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Commissioner Paul Aasen (Paul.Aasen@state.mn.us)

Minnesota Pollution Control Agency

520 Lafayette Road North

St. Paul, Minnesota 55155

Owen Seltz, Metallic Mining Sector, Industrial Division (Owen.Seltz@state.mn.us)

Minnesota Pollution Control Agency

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St. Paul, Minnesota 55155

RE: AIR EMISSION PERMIT NO. 13700063- 004 Major Amendment
Proposed to be issued to United States Steel Corporation for
MINNESOTA ORE OPERATIONS - KEETAC FACILITY

Dear Commissioner Aasen, Mr. Seltz:

These comments are submitted on behalf of WaterLegacy, a Minnesota non-profit organization formed to protect Minnesota's water resources and the communities that depend on them. In compliance with applicable Minnesota Rule 7001.0110, Subp. 2, WaterLegacy's comments are summarized as follows:

A. WaterLegacy's Interests

WaterLegacy's interests in the proposed Major Amendment to the air emissions permit for the United States Steel Corporation ("U.S. Steel") Minnesota Ore Operations – Keetac Facility ("Keetac") are:

- 1) Protection of Minnesota's water resources from up to 75.5 pounds per year of increased mercury emissions resulting from the new indurating furnace proposed at the Keetac facility. Mercury is a potent neurotoxic, and concentration of methyl mercury in fish creates neurological damage to the fetus, infants and children as well as to animal species at the top of the food chain, such as Minnesota's state bird, the common loon.
- 2) Protection of the integrity of implementation of the Minnesota mercury TMDL, so that increases in mercury emissions will not be permitted when both emission reductions and mercury emissions offsets are highly speculative, indefinite and unenforceable.
- 3) Protection of Minnesota waters from untreated mining discharge, which increases levels of sulfates, toxic metals, hardness and conductivity in surface waters, in violation of Minnesota water quality standards. The "Schedule of Compliance Multi-Media Pollutant Reduction" provided by the Minnesota Pollution Control Agency ("MPCA") to U. S. Steel on June 11, 2011 ("US Steel/MPCA June 11, 2011 SOC"), attached with this comment letter, voids prior Schedules of Compliance with U.S. Steel that would have

required active water quality treatment to address violations of standards for sulfates and hardness, among other pollutants.

- 4) Protection of the integrity of the MPCA's enforcement of mercury and water quality standards with respect to existing and expanding mining facilities, so that these facilities are not allowed to disregard regulations, increase mercury emissions, avoid collection and treatment of wastewater and pollute and despoil Minnesota's precious aquatic ecosystems.
- 5) Protection of WaterLegacy's mission to ensure effective public participation in government and regulatory processes that impact the quality of fresh water and the health of communities dependent on that water.
- 6) Avoiding a disturbing precedent where regulations are not rigorously applied and enforced for the mining industry, as would be required to prevent mercury contamination and wastewater pollution and to protect Minnesota water quality under the Clean Water Act.

B. Agency Actions Sought by WaterLegacy

The actions that WaterLegacy wishes the Agency to take in connection with the Keetac Draft/Proposed air emissions permit are as follows:

- 1) Provide members of the public with adequate public notice and opportunity for effective participation regarding the Keetac expansion by taking the following actions:
 - a) Reissue the Public Notice for the Draft/Proposed Air Emission Permit to specifically state that the permit would allow up to 75.5 pounds per year of new mercury emissions and that technologies to reduce mercury emissions from indurating furnaces are untested and uncertain;
 - b) Post the US Steel/MPCA June 11, 2011 SOC on the MPCA web site with the Public Notice for the Keetac expansion and the Draft Permit so that members of the public can readily have access to review this related document;
 - c) Issue an additional News Release for the Keetac expansion describing the proposed increase in mercury air emissions, providing a link to the Public Notice for the permit, inviting public comment and providing a street address and electronic mail address for public comment;
 - d) Extend the time for public comment on the Keetac expansion until August 1, 2011 to allow members of the public to review the updated Public Notice and the US Steel/MPCA June 11, 2011 SOC and evaluate whether they have concerns about increased mercury emissions and changes in requirements for compliance with water quality standards.
- 2) Conduct a meeting with the Commissioner with respect to the Keetac Draft/Proposed Permit pursuant to Minn. R. 7001.0125, Subp. 1, requested in conjunction with a contested case hearing on the Keetac expansion.
- 3) Conduct a contested case hearing on the Keetac Draft/Proposed Permit pursuant to Minnesota Rules 7000.1800 and 7000.1900.

