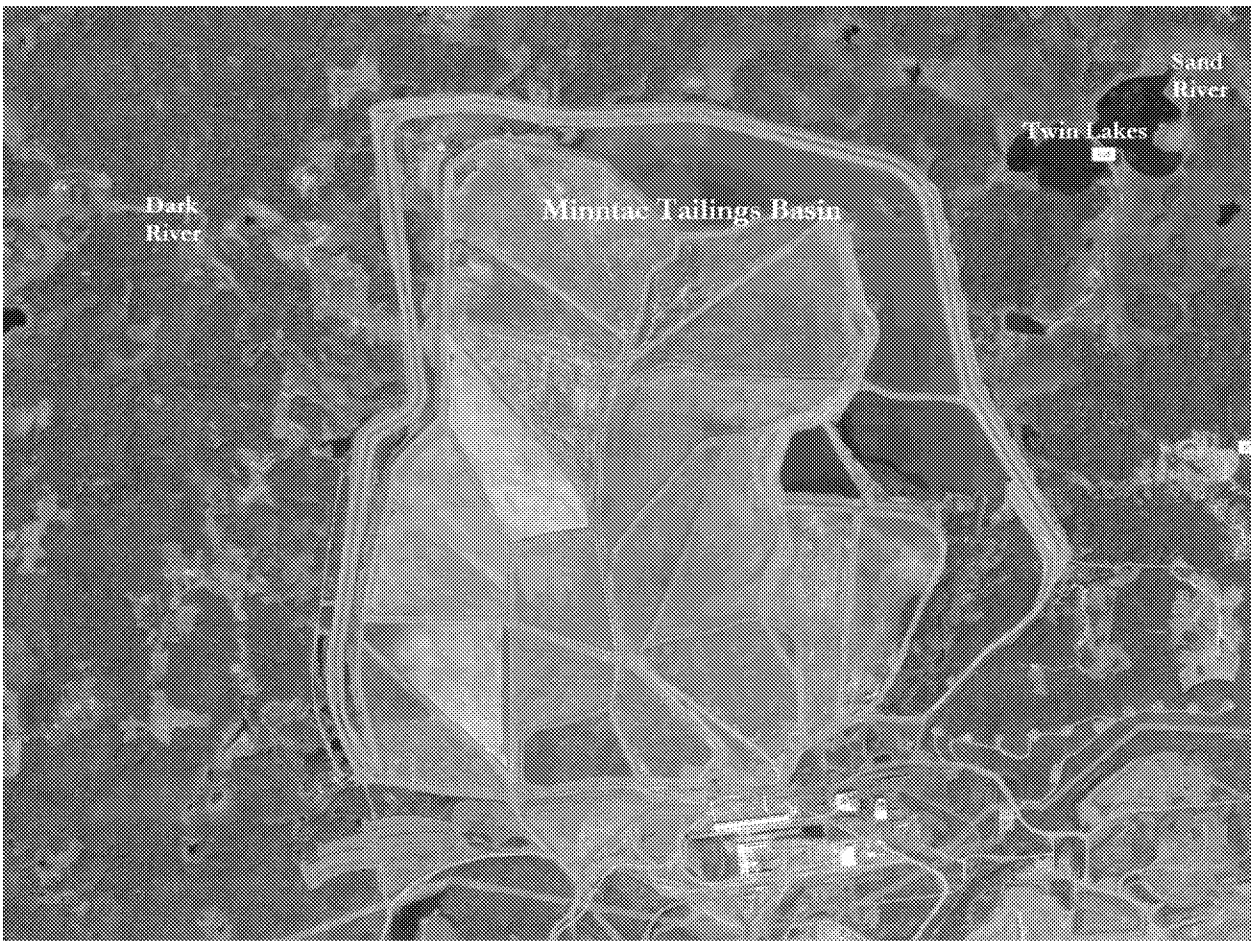

The tailings basin currently leaks into groundwater on both of these sides.

