STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
File No.
CASE TYPE: OTHER CIVIL/MANDAMUS

United States Steel Corporation,
Plaintiff-Petitioner,

v.

John Linc Stine, in his official capacity as the Commissioner of the Minnesota Pollution Control Agency, and the Minnesota Pollution Control Agency,
Defendants-Respondents.

VERIFIED COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

For its verified complaint and petition for writ of mandamus against defendants-respondents John Linc Stine, in his official capacity as the Commissioner of the Minnesota Pollution Control Agency and the Minnesota Pollution Control Agency, plaintiff-petitioner United States Steel Corporation states and alleges as follows:

PARTIES

1. Plaintiff-Petitioner United States Steel Corporation ("U. S. Steel") is a Delaware corporation licensed to do business in Minnesota.

2. Defendant-Respondent John Linc Stine, in his official capacity, is the Commissioner of defendant-respondent Minnesota Pollution Control Agency, a Minnesota state agency (collectively referred to as "MPCA"), located at 520 Lafayette Road North, St. Paul, Minnesota 55155. MPCA is the duly-designated state agency responsible for enforcement of the federal Clean Water Act ("CWA").

INTRODUCTION

3. This action concerns the Minntac mining facility and, more specifically, the National Pollutant Discharge Elimination System/State Disposal System ("NPDES/SDS" or "NPDES") permit (MN0057207) for the facility's Tailings Basin.

4. The Tailings Basin is the disposal area for the tailings generated during the processing of taconite at the Minntac facility. The basin also stores process water for use at the facility. Seepage discharge from the Tailings Basin is permitted and regulated pursuant to an NPDES/SDS permit.

5. The NPDES/SDS permit for the Tailings Basin was originally issued in 1987 and technically expired in 1992, but since Minntac applied for reissuance in a timely manner it has been administratively continued under the authority of MPCA since that time.

6. As set forth in more detail below, Minnesota law permits U. S. Steel, as the facility owner, to request from MPCA modifications to water quality standards and the classifications of bodies of waters downstream from the Tailings Basin (see discussion below of "Use Attainability Analysis" or UAA and "Site-Specific Modifications Requests").

7. On December 19, 2014, U. S. Steel submitted to MPCA a Use Attainability Analysis petition seeking the reclassification (and removal) of certain designated "beneficial uses" of water located near the Tailings Basin because those uses do not exist. MPCA failed to take final agency action on this request.

8. Then, on October 30, 2015, U. S. Steel submitted a Request for Site-Specific Modifications of certain state-established water quality standards applicable to waters located downstream from the Tailings Basin. Again, MPCA did not take final agency action on this request.

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9. U. S. Steel submitted these requests after MPCA had failed to complete its duties under the federally-required "triennial review" of water quality standards. At least once each three-year period, MPCA is required to review applicable water quality standards and, as appropriate, modify the standards. MPCA in the triennial review initiated in 2008 identified water quality standards for Class 3 and 4 waters as appropriate and a priority for modification, but has failed to complete the modification.

10. In November 2016, under pressure from an environmental group (including a lawsuit that was filed and then quickly settled), MPCA issued a draft NPDES/SDS permit for the Tailings Basin for public comment.

11. MPCA had, however, in January 2016 announced that it intended to wait to reissue expired mine discharge permits until 2018 to give it time to put in place certain water quality standards, including a sulfate standard for wild rice waters.

12. Instead, MPCA has "put the cart before the horse" by initiating the permit reissuance through a draft of the NPDES/SDS permit for the Minntac Tailings Basin without first taking final agency action on the UAA and Site-Specific Modification Request, and without completing the water quality standard revisions identified as appropriate in the triennial review (dating back to 2008). Moreover, MPCA is proceeding with the permitting process in an order that is inconsistent with its own stated plans to first adopt a wild rice sulfate standard.

13. The NPDES permitting process should not proceed until the applicable water quality standards are established based on current information, which necessarily requires that MPCA first take action on the UAA and the Site Specific Standards and complete the overdue water quality standard revisions in the triennial review process.

14. Because MPCA has failed and refused to first act on the above-stated matters, U. S. Steel is forced to commence this action seeking mandamus, declaratory and injunctive relief.

15. U. S. Steel seeks mandamus and declaratory judgment relief because MPCA has failed to first act on the requests and address and determine the applicable water quality standards before it proceeds to issue a revised NPDES/SDS permit for the Minntac Tailings Basin.

16. U. S. Steel seeks injunctive relief to enjoin MPCA from undertaking further action with respect to finalizing and enforcing the draft NPDES/SDS permit and seeks mandatory injunctive relief to compel MPCA to take final agency action on all requests and the triennial review water quality standard modifications as a necessary prerequisite to reissuing the NPDES/SDS permit for the Minntac Tailings Basin.