- 4) Deny issuance of the Keetac Draft/Proposed Permit on the following grounds: i) that its increased and permitted mercury emissions are certain, while the proposed reduction in new mercury emissions and proposed mercury offsets are uncertain, speculative and unenforceable and, thus, inconsistent with Minnesota's State Mercury TMDL; and ii) that the US Steel/MPCA June 11, 2011 SOC developed in conjunction with the Draft/Proposed Permit is inconsistent with the State's duties under the Clean Water Act as well as inconsistent with Minnesota's Statewide Mercury TMDL.

C. Support for WaterLegacy's Position

- 1) Requests for improvements in the public process pertaining to the Keetac expansion (Section B1) above) result from inadequacies in the process of public notice and lack of transparency. The notice, news release and multimedia schedule of compliance pertaining to the Keetac and Minntac mining facilities seem as if they were designed to mislead the public and exclude public participation in at least the following ways:
 - a) The MPCA Public Notice on the Draft/Proposed Air Emission Facility Permit for the Keetac Facility (<http://www.pca.state.mn.us/index.php/about-mpca/mpca-news/public-notices/public-notices.html>) did not notify members of the public that the proposed new indurating furnace would increase mercury air emissions. The word "mercury" did not even appear in the notice.
 - b) The MPCA News Release for the public meeting on the Keetac air permit proposal (<http://www.pca.state.mn.us/index.php/about-mpca/mpca-news/current-news-releases/public-meeting-set-for-u.s.-steel-keetac-mining-proposal.html>) also failed to include any reference to mercury or increased mercury emissions. Unlike other MPCA news releases pertaining to permits, the News Release heading did not state that the MPCA solicited or invited public comments, did not provide members of the public with any link to the Keetac Public Notice or Draft/Proposed Permit and did not provide members of the public with any address or email to which they might submit comments. (Compare, for example, the June 13, 2011 MPCA News Release "MPCA Solicits Comments on Environmental Review of Wastewater Project" at <http://www.pca.state.mn.us/index.php/about-mpca/mpca-news/current-news-releases/mpca-solicits-comments-on-environmental-review-of-wastewater-project.html>).
 - c) Neither the MPCA website nor any of the publicly available documents pertaining to the Keetac mining expansion include or reference the US Steel/MPCA June 11, 2011 SOC or inform the public either of the nature of the proposed "offset" for new mercury emissions or the MPCA's agreement, in conjunction with the Keetac permit expansion, to void prior water quality compliance schedules that required active water quality treatment. In fact, the Technical Support Document for the Keetac mining expansion dated June 1, 2011 included and referenced a Schedule of Compliance (Attachment 7.a) that was invalidated less than two weeks later by the multimedia US Steel/MPCA June 11, 2011 SOC.
- 2) In support of our petition for a contested case hearing, request for a meeting with the Commissioner and request that the Keetac Draft/Proposed Air Emissions Permit be denied

(Section B 2), B 3) and B 4) above) WaterLegacy states that there are material issues of fact in dispute concerning the Keetac expansion as well as mixed issues of fact and policy that require attention from the citizen Board of the MPCA.

Material issues of fact include the following:

- Whether mercury emissions likely to result from the Keetac expansion, over time as well as at the onset of operation of the new indurating furnace, are likely to increase, adding up to 75.5 pounds per year of additional toxic mercury;
- Whether increased mercury emissions from the Keetac expansion are likely to be offset at all by mercury emissions reduction “goals” related to existing Keetac and Minntac mining operations and, if so, to what degree and within what time frame.

Mixed issues of fact and policy include the following:

- Whether the Keetac Draft/Proposed Permit is inconsistent with Minnesota’s Statewide Mercury TMDL in that it provides for certain mercury increases and only speculative and untested mercury reductions;
- Whether the Keetac Draft/Proposed Permit is inconsistent with Minnesota’s Statewide Mercury TMDL in that any offsets for increased mercury emissions are neither certain, specific, timely or enforceable;
- Whether the reliance of the Keetac Draft/Proposed Permit on various provisions in the US Steel/MPCA June 11, 2011 SOC undermines compliance with NPDES/SDS permits and water quality standards, inconsistent with the MPCA’s delegated duties under the Clean Water Act.

3) In support of our petition for a contested case hearing, request for a meeting with the Commissioner and request that the Keetac Draft/Proposed Air Emissions Permit be denied (Sections B 2) to B 4) above) WaterLegacy incorporates by reference the facts stated in preceding sections and provides additional information below pursuant to Minn. R. 7000.1900, Subp. 1C to demonstrate that there is a reasonable basis underlying the disputed material issues of fact and mixed issues of fact and policy such that holding a contested case would allow introduction of information that would aid the Commissioner or the Board in making a final decision in this matter.