32. Near to Minntac, the Dark River is designated as Class 2B, 3B, 4A, 4B, 5, and 6 waters. Seven miles downstream, the Dark River is a designated trout stream and thus is subject to additional use classifications and water quality standards. Minn. R. 6264.0050, subp. 4 (PP)(24), Minn. R. 7050.0470, subp. 2(A)(10) (listing the Dark River as Classes 1B, 2A, 3B and trout waters). In the stretch of the Dark River designed as a trout stream, water quality standards for Class 1B, 2A, 3B, 3C, 4A, 4B, 5 and 6 apply.

33. Little Sandy Lake and Sandy Lake (collectively "Twin Lakes") are Class 2B, 3B, 4A, 4B, 5, and 6 waters. As discussed elsewhere in this complaint the Twin Lakes also were historically a habitat for abundant wild rice, in amounts suitable for harvesting.

Violations of Applicable Water Quality Standards Traceable To Minntac

34. MPCA has conducted water quality sampling in multiple locations around the tailings basin, and found ample evidence of water quality violations for at least five pollutants' standards in surface waters and groundwater. A report prepared by a MPCA hydrologist noted: "Monitoring and investigative activities have shown concentrations of certain parameters in surface water and groundwater that exceed applicable numeric standards. For surface water, the parameters are bicarbonate, hardness, specific conductance, sulfate and total dissolved salts (solids) and for groundwater they are sulfate and total dissolved solids."

Surface water violations

35. Table 1 below, created with data from the MPCA sources, shows water quality sampling results for surface water around the tailings basin. Highlighted cells show locations where the maximum or average results exceed applicable water quality standards. Water quality results are shown as maximum, or highest result obtained, while the average of all results for the sampling point is shown in parentheses. Only the stretch designated as a trout stream has applicable surface water quality standards for sulfate and TDS, therefore the six cells that do not show violations at elevated levels simply do not have Class 1A/2B standards for these two pollutants. Hence, *every* applicable standard was violated where MPCA had sampling data.

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Constituent	Standard	SD001	Dark River 2	Dark River 3 (trout stream)	Little Sandy Lake
Bicarbonates	250 mg/l	346 (196)	505 (505)	308 (308)	315 (223)
Hardness	250 mg/l	1160 (592)	1430 (1430)	788 (788)	N/A*
Specific Conductance	1000 micromhos per centimeter at 25°C	3180 (2552)	2367 (2367)	1412 (1412)	1890 (1210)
Sulfate	250 mg/l	N/A	N/A	489 (457)	N/A
Total Dissolved Solids	500 mg/l	N/A	N/A	1040 (1040)	N/A

Table 1: MPCA-documented exceedances of water quality standards in waters impacted by the Minntac tailings basin.
***MPCA testing data available to MCEA show a missing data point for harness at this location.**

36. SD001 is the discharge point from the basin into the Dark River. Dark River 2 is approximately 4 miles from the basin. Dark River 3 is approximately 10 miles from the basin, and within a designated trout stream (and thus subject to more stringent water quality standards). Little Sandy Lake is on the Sand River side of the basin, approximately 1 ¼ miles from the basin.

Groundwater violations

37. In addition, groundwater testing results around the tailings basin show violations of groundwater standards for sulfate and TDS. As MPCA documents explain, "after more than 40 years of operation, essentially all groundwater in the surficial aquifer beneath the basin is tailings-impacted." The groundwater results in Table 2 below come from MPCA data and are from groundwater investigation locations monitored under an existing Schedule of Compliance.

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Of the seven piezometers listed in PCA documents,[12] numbers 5 and 12 are the closest to the facility's dam and are both located directly between the tailings basin and Little Sandy Lake. Highlighted cells show locations where the maximum and average results exceed applicable groundwater quality standards. *All* reported sampling results at piezometers 5 and 12 violate the applicable standard:

Constituent	**Groundwater Standard**	**PZ 5S**	**PZ 5D**	**PZ 12S**	**PZ 12 I**	**PZ 12 D**
Sulfate	250 (mg/l)	894 (683)	748 (696)	577 (570)	564 (555)	480 (447)
Total Dissolved Solids	500 (mg/l)	1630 (1600)	1540 (1495)	1180 (1155)	1170 (1115)	985 (959)

Table 2: MPCA groundwater testing results.