JURISDICTION AND VENUE

17. Jurisdiction in the Ramsey County District Court is proper pursuant to Minn. Stat. § 586.11, which provides that "[t]he district court has exclusive original jurisdiction in all cases of mandamus…."

18. Venue is proper as MPCA is a state agency residing in Ramsey County.

FACTUAL BACKGROUND

A. THE MINNTAC FACILITY, NPDES/SDS PERMIT AND MPCA STIPULATION WITH MCEA.

19. U. S. Steel owns and operates the Minntac facility located in Mountain Iron, St. Louis County, Minnesota. Minntac is a taconite mining and processing facility that began processing taconite into pellets in 1967.

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20. MPCA and the United States Environmental Protection Agency (EPA) regulate water quality impacts of Minntac's Tailings Basin pursuant to a NPDES/SDS permit.

21. NPDES/SDS Permit MN00057207 regulates and authorizes discharges from the Minntac Tailings Basin Area.

22. U. S. Steel was first issued a NPDES/SDS permit to govern discharges from the Minntac facility on September 30, 1987. The NPDES/SDS permit has been administratively continued by MPCA since it expired on July 31, 1992, and U. S. Steel continues to operate under the expired permit pursuant to Minn. Rule 7001.0160.

23. MPCA has failed in its legal duty to take final agency action on either the UAA or the Site Specific Standards and has failed in its duty to complete modifications of the Class 3 and Class 4 standards in the triennial review process.

24. Despite its inaction with respect to these agency duties to examine, modify and establish water quality standards, on or about November 15, 2016, MPCA issued for public comment a draft NPDES/SDS permit for the Minntac Tailings Basin facility that includes water quality standards and limitations that are the subject of the above-referenced UAA, Site Specific Standards Request and triennial review water quality standard modification process (the "Draft NPDES/SDS Permit").

25. MPCA issued the Draft NPDES/SDS Permit for comment six days after it was served with a lawsuit by the Minnesota Center for Environmental Advocacy and two other organizations (collectively "MCEA") alleging that the existing NDPES Permit was "inadequate." The MCEA lawsuit against MPCA in Ramsey County District is captioned *State of Minnesota ex rel., Minnesota Center for Environmental Advocacy, Save Lake Superior*

Association and Save Our Sky Blue Waters v. Minnesota Pollution Control Agency, Court File No. 62-CV-16-6257 (the "MCEA Action").

26. On December 2, 2016, MPCA entered into a "Stipulation" with MCEA in which MCEA agreed to dismiss its lawsuit against MPCA in exchange for MPCA's agreement to, among other items, issue a final permit within nine months:

> The MPCA agrees that it shall pursue issuance of a final National Pollutant Discharge Elimination System/State Disposal System ("NPDES/SDS") permit governing surface water and groundwater pollution from the Minntac tailings basin with the goal of completing all administrative proceedings and issuing a final permit within nine months of the Effective Date of this stipulation.

A copy of the Stipulation is attached hereto and incorporated herein as Exhibit A.

27. In January 2016, MPCA announced, however, that MPCA was placing the taconite mine permitting process "on pause" to allow for the completion of the rule-making process on a revised sulfate standard in wild rice waters—a process that was to be completed in January 2018.

28. MPCA has initiated the NPDES/SDS permitting process without having taken required final agency actions on the UAA and the Site Specific Standards requests from U. S. Steel, without completing the mandated triennial review modification of water quality standards, and in conflict with its own stated goals and plans.

29. The NPDES/SDS permitting process for the Minntac facility cannot and should not proceed until the applicable water quality standards are established based on the most recent data and recommendations, which necessarily requires that MPCA first take action on the UAA and Site Specific Standards and complete the long-overdue water quality standard modifications identified in the triennial review process.

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B. MINNESOTA WATER QUALITY STANDARDS.

30. The Clean Water Act ("CWA") was adopted in 1977 to restore and maintain the "chemical, physical, and biological integrity" of surface water "where attainable" through water quality standards ("WQS").

31. Minnesota has developed and maintains WQS pursuant to Minn. Rule Ch. 7050. WQS describe the desired condition, or level of protection, for Minnesota's surface waters and serve as the foundation for the water quality-based pollution control program mandated by the CWA.

32. WQS consist of specific "designated uses" that are linked to measurable criteria that, in turn, are used to establish whether a specific water body is being protected.

33. WQS then serve as the basis for water quality-based effluent limits in NPDES permits. Under the CWA, individual states establish the WQS for their state.