- a) The Draft/Proposed Keetac Permit proposes to increase mercury emissions as a result of “modifying and re-activating its idled Phase I indurating furnace to allow for an increase in taconite pellet production by 3.6 million tons per year (MTPY) to a facility-wide potential production level of 9.6 MTPY. The modification also includes expansions in mining, ore crushing, concentration, agglomeration, and finished pellet handling to accommodate production from the new indurating furnace.” (MPCA Public Notice on the Draft/Proposed Air Emission Facility Permit for the Keetac Facility, *supra*, p. 1, *see also* MPCA Technical Support Document for Draft/Proposed air Emission Permit No. 13700063-004, “Technical Support Document,” p. 2).
- b) The Draft/Proposed Keetac permit would allow up to 75.5 pounds of additional

mercury emissions into the air. The Draft/Proposed permit sets an 80 percent mercury reduction “goal” with respect to these emissions. (Draft/Proposed Keetac Permit, <http://www.pca.state.mn.us/index.php/about-mpca/mpca-news/public-notices/public-notices.html>, p. A-64). Even if this “goal” were attainable and enforceable, the Keetac expansion would entail an increase of 15 pounds of mercury emissions per year.

- c) The mercury reduction “goal” for new mercury increases in the Keetac Draft/Proposed Permit is likely to be neither attainable nor enforceable. The very next page of the Draft Permit states, “The mercury reduction technology demonstration report, required in Table B shall propose a reasonably expected mercury reduction, *if the demonstration results indicate that the Mercury Emissions Reduction Goal is not achievable.*” (Keetac Draft Permit, *supra*, p. A-65, emphasis added). The US Steel/MPCA June 11, 2011 SOC acknowledges that actual mercury reduction from installation of future technology at the new induration furnace is speculative, “To date, no mercury control technologies have been tested long term or installed on a taconite indurating furnace.” (US Steel/MPCA June 11, 2011 SOC, *supra*, p. 6).
- d) Proposed offsets for the increased mercury resulting from the Keetac expansion are uncertain, indefinite and neither timely nor enforceable. The offsetting mercury emissions reductions from existing Keetac and Minntac facilities are proposed as a “goal” to be obtained “by 2025” neither a current offset, nor an enforceable obligation. (US Steel/MPCA June 11, 2011 SOC, *supra*, pp. 4, 6). As with the proposed 80 percent reduction in new emissions from the new Phase III indurating furnace at Keetac, the mercury emissions reductions for existing taconite facilities are admitted to be speculative. As stated above in subparagraph (c), no mercury control technologies have been tested long term or installed on a taconite indurating furnace.
- e) The uncertainty of any mercury offset at the existing Keetac and Minntac mining facilities is highlighted in the Schedule of Compliance, which states, “If by June 30, 2016, the Regulated Party and the MPCA agree that short term and long term testing have not identified technologies for installation and no additional technologies have been identified for testing, the Regulated Party's testing obligations will be fulfilled by cooperating with the Mercury- Emissions- Reduction Research and Implementation Council.” (US Steel/MPCA June 11, 2011 SOC, *supra*, p. 16).
- f) As explained in Minnesota’s Mercury TMDL, in the year 2000, the minerals processing sector represented 21 percent of Minnesota’s emissions of mercury. (Minnesota Statewide Mercury TMDL <http://www.pca.state.mn.us/publications/wq-iw4-01b.pdf>, p. 22). The Statewide Mercury TMDL stated, “To maintain economic fairness while focusing on meeting water quality standards, the Agency will employ a phased approach to achieve a goal of 789 pounds of mercury emitted from all Minnesota sources.” (p. 44). The TMDL proposed “sector specific milestones” linked to national mercury emissions reductions (p.46), and stated that achieving progress “will require reductions in mercury emissions in the taconite and power-generation sectors.” (p. 49)
- g) The Draft/Proposed Keetac Permit is inconsistent with the Statewide Mercury TMDL requirement of sector-specific mercury emissions reduction. The Technical Support Document demonstrates that, if the permit is approved, *U.S. Steel’s Minntac and*

Keetac emissions of toxic mercury will increase nearly 100 pounds per year to 366 pounds of mercury per year, as compared with the 2008 baseline of 267 pounds. (Technical Support Document, Attachment 7.b). Although the TSD graphs possible future reductions, there is no required step-down in mercury reductions contained in the Draft/Proposed Keetac Permit and no data in either the Draft Permit, the Technical Support Document or the multimedia SOC demonstrates that proposed mercury reductions are attainable or that operations or expansions will be contingent on mercury emissions reductions.