Both piezometer 5 and 12 are approximately half a mile from the tailings basin wall, outside the Minntac property line. Independent research of the data shows that the average concentration of sulfate in two Minntac-basin-affected wells is *65 times* that of the two non-affected wells.

38. By comparing measured sulfate mass at the two historically monitored seeps and the increases in sulfate mass downstream from these points, MPCA has determined that the tailings basin is raising sulfate levels in the nearby lakes and rivers by discharging to surface water through groundwater with a direct hydrologic connection. MPCA analysis explains:

> Although some of the difference in mass between the seep and stream sampling points is likely due to other near-dike seepage sources not accounted for at the SD001 and SD002 sampling locations, the magnitude of the differences (factor of 29 on the west and 8 on the east) points to a likely contribution from deeper

[12] Piezometers are similar to wells but are also used to measure the water pressure and level in groundwater. The different letters associated with the two piezometers, used in MPCA documents and recreated in the above table, appear to designate depths at which the water samples were taken—i.e., S for shallow, D for deep, I for intermediate. For the sake of this complaint, the distinction between monitoring wells and piezometers is unimportant. MPCA has monitoring data from piezometers, surface water testing, and groundwater wells that demonstrate violations of applicable water quality standards.

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groundwater flow, emerging either directly into the stream, or into a minor tributary drainage to the stream, at some distance from the basin.

39. Consistent with the above, MPCA produced the following table of "parameters of concern" and observed pollutant concentrations surrounding the tailings basin.

Minntac Tailings Basin	Groundwater & Drinking Water (trout)		Industrial Consumption		Agric. and Wildlife		Observed Concentrations		
Parameters of Concern	Class 1	Secondary Drinking Water Standard	Class 3B (trout)	Class 3C	Class 4A (irrig. And wild rice)	Class 4B (livestock and wildlife)	GW012	Dark River @ CR668	Sand River / Twin Lakes (Twin 1-Sept 2013)
Bicarbonates (HCO3 as CaCO3)					250 mg/L		N/A	505	314
Fluoride	4.0 mg/L	2.0 mg/L					NM	8.67 (seep)	N/A
Hardness (Ca+Mg as CaCO3)			250 mg/L	500 mg/L			N/A	1430	NM
Specific Conductance					1000 uS		N/A	2367	1890
Sulfate		250 mg/L			10 mg/L	1000 mg/L	435	900	650
TDS		500 mg/L			700 mg/L		840	1950	1390

Table 3: MPCA-hydrologist-generated "Identified Parameters of Concern" table documenting pollutant concentrations.

The table reconfirms that Minntac's discharges from its tailings basin exceed applicable ground and surface water standards for all listed pollutants.

Pollution, Impairment, and Destruction of Wild Rice

40. The Twin Lakes were once covered in wild rice. The lakes were identified as wild rice waters[13] in a 2008 report from the Minnesota Department of Natural Resources (DNR) to the legislature, as well as in a Draft Recommendation by MPCA to designate these two lakes when the NPDES permit is reissued. The lakes are also identified on a list kept by the Inter-Tribal 1854 Treaty Authority, based on its own wild rice survey. They are also included in MPCA's October 26, 2015, draft list of MPCA wild rice waters, a document accompanying the MPCA's ongoing

[13] Although these "wild rice waters" are official designations by government and tribal bodies, this complaint does not depend on official designation for the MERA claim for the destruction of a natural resource. While these official designations are sufficient to show the presence of this resource, such designation is not necessary for this claim as it does not depend on any particular water quality standard.

rulemaking on the topic.[14] The MPCA report discussed above confirms that "since MPCA staff have made a preliminary draft staff recommendation that Little Sandy Lake and Sandy Lake can be considered waters used for the production of wild rice, the river's inflow to these two lakes is the logical point to monitor for compliance with the sulfate standard for wild rice production waters."