34. In Minnesota, Minn. Rule Ch. 7050 establishes the WQS for the State of Minnesota, including the following:

(a) Designated uses of Minnesota's surface waters (e.g., domestic consumption, aquatic life, industrial consumption, agricultural use);

(b) Numeric and narrative standards designated to protect those uses;

(c) Nondegradation requirements to maintain and protect existing uses and high quality waters; and

(d) General policies addressing implementation issues.

35. All surface waters in Minnesota are protected for multiple beneficial uses.

C. U. S. STEEL'S 2014 USE ATTAINABILITY ANALYSIS (UAA) PETITION.

36. On or about December 19, 2014, U. S. Steel submitted to MPCA a "Use Attainability Analysis of the Upper Dark River and Timber Creek" petition for the Minntac facility (the "UAA Petition"). The UAA Petition requested MPCA to remove the Class 3C

(industrial consumption) and Class 4A (agricultural irrigation), and modify the Class 4B (livestock and wildlife) designated beneficial uses currently in place for the Upper Dark River and Timber Creek because such uses have not existed, do not exist, and are not reasonably expected to exist in the future. Attached and incorporated herein as Exhibit B is the UAA Petition.

37. The Upper Dark River and Timber Creek are located downstream from the Minntac facility. The reclassification of these water bodies was requested pursuant to Minn. Rules 7050.0405, which states: "Any 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, section 14.09."

38. As provided in Minn. R. 7050.0405, subp. 2, "[u]pon receiving a petition, the commissioner has 60 days to reply in writing and indicate a plan for disposition of the petition. The commissioner may request additional information from the petitioner if the request is considered incomplete, in which case the commissioner has 60 days to reply after the additional information is received and the petition is complete."

39. Further, under Minn. R. 7050.0405, subp. 2, "[i]f the commissioner finds that the evidence submitted supports a review of the designated uses, a use attainability analysis *must be commenced* within six months of the commissioner's reply to the complete petition. The petition becomes part of the use attainability analysis." (Emphasis added).

40. Moreover, "[i]f the commissioner finds that the use attainability analysis supports a change in use classification, the *commissioner shall* propose the change through rulemaking." Minn. R. 7050.0405, subp. 2 (Emphasis added).

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41. The commissioner of MPCA has failed to reply in writing and indicate a plan for disposition of the UAA Petition or take any other action in response to the petition as required by law.

42. As set forth in greater detail in the UAA Petition, the current and future use of water in Timber Creek and Upper Dark River for industrial purposes has not existed, does not exist and is not reasonably expected to exist in the future based on, but not limited to, the following factors:

(a) There is no evidence of historical or existing industrial uses of surface water in the upper Dark River and Timber Creek since November 28, 1975;

(b) Human-caused conditions (property ownership) prevent access to the water body in order to withdraw it and use it for industrial purposes;

(c) Small flows do not facilitate industrial uses;

(d) The nearest downstream permitted user of water for industrial consumptive use exists approximately 213 miles downstream of the Upper Dark River.

43. Based on the above facts and as set forth in the UAA Petition, the beneficial use of water from Timber Creek and Upper Dark River for industrial consumption is not attainable.

44. As set forth in greater detail in the UAA Petition, the current and future use of water in Timber Creek and Upper Dark River for agricultural purposes has not existed, does not exist and is not reasonably expected to exist in the future based on, but not limited to, the following factors:

(a) There is no evidence of historical or existing agricultural uses since November 28, 1975;

(b) Human-caused conditions (property ownership) prevent access to the water body for the development of agriculture and/or irrigation;

(c) Small flows do not facilitate irrigation requirements;

(d) There are no users of water downstream of the Upper Dark River who are permitted to use water for the purpose of agricultural irrigation.

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45. Based on the above facts and as set forth in the UAA Petition, the beneficial use of water from Timber Creek and Upper Dark River for agricultural irrigation is not attainable.

46. In addition, and as referenced in the UAA Petition, the Class 4B water beneficial use classification standard for livestock and non-acclimated wildlife should be removed, based on the following:

(a) There is no evidence of historical or existing livestock watering or use by non-acclimated wildlife in the Upper Dark River and Timber Creek since November 28, 1975;

(b) Human-caused conditions (property ownership) in the Upper Dark River and Timber Creek subwatersheds prevent access to the water bodies in order to facilitate livestock watering;

(c) There is no evidence of historical or existing problems associated with wildlife access use of the waters from the Upper Dark River and Timber Creek.

47. Despite the legal requirement that the commissioner reply in writing and indicate a plan for disposition of the UAA Petition, MPCA has failed to indicate its plan for disposition of the U. S. Steel UAA Petition since its submittal in 2014.

48. MPCA action on the U. S. Steel UAA Petition has the potential to significantly impact the terms of the NPDES permit because, as Minn. R. 7050.0405, subp. 2., provides, if the petition supports a review of the designated uses, a use attainability analysis must be commenced within six months.