- h) With no proven technology to reduce mercury emissions from indurating furnaces and no requirements that operations cease if mercury cannot be successfully reduced, permitting additional mercury emissions virtually ensures that the mining sector will continue to increase mercury emissions in conflict with the Statewide Mercury TMDL. MPCA data suggests that mercury emissions from the mining sector will increase by nearly 100 pounds per year from 2005 to 2018, growing from 22 percent to 57 percent of Minnesota's mercury emissions, while plans for reduction are relegated to "goals" for between 2018 and 2025. (See 2009 TMDL Implementation Plan <http://www.pca.state.mn.us/publications/wq-iw4-01p.pdf>, p. 13). This permitting strategy would kick the can down the road, not implement control of toxic pollutants.
- i) The US Steel/MPCA June 11, 2011 SOC documents violations of water quality standards by U.S. Steel in connection with the Minntac mining facility.
- Although the Minntac National Pollutant Discharge Elimination System/State Discharge System ("NPDES/SDS") permit prohibits any increase in sulfate added to process wastewater, the facility added 57,558 excess pounds of sulfate in 2010 and as much as 80,847 pounds of sulfate in 2006. (US Steel/MPCA June 11, 2011 SOC, *supra*, p. 8)
 - Although the Minntac NPDES/SDS permit prohibits any increase in calcium in wastewater, in 2006 the facility added 141,312 pounds of calcium to process wastewater. (US Steel/MPCA June 11, 2011 SOC, *supra*, p. 8)
 - Although the Minntac NPDES/SDS permit prohibits any increase in hardness (CaCO₃) in wastewater, in 2010 the facility added 741,468 excess pounds of hardness to process wastewater. (US Steel/MPCA June 11, 2011 SOC, *supra*, p. 8).
- j) The US Steel/MPCA June 11, 2011 SOC voids the prior 2007 Schedule of Compliance that would have required an active Process Water Treatment System, tailings basin seep collection and return and capture of surface seepage. Reduction in water quality contamination is proposed to result from U.S. Steel's replacement of wet scrubbers with a dry scrubber at Taconite Production Line 6 at the Minntac facility over a period of years. (US Steel/MPCA June 11, 2011 SOC, *supra*, p. 6).
- k) There has been no public notice regarding the US Steel/MPCA June 11, 2011 SOC and no publicly available documents assess either the likelihood and timing of mercury offsets proposed in the SOC or the water quality implications of the change in proposed enforcement from active Process Water Treatment to installing a proposed dry scrubber at Minntac Taconite Production Line 6. There is no public record

evaluating the extent to which dry controls on this Line will or will not reduce air emissions or the degree to which such controls may or may not already be required under applicable law. Neither facts nor policies supporting the agglomeration of enforcement and release from obligations have been disclosed to the public or presented to the citizens Board of the MPCA.

- l) Finally, the 1987 Minntac Tailings Basin NPDES/SDS permit with which U.S. Steel is out of compliance is past due for a comprehensive and public review. Although this NPDES/SDS permit had previously expired on July 31, 1992, MPCA staff approved a “modification” of the expired permit on April 13, 2010 in order to collect seepage and comply with the 2007 Schedule of Compliance voided this week by the MPCA. The modification was classified as “minor” under Minn. R. 7001.0190, Subp. 3 to avoid public notice or review of the NPDES/SDS permit or the 2007 Schedule of Compliance. (See Minntac NPDES/SDS Permit MN0057207, p. 31). U.S. EPA rules promulgated under the Clean Water Act limit the effective term of state NPDES/SDS permits to five years. 40 C.F.R. §122.46 (a).

Based on the above discussion, the cited documents and other records on file with the MPCA with respect to the Draft/Proposed Keetac Air Emissions Permit, the Minntac Tailings Basin NPDES/SDS permit and various Schedules of Compliance, WaterLegacy respectfully requests the following actions be taken by the MPCA, as more specifically stated in Section B above:

- Provide members of the public with adequate public notice and opportunity for participation by reissuing the Public Notice and News Release for the Keetac expansion, extending the time for public comment and posting the US Steel/MPCA June 11, 2011 SOC to the MPCA website;
- Conduct a meeting between the Commissioner and members of the public and a contested case hearing with respect to the Keetac Draft/Proposed Permit to address material issues of fact and mixed issues of fact and policy summarized above;
- Deny issuance of the Draft/Proposed Keetac Air Emissions Permit due to the increased mercury emissions that would result and the precedent that would be set by approving the Keetac expansion.

Please feel free to contact me at 651-646-8890 if you have any questions regarding the above comments. We look forward to hearing from you with respect to WaterLegacy’s requests for agency action.

Respectfully,



Paula Goodman Maccabee
Counsel for WaterLegacy

Enclosure

cc: Susan Hedman, Administrator for EPA Region 5 (Hedman.Susan@epa.gov)