41. Discharges of water high in sulfate from the tailings basin has led to the destruction of the wild rice that once proliferated in the Twin Lakes. The basin leaks surface water and groundwater through a direct hydrologic connection to these lakes, and has altered their chemistry significantly over the years. Records from the DNR and the Inter-Tribal 1854 Treaty Authority demonstrate the destruction of the Twin Lakes' wild rice stands and water quality over time, and show stark differences in pollution levels in the Twin Lakes as compared with lakes in the area that have not been mining-impacted.

42. The effect of the ongoing pollution on the Twin Lakes has been severe—degrading plentiful wild rice supplies over the era that the Minntac tailings basin has been discharging. Looking at the historic record of the botanical resource's extirpation, it is apparent that this natural resource has been effectively destroyed by ongoing pollution.

43. The water and botanical resources in question have historical and cultural significance to Minnesotans. Wild rice is our state grain, a unique resource of cultural significance that Minnesota is especially proud of and interested in protecting. Minnesota regulations specifically protect wild rice waters, "[i]n recognition of the ecological importance of this resource" and its importance as food for humans and wildlife, as well as cultural significance to Minnesota's tribes. Minn. R. 7050.0224, subp. 1. There is a narrative standard in Minnesota

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[14] Draft list of MPCA wild rice waters (Oct. 26, 2015) *available at* https://www.pca.state.mn.us/water/draft-proposal-protecting-wild-rice-excess-sulfate.

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regulations that specifically seeks to keep wild rice waters productive. Minn. R. 7050.0224, subp. 1. Wild rice is sacred to Minnesota's tribes and is a central part of a traditional diet, and is served at culturally-significant events.

44. Since the pollution is ongoing and has created conditions deleterious to wild rice, this resource cannot now be replaced in the Twin Lakes without pollution controls. The low levels of pollution and high levels of rice in other nearby lakes demonstrate that the decline of rice in the Twin Lakes is caused by pollution from the Minntac tailings basin, and without that pollution, rice would be expected to be thriving.

45. The extirpation of wild rice in the lakes leads to a barren habitat for waterfowl that depend on the rice to survive, and the absence of rice has a negative impact on people whose livelihood includes harvesting wild rice in the area. The Twin Lakes were harvested for rice yearly before the more recent decline.

Minntac NPDES Permit Allows Pollution, Fails To Control for Known Pollutants

46. The Minntac tailings basin is subject to regulation under the CWA. U.S. Steel holds NPDES/SDS Permit No. MN 0057207 (the NPDES permit), which was issued in 1987 and expired in 1992. The NPDES permit has been administratively continued for over twenty years and has not been re-issued, though it has been modified repeatedly and recently.

47. The NPDES permit establishes almost no limits for pollutants discharged from the tailings basin. It does not limit the discharge of most relevant pollutants in tailings basin water, and only contains effluent limits for oil & grease, pH, and total suspended solids. It does not limit discharge of specific conductance or sulfate, but only requires monitoring of those discharges at SD001.

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48. MPCA staff has stated in public documents, including the draft Fact Sheet that accompanied a draft Minntac NPDES permit (never finalized) released in February 2015, that surface water and groundwater violations are attributable to Minntac's tailings basin. The data collected by MPCA staff are definitive proof of these violations.

49. Water quality violations caused by Minntac have been known to MPCA for many years. A 2004 Draft Environmental Impact Statement regarding Minntac noted that concentrations for hardness, alkalinity, conductivity, neutral pH, total dissolved solids, and sulfate were all high. Sulfate levels were recorded in excess of 1000 mg/l. Over time, the concentrations of sulfate and conductivity in the Dark River have increased as a result of discharges from the tailings basin.

Schedules of Compliance Are Ineffective, and Cannot Satisfy CWA Duties Regardless of Full Implementation

50. MPCA issues Schedules of Compliance to facilities that are in violation of their permits and environmental standards. U.S. Steel has been subject to at least five separate Schedules of Compliance since 2001 in an effort to bring it into compliance with water quality and air quality standards; it has also paid over $100,000 in penalties for violations of those Schedules of Compliance.[15] It is currently subject to a 2011 Schedule of Compliance, most recently amended on February 12, 2013, that relates to both Minntac and another U.S. Steel

[15] The facility's penalties include a recent penalty reported by MPCA in July 2016 for wastewater violations at Minntac. Press Release, MPCA completes 44 enforcement cases in second quarter of 2016 (July 26, 2016) https://www.pca.state.mn.us/news/mpca-completes-44-enforcement-cases-second-quarter-2016.