49. MPCA has ignored and disregarded the requirements of Minn. R. 7050.0405 by proceeding with the reissuance process for the NPDES permit based on a Draft NPDES Permit containing provisions based on currently-designated uses and without determining whether the evidence submitted by U. S. Steel in the UAA supports a review of the designated uses.

50. If MPCA acted on its own triennial water quality review recommendations, the UAA Petition, and/or the Site Specific Standard request, the majority of the constituents and

parameters subject to treatment and/or monitoring in the Draft NPDES Permit would not be required.

51. MPCA's failure to act on the UAA Petition will cause U. S. Steel irreparable harm, including, but not limited to, unrecoverable capital treatment expenditures of well over one hundred million dollars, and annual operating costs that would range in the tens of millions of dollars. U. S. Steel would further be required to spend $1 to $2 million in developing treatment plans, performing investigative work and data collection. If these extraordinary (and unrecoverable) expenses do not force U. S. Steel into a partial or total idling of the Minntac facility, they undoubtedly will place U. S. Steel at a distinct and significant competitive disadvantage in the market.

D. U. S. STEEL'S 2015 SITE-SPECIFIC STANDARD REQUEST.

52. On or about October 30, 2015, U. S. Steel submitted to MPCA a "Request for Site-Specific Modifications of Certain Class 3C (Industrial) and Class 4A (Irrigation) Water Quality Standards" for certain waterbodies downstream from the Tailings Basin (the "Site-Specific Request"). Attached and incorporated herein as Exhibit C is the Site-Specific Request.

53. The Site-Specific Request prepared by U. S. Steel presented information supporting site-specific standards related to Class 3C (industrial consumption) and Class 4A (agricultural irrigation) beneficial uses for certain waters located in the Dark River and Sand River watersheds located northeast and northwest of the Minntac facility.

54. Under Minn. Rule Ch. 7050, site-specific standards shall be applied by MPCA if the site-specific standards are supportive of the designated uses established in Minn. Rule Ch. 7050 and if the site-specific standards are based on sound scientific rationales.

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55. Minnesota Rule 7050.0220, subp. 7. A., provides that site-specific standards "are subject to review and modification …" and that "site-specific information *shall be applied*" if it is available and if it can be shown that a site-specific modification is more appropriate than applying a statewide or regional standard. (emphasis added).

56. Minnesota Rule 7050.0220, subp. 7. B., states that site-specific information may be provided to MPCA "by any person outside the agency", that the "commissioner *shall evaluate* all relevant data in support of a modified standard" and that the commissioner is to "determine whether a change in the standard for a specific water body … is justified." (emphasis added).

57. Despite the legal requirements that the commissioner "*shall*" evaluate all relevant data in support of a modified standard and "*shall*" determine whether a change is justified, MPCA has not acted on U.S. Steel's Site-Specific Standard Request.

58. MPCA action on U. S. Steel's Site-Specific request has the potential to significantly impact the terms of the NPDES permit because, as Minn. R. 7050.0220, subp. 7., provides, if a site specific modification is appropriate the site specific standard "shall be applied."

59. MPCA has ignored and disregarded the requirements of Minn. R. 7050.0220, subp. 7., by proceeding with the reissuance process for the NPDES permit based on a Draft NPDES Permit containing provisions based solely on statewide standards and without consideration as to whether U. S. Steel's proposed site specific modification of those standards is appropriate.

60. If MPCA acted on its own triennial water quality review recommendations, the UAA Petition, and/or the Site Specific Standard request, the majority of the constituents and

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parameters subject to treatment and/or monitoring in the Draft NPDES Permit would not be required.

61. MPCA's failure to act on the Site Specific Modification Request will cause U. S. Steel irreparable harm, including, but not limited to, unrecoverable capital treatment expenditures of well over one hundred million dollars, and annual operating costs that would range in the tens of millions of dollars. U. S. Steel would further be required to spend $1 to $2 million in developing treatment plans, performing investigative work and data collection. If these extraordinary (and unrecoverable) expenses do not force U. S. Steel into a partial or total idling of the Minntac facility, they undoubtedly will place U. S. Steel at a distinct and significant competitive disadvantage in the market.

E. THE OVERDUE MODIFICATION OF CLASS 3 AND 4 WATER QUALITY STANDARDS PURSUANT TO THE TRIENNIAL REVIEW.

62. MPCA is the state agency charged with enforcing the CWA, 33 U.S.C. §§ 1251–1387. *See* Minn. Stat. § 115.03. MPCA is, accordingly, responsible for conducting a triennial review of Minnesota's water quality standards and, as appropriate, modifying and adopting standards, as required by Section 303 of the CWA (codified as 33 USC §1313).

63. Section 303(c)(1) provides that:

> The Governor of a State or the State water pollution control agency of such State *shall* from time to time (*but at least once each three year period* beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator. (Emphasis added).

64. In 2008, MPCA began a triennial review of WQS and as a result of that review concluded that it was appropriate to modify the Class 3 and Class 4 WQS. As part of this

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process, MPCA contracted with the Department of Bioproducts and Biosystems Engineering at the University of Minnesota to conduct a reexamination of the Class 3 and Class 4 WQS.

65. In November 2010, MPCA held public information sessions to describe the status of the rule revision, present a summary of the University of Minnesota report, and MPCA staff's recommendation on the WQS changes.

66. At that time, MPCA staff recommended a range of possible changes that potentially affect both the applicable WQS and how waters of the state are classified (or not classified). MPCA staff stated this in a 2010 summary of possible changes to the standard:

> The Class 3 and the Class 4 standards were first adopted into rule on a state-wide basis in the late 1960s and have remained largely unchanged since that time. Over the last eight-to-ten years, certain industrial sector dischargers have been assigned stringent "salt-related" effluent limits. This is especially true for food processing industries and ethanol production facilities that employ water conservation techniques or process their incoming water using reverse osmosis technologies and that discharge their treated wastewaters to low flow receiving waters. In many of these instances, the Class 3 and Class 4 water quality standards translate into "end of pipe" limitations; often times protecting a resource that, due to its low flow characteristics, does not provide sustainable water for either industrial or irrigation purposes.

See "Technical Support Document Summary, June 29, 2010," MCPA, https://www.pca.state.mn.us/sites/default/files/wq-s6-17.pdf.

67. Then, in conjunction with the 2013 triennial review (the last review conducted), MPCA indicated that the "[r]evision to and update of existing Class 3 (Industrial Consumption) and Class 4 (Agriculture and Wildlife) designations and associated WQS" is a topic to be considered. *See* "Water Quality Standards," MPCA, https://www.pca.state.mn.us/water/water-quality-standards.

68. MPCA further stated that the "[e]xamination of the Class 3 and Class 4 WQS has been proposed several times in the past, and was identified as a priority in the 2008 TSR, but the project has not proceeded due to other priority rule-related issues." *See Id.*

69. MPCA website for "Amendments to Water Quality Standards – Use Classifications 3 and 4"—provides that the "Clean Water Act requires a regular review of state water quality standards, and one important aspect of that review is the updating of designated use classifications" and that "in this rulemaking, MPCA proposes to amend the existing rules governing water quality standards for industrial consumption (Class 3) and agricultural and wildlife usage (Class 4)."

70. On December 2, 2015, MPCA informed U. S. Steel that "MPCA is currently in rulemaking to revise the standards associated with the Class 3 and 4 uses."

71. On December 14, 2015 MPCA informed U. S. Steel in writing that MPCA is "nearing the beginning of the official rulemaking process" to revise the Class 3 and Class 4 water quality standards and that its rulemaking schedule anticipated completion of draft rule language and issuance of a rulemaking notice in July 2016, with completion of the rulemaking process in December 2016.

72. MPCA announced its planned changes to the Class 3 standards in its Request for Comments on Planned Amendments dated January 26, 2016, indicating as follows:

> Planned changes to the Class 3 use include replacing numeric standards for the existing subclasses (3A–3D) with a single narrative standard. This standard would apply only to surface waters subject to the Minnesota Department of Natural Resources (MDNR) water appropriations permitting program for specific industrial uses. The Class 3 use class would no longer apply to all surface waters of the state.

See "Request for Comments on Planned Amendments to rules governing Water Quality Standards–Use Classifications 3 and 4," MPCA https://www.pca.state.mn.us/sites/default/files/wq-rule4-17a.pdf.

73. MPCA announced its planned changes to the Class 4 standards in its Request for Comments on Planned Amendments dated January 26, 2016, indicating as follows:

> Planned changes to Class 4A (Agricultural Use and Irrigation) and Class 4B (Wildlife and Livestock Watering) include updating numeric standards to reflect current science. Rather than applying to all surface waters of the state, Class 4A standards would be applied on a seasonal basis (during growing season months) and only to waters with an active MDNR water appropriations permit. Class 4B standards would continue to apply to all surface waters of the state. The MPCA will also consider any other rule changes needed in order to implement the desired changes to the Class 3 and Class 4 standards.
>
> *Id.*

74. On or about March 29, 2016, U. S. Steel submitted comments regarding the planned amendments to rules governing water quality standards (Revisor's ID number 04335) concerning proposed changes to the Class 3 and Class 4 standards. Said comments included the following:

(a) U. S. Steel supports elimination of Class 3 numerical standards and replacing with Class 2 numeric and narrative standards

(b) U. S. Steel supports revisions of Class 4A standards

(c) U. S. Steel supports revisions to Class 4B standards

75. On or about April 8, 2016, U. S. Steel, as part of the 'Taconite Coalition' submitted comments regarding the planned amendments to rules governing water quality standards (Revisor's ID number 04335) concerning proposed changes to the Class 3 and Class 4 standards.