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taconite facility, Keetac.[16] That Schedule of Compliance regards, in part, sulfate and hardness discharges at Minntac.

51. Under the 2011 Schedule of Compliance, U.S. Steel is required to propose unspecified solutions to its sulfate and hardness violations at Minntac. It is also required to evaluate the feasibility of collecting seepage on the Dark River side of its Minntac tailings basin, similar to the previously-implemented seepage collection and return system on the Sand River side. It is required to install monitoring wells that will refine a groundwater model for sulfate transport and monitor compliance with the sulfate groundwater standard at the property boundary. The 2013 Amendment to this Schedule of Compliance includes alleged violations related to the sulfate standard for groundwater. It requires U.S. Steel to create a Groundwater Sulfate Reduction Plan, but does not include a deadline by which a reduction plan must be implemented, nor any benchmarks for achieving sulfate reduction.

52. The effectiveness of Minntac's Schedule of Compliance and its amendments is limited by two basic facts. First, it has no comply-by date: the Schedule of Compliance, though ostensibly an effort by MPCA to bring U.S. Steel into compliance with the NPDES permit, does not require that U.S. Steel comply with the permit by any particular date. Second, even if the Schedule of Compliance was successful, it would bring Minntac into compliance with an NPDES permit that does not protect surrounding waters from pollution, impairment, and destruction because it does not limit the discharge of most pollutants from the tailings basin.

[16] In March 2016 Keetac was put under another Schedule of Compliance to attempt to remedy its ongoing violation of sulfate standards and existing commitments in U.S. Steel's earlier Schedules of Compliance.

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Control Technologies Currently Used By U.S. Steel Will Not Prevent Pollution

53. Now that the seepage collection and return system is in place, there are data that show that a substantial amount of seepage at the Minntac tailings basin is still occurring at a subsurface level on the Sand River side of the basin. Data from MPCA and the Inter-Tribal 1854 Treaty Authority demonstrate that although sulfate concentrations in the surface waters of the adjacent Twin Lakes have dropped since 2011, they still range between 60 mg/l and almost 300 mg/l, well above any natural levels detected in the area. MPCA stated that 6780 kg/day of sulfate was discharging to the Sand River prior to construction of the seepage collection system, and 4094 kg/day discharge after construction, while the subsurface seepage remained unchanged at 912 kg/day. The seepage collection and return system collected approximately 40 percent of the total mass of sulfate, as compared to the 55 to 60 percent of total seepage predicted at construction.

54. MPCA documents show that a similar seepage collection and return system on the Dark River side would not resolve tailings basin water pollution from sulfates. The surface discharge from the Dark River side is 14,586 kg/day. A 40 percent reduction in this discharge would reduce the discharge to about 8751 kg/day. Again, a substantial reduction, but the mass of sulfates would still be more than twice the volume that is recorded to be discharging on the Sand River side, which is far too high to comply with the groundwater standard for sulfate of 250 mg/l.[17]

MPCA'S Conduct and Failure To Act

55. MPCA has been aware for decades that U.S. Steel has been in violation of water quality standards under an expired NPDES/SDS permit. The NPDES permit does not reflect any

[17] The 250 mg/l sulfate standard applies to groundwater, as well as the downstream portion of the Dark River designated a trout stream.

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of the heightened standards that came into effect since 1987, nor even many of the water quality standards that existed at the time. The delay in renewing the expired permit is entirely MPCA's, and the failure to update the permit to reflect current law is therefore also MPCA's. Much of the information available on the Minntac tailings basin's violation of water quality standards was either produced by or reported to MPCA, and the agency's Schedules of Compliance under the expired permit have failed to bring the facility into compliance with the CWA and state standards.[18]

56. Even with more than two decades to take a final action and issue an updated permit in compliance with the CWA, MPCA has not responded to U.S. Steel's application with a new permit. Conservation Organizations are not aware of any other Minnesota facility that has operated for this long under an expired NPDES/SDS permit.