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76. The completion of MPCA's triennial review and the resulting modification of the Class 3 and Class 4 water quality standards have the potential to significantly impact the terms of the NPDES/SDS permit because significant portions of the Draft NPDES/SDS Permit are based on the obsolete standards.

77. Despite MPCA's statutory obligation to complete the triennial review process by reviewing water quality standards and modifying them as appropriate, MPCA's clear and repeated statements that modifying the Class 3 and 4 standards is appropriate and MPCA's plan to complete rulemaking by December 2016, MPCA has not revised the Class 3 and Class 4 water quality standards. Instead, MPCA commenced the process to reissue the NPDES/SDS permit with limits and requirements based on the current, outdated Class 3 and Class 4 standards.

78. If MPCA acted on its own triennial water quality review recommendations, the UAA Petition, and/or the Site Specific Standard request, the majority of the constituents and parameters subject to treatment and/or monitoring in the Draft NPDES Permit would not be required.

79. MPCA's failure to act on the modification of Class 3 and Class 4 water quality standards pursuant to the triennial review will cause U. S. Steel irreparable harm, including, but not limited to, unrecoverable capital treatment expenditures of well over one hundred million dollars, and annual operating costs that would range in the tens of millions of dollars. U. S. Steel would further be required to spend $1 to $2 million in developing treatment plans, performing investigative work and data collection. If these extraordinary (and unrecoverable) expenses do not force U. S. Steel into a partial or total idling of the Minntac facility, they

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undoubtedly will place U. S. Steel at a distinct and significant competitive disadvantage in the market.

COUNT I
WRIT OF MANDAMUS RELIEF—
USE ATTAINABILITY ANALYSIS PETITION

80. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

81. This cause of action is brought pursuant to Minn. Stat. §§ 586.01, *et seq.*, for a peremptory or alternative writ of mandamus directing MPCA to take final agency action on the Use Attainability Analysis petition submitted by U. S. Steel on December 19, 2015.

82. As set forth above, and pursuant to Minn. R. 7050.0405 "[i]f the commissioner finds that the evidence submitted supports a review of the designated uses, a use attainability analysis *must be commenced* within six months of the commissioner's reply to the complete petition," and that "[i]f the commissioner finds that the use attainability analysis supports a change in use classification, the *commissioner shall* propose the change through rulemaking." Minn. R. 7050.0405, subp. 2 (emphasis added).

83. The commissioner of MPCA has failed to reply in writing and indicate a plan for disposition of the UAA Petition or take any other action in response to the petition as required by law. MPCA's failure to comply with its clear legal duty to take action on the UAA Petition constitutes a public wrong specifically injurious to U. S. Steel and there is no plain, speedy and adequate remedy in the ordinary course of law.

84. Accordingly, U. S. Steel is entitled to a peremptory or alternative writ of mandamus ordering that (a) MPCA take final agency action on U. S. Steel's UAA petition, and (b) MPCA take said final agency action prior to the reissuance of the NPDES permit.

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COUNT II
WRIT OF MANDAMUS RELIEF—
SITE-SPECIFIC STANDARD REQUEST

85. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

86. This cause of action is brought pursuant to Minn. Stat. §§ 586.01, *et seq.*, for a peremptory or alternative writ of mandamus directing MPCA to take final agency action on the Site-Specific Standard Modification Request made by U.S. Steel on October 30, 2015.

87. As set forth above, and pursuant to Minn. R. 7050.0220, the standards "are subject to review and modifications as applied to a specific water body" and that if "site-specific information is available that shows that site-specific modification is more appropriate than the statewide or ecoregion standard" the "site-specific information *shall be applied*." (Emphasis added).

88. As set forth above, U. S. Steel has properly submitted a request for Site Specific Standards, but MPCA has failed to act on said requests. MPCA's failure to comply with its clear legal duty to take agency action on the Site-Specific Standard Modification Request constitutes a public wrong specifically injurious to U.S. Steel and there is no plain, speedy and adequate remedy in the ordinary course of law.

89. Accordingly, U.S. Steel is entitled to a peremptory or alternative writ of mandamus ordering that (a) MPCA take final agency action on U. S. Steel's Site Specific Standard Modification Request, and (b) MPCA take said final agency action prior to the reissuance of the NPDES permit.

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COUNT III
WRIT OF MANDAMUS RELIEF—
TRIENNIAL REVIEW

90. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

91. This cause of action is brought pursuant to Minn. Stat. §§ 586.01, *et seq.*, for a peremptory or alternative writ of mandamus directing MPCA to complete the triennial review.

92. As set forth above, MPCA is the state agency charged with implementing the CWA, 33 U.S.C. §§ 1251–1387. See Minn. Stat. § 115.03. As such, it is responsible for reviewing and modifying water quality standards through a triennial review process as prescribed by Section 303 of the CWA (codified as 33 USC §1313); accordingly, MPCA "*shall* from time to time (*but at least once each three year period* beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." (Emphasis added).

93. As set forth above, MPCA has determined that it is appropriate to modify the Class 3 and Class 4 standards. Modification has been proposed several times in the past and was identified as a priority by MPCA in 2008, but the modification has not proceeded.

94. MPCA has reviewed the Class 3 and Class 4 standards and determined that modifications are appropriate yet has not modified the standards, clearly violating the duties imposed on it by Section 303(c)(1) of the Clean Water Act.

95. Therefore, U. S. Steel is entitled to a peremptory or alternative writ of mandamus ordering that (a) MPCA complete the triennial review and initiate rulemaking to modify the Class 3 and Class 4 standards, and (b) MPCA complete of said triennial review and initiate rulemaking prior to the reissuance of the NPDES permit.

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COUNT IV
DECLARATORY JUDGMENT—
USE ATTAINABILITY ANALYSIS PETITION

96. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

97. This cause of action is brought pursuant to Minn. Stat. §§ 555.01, *et seq.*, for declaratory relief seeking a determination of this court that MPCA has failed to comply with the requirements of Minn. R. 7050.0405 to take final agency action on the UAA Petition submitted by U.S. Steel on December 19, 2015.

98. As detailed above, and pursuant to Minn. R. 7050.0405 "[i]f the commissioner finds that the evidence submitted supports a review of the designated uses, a use attainability analysis *must be commenced* within six months of the commissioner's reply to the complete petition," and that "[i]f the commissioner finds that the use attainability analysis supports a change in use classification, the *commissioner shall* propose the change through rulemaking." Minn. R. 7050.0405, subp. 2 (emphasis added).

99. MPCA commissioner has failed to reply in writing and indicate a plan for disposition of the petition or take any other action in response to the petition as required by law.

100. There is a real, immediate, substantial and continuing controversy between U.S. Steel and MPCA requiring intervention of the court with respect to MPCA's failure to comply with its clear legal duty to take final agency action on the UAA Petition submitted by U. S. Steel on December 19, 2015.

101. U. S. Steel is entitled to a declaratory judgment that MPCA has failed to comply with state agency rule requirements mandating agency action on U. S. Steel's UAA Petition.

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COUNT V
DECLARATORY JUDGMENT—
SITE-SPECIFIC REQUEST

102. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

103. This cause of action is brought pursuant to Minn. Stat. §§ 555.01, *et seq.,* for declaratory relief seeking a determination of this court that MPCA has failed to comply with the requirements of Minn. R. 7050.0220 to take agency action on the Site-Specific Request made by U.S. Steel.

104. As detailed above, U. S. Steel has properly submitted a Site Specific Request, but MPCA has failed to act on the request as it is legally obligated to do.

105. There is a real, immediate, substantial and continuing controversy between U. S. Steel and MPCA requiring intervention of the court with respect to MPCA's failure to comply with its clear legal duty to take agency action on the Site-Specific Request made by U. S. Steel.

106. U. S. Steel is entitled to a declaratory judgment that MPCA has failed to comply with state agency rule requirements mandating agency action on U. S. Steel's Site-Specific Request.

COUNT VI
DECLARATORY JUDGMENT—
TRIENNIAL REVIEW

107. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

108. This cause of action is brought pursuant to Minn. Stat. §§ 555.01, *et seq.,* for declaratory relief seeking a determination of this court that MPCA has failed to comply with Section 303 of the CWA (codified as 33 USC §1313) requiring MPCA to review and modify water quality standards through a triennial review process.

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109. As detailed above, MPCA is the state agency charged with implementing the CWA, 33 U.S.C. §§ 1251–1387. As such, it is responsible for reviewing and modifying water quality standards through a triennial review process as prescribed by Section 303 of the CWA (codified as 33 USC §1313); accordingly, MPCA "*shall* from time to time (*but at least once each three year period* beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." (Emphasis added).

110. There is a real, immediate, substantial and continuing controversy between U. S. Steel and MPCA requiring intervention of the court with respect to MPCA's failure to comply with its clear legal duty to complete the triennial review and initiate rulemaking to modify the Class 3 and Class 4 standards.

111. U. S. Steel is entitled to a declaratory judgment that MPCA has failed to comply with federal law mandating timely state agency review of water quality standards.