57. Despite ample reason to do so, MPCA has failed to act on its obligations to timely reissue the NPDES permit to include standards that comply with all existing CWA and state water quality standards. This failure to act poses a direct threat to Minnesota's important natural resources by allowing Minntac's tailings basin to discharge numerous hazardous pollutants, and destroy natural resources such as wild rice with this discharge. MPCA's failure to act violates its duties to issue NPDES/SDS permits protective of the environment and consistent with environmental quality standards, and therefore also violates MERA.

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[18] The ongoing failure of U.S. Steel to comply with these agreements provides grounds for which MPCA should have revoked the continued permit, as "the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a stipulation agreement or compliance schedule designed to bring the permittee in compliance with the permit." Minn. R. 7001.0160(A). Nevertheless, MPCA has not acted to revoke the permit in the many years it has been violated.

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58. The applicable state law appeals period for challenging the permit elapsed in 1987, and any potential federal claim for failure to act under the Administrative Procedure Act elapsed in 1993.

COUNT 1
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Water Quality Standards for Bicarbonates
MERA, Minn. Stat. § 116B.10

59. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained therein.

60. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

61. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of surface water standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

62. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge bicarbonates, a water pollutant, in violation of an environmental quality standard, limitation, or rule of the state: the state water quality standards which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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63. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 2
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Water Quality Standards for Hardness
MERA, Minn. Stat. § 116B.10

64. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

65. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

66. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of surface water standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

67. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge water pollutants in violation of an environmental quality standard, limitation, or rule of the state: the state water quality standards for hardness which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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68. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 3
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Water Quality Standards for Specific Conductance
MERA, Minn. Stat. § 116B.10

69. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

70. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

71. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of surface water standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

72. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge water pollutants in violation of an environmental quality standard, limitation, or rule of the state: the state water quality standards for specific conductance which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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73. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 4
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Surface Water Quality Standards for Sulfate
MERA, Minn. Stat. § 116B.10

74. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

75. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

76. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of surface water standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

77. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge sulfate, a water pollutant, in violation of an environmental quality standard, limitation, or rule of the state: the state water quality standards applicable to designated trout streams which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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78. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 5
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Groundwater Quality Standards for Sulfate
MERA, Minn. Stat. § 116B.10

79. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

80. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

81. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of groundwater standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

82. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge sulfate, a water pollutant, in violation of an environmental quality standard, limitation, or rule of the state: the state groundwater quality standards which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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83. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 6
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Surface Water Quality Standards for Total Dissolved Solids
MERA, Minn. Stat. § 116B.10

84. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

85. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

86. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of surface water standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

87. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge TDS, a water pollutant, in violation of an environmental quality standard, limitation, or rule of the state: the state water quality standards applicable to designated trout streams which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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88. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 7
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Recorded Violations of Groundwater Quality Standards for Total Dissolved Solids
MERA, Minn. Stat. § 116B.10

89. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

90. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

91. Minn. Stat. § 116B.02, subd. 5 defines "pollution, impairment or destruction" to include "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . ." This includes the ongoing violation of groundwater standards. An NPDES/SDS permit must include effluent limits that result in compliance with state water quality standards under state and federal law. 40 C.F.R. § 122.44(d); Minn. R. 7001.1080.

92. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . from pollution, impairment or destruction" because it allows U.S. Steel's facility to discharge TDS, a water pollutant, in violation of an environmental quality standard, limitation, or rule of the state: the state groundwater quality standards which have been in effect prior to the time that violations were recorded. Minn. Stat. § 116B.10. Data and statements collected by MPCA staff are sufficient to prove this claim.

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93. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 8
Permit Inadequate to Protect Against
Pollution, Impairment, or Destruction: Minntac NPDES Permit Allows Water Discharge that Materially Adversely Affects Minnesota Wild Rice
MERA, Minn. Stat. § 116B.10

94. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

95. U.S. Steel-Minntac's NPDES/SDS permit MN0057207 is a permit for which the applicable statutory appeal period has elapsed.