COUNT VII
INJUNCTIVE RELIEF

112. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

113. As described above, MPCA has failed in its legal duties to take final agency action on either the UAA Petition or the Site-Specific Request and it has not completed a triennial review for the Class 3 and Class 4 standards.

114. Despite its inaction, on or about November 15, 2016, MPCA initiated the permit reissuance process by issuing for public comment the Draft NPDES/SDS Permit for the Minntac Tailings Basin that includes limitations and requirements based on water quality

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standards that are the subject of the above-referenced UAA Petition, Site-Specific Request and triennial review water quality standard modification process.

115. U. S. Steel is entitled to temporary and permanent injunctive relief enjoining MPCA from reissuing the NPDES permit until it has fulfilled its duties to properly act on the UAA Petition, the Site-Specific Request and the triennial review process, including MPCA's duty to update the Class 3 and Class 4 water quality standards.

116. U. S. Steel has no adequate remedy at law and will suffer irreparable harm if MPCA is not prohibited from reissuing the NPDES/SDS permit prior to taking the actions described above.

COUNT VIII
FEE AND COSTS
MINN. STAT. § 15.472

117. U. S. Steel restates and realleges the paragraphs above as though fully set forth in this count.

118. As described above, MPCA has failed to act on its own triennial water quality review recommendations, the UAA Petition, and/or the Site Specific Standard request.

119. MPCA's failure to act is not substantially justified and has forced U. S. Steel to commence legal action. Because MPCA's failure to act on its own triennial water quality review recommendations, the UAA Petition, and/or the Site Specific Standard request is substantially unjustified, U. S. Steel is now entitled to its reasonable costs and fees pursuant to Minn. Stat. § 15.472.

WHEREFORE, Plaintiff-Petitioner United States Steel Corporation prays for judgment against Defendants-Respondents MPCA as follows:

1. That the court issue a peremptory writ of mandamus compelling (a) MPCA to take final agency action on U. S. Steel's UAA Petition and its Site-Specific

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Request, and complete the triennial review water quality standard modification process, including the initiation of rulemaking to modify the Class 3 and Class 4 water quality standards, and (b) MPCA to take said actions prior to the reissuance of the NPDES permit.

2. That the court, in the alternative, order that an alternative writ of mandamus issue compelling MPCA to show cause why the writ should not issue compelling MPCA to take final agency action on U.S. Steel's UAA Petition and Site-Specific Request, and complete the triennial review process, including the initiation of rulemaking to modify the Class 3 and Class 4 water quality standards;

3. That the court declare and adjudge that MPCA has failed to comply with the requirements of Minn. R. 7050.0405, to take final agency action on the UAA Petition submitted by U. S. Steel;

4. That the court declare and adjudge that MPCA has failed to comply with the requirements of Minn. Rule 7050.0220, to take agency action on the Site-Specific Request made by U. S. Steel;

5. That the court declare and adjudge that MPCA has failed to comply with its clear legal duty under Section 303(c)(1) of the Clean Water Act to complete the triennial review and initiate rulemaking to modify the Class 3 and Class 4 standards;

6. That the court issue temporary injunctive relief enjoining MPCA from reissuing the NPDES permit until it has fulfilled its duties to properly act on the UAA Petition, the Site-Specific Standard Request and the triennial review process, including its duty to update the Class 3 and Class 4 water quality standards;

7. That the court issue permanent injunctive relief enjoining MPCA from reissuing the NPDES permit until it has fulfilled its duties to properly act on the UAA Petition, the Site-Specific Request and the triennial review process, including its duty to update the Class 3 and Class 4 water quality standards;

8. That U.S. Steel be awarded costs, disbursements, expenses, expert fees, and reasonable attorneys' fees under both Minn. Stat. § 15.472, and as may be otherwise recoverable by law; and

9. Granting and awarding such other and further relief as the court deems just and equitable.

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Dated:

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ACKNOWLEDGMENT

I hereby acknowledge that sanctions may be awarded pursuant to Minn. Stat. § 549.211, subd. 3, if the court determines that this document violates Minn. Stat. § 549.211, subd. 2.

Rob A. Stefonowicz

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VERIFICATION

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

Christina Bartovich, being first duly sworn, deposes and states that she is Director-Environmental, Minnesota Ore Operations for United States Steel Corporation, that she has read and fully understands the allegations of this verified complaint and petition for writ of mandamus, and that the same are true and correct, except as to those matters stated on information and belief, which matters she believes to be true and correct.

_____
Christina Bartovich

State of Minnesota
County of St. Louis

This instrument was acknowledged before me on February 15, 2017, by Christina Bartovich as Director-Environmental for Minnesota Ore Operations.

_____
Signature of notarial officer

My commissioner expires: _____

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