96. The Minntac tailings basin has severely harmed wild rice, a resource of historical and cultural significance, in the Twin Lakes. The Minntac NPDES/SDS permit is inadequate under MERA because it allows pollutant discharges that materially adversely affect this resource.

97. Under MERA clean water and botanical resources are protectable natural resources of the State of Minnesota. Minn. Stat. § 116B.02, subd. 4.

98. Minntac's NPDES/SDS permit is a "permit" that is "inadequate to protect. . . water . . . or other natural resources located within the state from pollution, impairment or destruction." Minn. Stat. § 116B.10. The permit allows pollution, impairment, or destruction since it allows conduct that materially adversely affects wild rice waters, protected natural resources of the state. Minn. Stat. § 116B.02. "Natural resources" have been materially adversely impacted in both the polluted water resource at issue here and the destruction of a botanical resource of wild rice. Minn. Stat. Ann. § 116B.02.

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99. The NPDES/SDS permit has no limits for sulfate discharges and U.S. Steel is consequently under no permit duty to abate this pollution. Minntac's NPDES/SDS permit allows discharge of sulfates at levels that have largely eliminated the wild rice population in the Twin Lakes. As a result the discharge from the facility has polluted, impaired, and destroyed wild rice in the Twin Lakes.

100. Because the Minntac permit fails to protect Minnesota resources from pollution, impairment, or destruction, the Conservation Organizations are entitled to declaratory and equitable relief as requested below. Minn. Stat. § 116B.07.

COUNT 9
Fees and Costs
MPCA's Position Not Substantially Justified
Minn. Stat. § 15.472

101. Plaintiffs hereby incorporate all preceding paragraphs of this complaint and all allegations contained within them.

102. Plaintiff MCEA has urged the MPCA for over a decade to address water quality impacts at the Minntac tailings basin site by re-opening and re-issuing the long-expired NPDES/SDS permit at issue here.

103. On numerous occasions MCEA has submitted Data Practices Act requests to MPCA in order to review ongoing violations of water quality standards caused by the permitted facility. On numerous occasions MCEA has met with MPCA to discuss the failure to issue a timely and protective permit. MPCA failed to act despite these meetings and other contacts.

104. MPCA's failure to act is unreasonable and has forced Plaintiffs in this case to take legal action. Because MPCA's refusal to re-issue a five-year term NPDES permit for more than twenty years is substantially unjustified, Plaintiffs are entitled to their reasonable costs and fees. Minn. Stat. § 15.472.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Conservation Organizations respectfully request that this Court:

a. Declare that the MPCA's NPDES/SDS Permit MN0057207 for U.S.Steel Minntac's operation is insufficient to protect Minnesota's natural resources and is resulting in pollution, impairment and destruction of the environment in violation of the Minnesota Environmental Rights Act, Minn. Stat. § 116B.10;

b. Compel MPCA to take immediate action to reopen, amend, and reissue by a date certain the NPDES/SDS industrial wastewater permit for the Minntac tailings basin to include enforceable discharge limits, and sufficient additional monitoring, that ensure compliance with all applicable federal and state water quality standards;

e. Order MPCA to take other immediate, effective, and meaningful action to prevent U.S. Steel's Minntac facility from polluting, impairing, and destroying the air, water, land, or other natural resources located around those facilities;

f. Award plaintiffs' costs, expenses, expert witness fees, and reasonable attorneys' fees under Minn. Stat. § 15.472; and

g. Grant plaintiff such other and further relief as this Court deems just and equitable.

Dated: November 8, 2016

/s/ Hudson Kingston

Hudson B. Kingston (#0397994)
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ACKNOWLEDGEMENT

Plaintiff, by its attorney, Hudson Kingston, acknowledges that sanctions may be awarded under Minn. Stat. § 549.211 to the opposing party if the party or its attorney acts in bad faith, asserts a frivolous claim, asserts an unfounded position to delay or harass, or commits a fraud upon the Court.

/s/ Hudson Kingston
Hudson B. Kingston

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