

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

RECORD OF DECISION

In the Matter of the Final Environmental
Impact Statement for the Mittal Steel, USA -
Minorca Mine, Inc. (formerly Ispat Inland Mining),
East Reserve Development Project,
St. Louis County, Minnesota
Pursuant to Minnesota Rules,
Parts 4410.0200 to 4410.6500

**FINDINGS OF FACT,
CONCLUSIONS,
AND ORDER**

Based upon, and after having considered, the entire record of the proceeding, including written reports, written and oral data, information, and statements, the Department of Natural Resources (DNR) makes the following:

FINDINGS OF FACT

1. Mittal Steel USA - Minorca Mine, Inc. (Proposer) proposes to open the East Reserve (Project). The Project consists of a new open-pit mine area located between the towns of Biwabik and McKinley that includes two new separate mine pits, overburden, waste rock and lean taconite stockpiles located north of the mine pits; mine pit dewatering routes; and a new haul road extension from the existing Laurentian Mine haul road.
2. On March 7, 2005, the DNR received the Proposer's completed portions of the Environmental Assessment Worksheet (EAW), pursuant to Minnesota Rules, part 4410.1400.
3. The Responsible Government Unit (RGU) determined that the Proposer's data submittal was incomplete and returned the data submittal to the Proposer for completion of the missing data pursuant to Minnesota Rules, part 4410.1400.
4. The Proposer stated in a letter dated April 11, 2005, to the RGU that it was the Proposers belief that the Project should be considered a supplemental to the Laurentian EIS completed in 1990.
5. Pursuant to Minnesota Rules, part 4410.300, subpart 7, the RGU concluded that the Project is not considered a phase of the Laurentian Mine as defined by Environmental Quality Board (EQB) Rules, however it could be considered an expansion. Minnesota Rules, part 4410.3000, subpart 11, item B indicates that expansions of 320 acres or more must be treated as independent and must be reviewed in accordance with Minnesota Rules, parts 4410.1000 to 4410.2800. Therefore, the proposed Project requires preparation of an EAW pursuant to Minnesota Rules, part 4410.4300, subpart 11, item B, which also designates the Minnesota DNR as the RGU.
6. Pursuant to Minnesota Rules, part 4410.2000, subpart 3, item B, the RGU and Proposer agreed that an Environmental Impact Statement (EIS) should be prepared.
7. The DNR accepted the Proposer's completed data portions of the EAW form on June 27, 2005 in accordance with Minnesota Rules, part 4410.1400.

8. The DNR prepared a Scoping EAW and Draft Scoping Decision Document for the Project, pursuant to Minnesota Rules, part 4410.2100.
9. Pursuant to Minnesota Rules, part 4410.2100, subpart 3, the Notice of Availability of the Scoping EAW and Draft Scoping Decision Document was published in the *EQB Monitor* (Vol. 29, No. 14) on July 4, 2005, beginning the 30-day scoping period. The notice included the time, place, and date of the scoping meeting.
10. Pursuant to Minnesota Rules, part 4410.2100, subpart 3, the DNR supplied a press release to at least one newspaper of general circulation in the vicinity of the Project. The press release included the name and location of the project, a brief description of the project, the location at which copies of the Scoping EAW and Scoping Decision Document were available for review, the date the comment period ends, and the procedures for commenting.
11. The DNR provided copies of the Scoping EAW and Scoping Decision Document to all parties designated on the EQB EAW Distribution List in accordance with Minnesota Rules, part 4410.1500, item A. The EAW and Scoping Decision Document were also made available to the public via posting on the MNDNR's Website.
12. Pursuant to Minnesota Rules, part 4410.2100, subpart 3, item B, the DNR held a public scoping meeting on Tuesday, July 26, 2005, at the Biwabik City Hall (Pavilion), 100 5th Avenue North in Biwabik, Minnesota from 6:00 p.m. to 8:00 p.m. Approximately 16 people attended the meeting. The attendees received information about the Minnesota Environmental Review Program, the proposed project, the proposed EIS contents, and were given an opportunity to ask questions about the project and the EIS process. The DNR provided a comment form for submitting written comments on the proposed EIS scope.
13. The DNR accepted written and emailed comments on the Scoping EAW and Draft Scoping Decision Document for a period of 30 days following publication of notice of availability (July 4, 2005 to August 3, 2005), in accordance with Minnesota Rules, part 4410.2100, subpart 3.
14. The DNR received three comment letters on the Scoping EAW and Draft Scoping Decision Document during the 30 day scoping period. Letters were received from:

David Sherek, Biwabik Public Utility Commission
Jane Reyer, National Wildlife Federation
Larry Minton, Attorney for City of Biwabik

During the July 26, 2006 public scoping meeting verbal comments from the following were recorded by a court reporter and supplied in a transcript: David Sherek, Dale Sandnas, Larry Minton, Terry Lowell, and Marty Halverson.
15. The EQB rules do not require the RGU to respond to comments received on the Scoping EAW and Draft Scoping Decision Document, but require the RGU to consider the comments received in developing the final scoping decision.
16. The DNR responded to all comments received on the Scoping EAW and Draft Scoping Decision Document in an October 13, 2005 correspondence entitled "Responses to EIS Scoping Comments"

17. The EQB rules require the RGU to issue a final Scoping Decision Document within 15 days after the close of the 30-day scoping period.
18. The DNR considered the comments received during the scoping period, made revisions to the Draft Scoping Decision Document as warranted, and issued the Final Scoping Decision Document on August 24, 2005.
19. The Final Scoping Decision Document included the following content in accordance with Minnesota Rules, part 4410.2100, subpart 6: the issues to be addressed in the EIS; the time limits for preparation; identification of the permits for which information will be gathered concurrently with EIS preparation; identification of the permits for which a record of decision will be required; alternatives that will be addressed in the EIS; identification of potential impact areas resulting from the project itself and from related actions which shall be addressed in the EIS; and identification of necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time at a reasonable cost.
20. The DNR provided copies of the Final Scoping Decision Document to all parties designated on the EQB EAW Distribution List, to all parties that submitted comments on the draft scoping documents, and to all parties requesting copies. The Final Scoping Decision Document and Scoping EAW were also made available to the public via posting on the MNDNR's Website.
21. On Monday, November 7, 2005, an EIS preparation notice summarizing the scoping decision was published in the EQB *Monitor* (Vol. 29, No. 16). The DNR supplied a press release to at least one newspaper of general circulation in St. Louis County, Minnesota.
22. On Wednesday, December 14, 2005, the U.S. Army Corps of Engineers (USACE) informed the Proposer and the DNR that the proposed project was a major federal action that has the potential to significantly affect the quality of human environment, and will require the preparation of a federal EIS pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4347) and its implementing regulations (40 C.F.R. parts 1500-1508).
23. The Proposer requested that the USACE participate in the state EIS process to avoid the need for a separate federal EIS at a later date.
24. The USACE published a Notice of Intent (NOI) in the *Federal Register* (Vol. 71, No. 27) to prepare a Draft EIS for the construction and operation of an open pit taconite mine proposed by Ispat Inland Mining between Biwabik and McKinley in St. Louis County, Minnesota.
25. A memorandum of understanding (MOU) for the purpose of preparing a joint state/federal EIS among the USACE, DNR, and the Proposer was created and entered into on Monday, February 13, 2006.
26. Preparation of the EIS became a joint federal and state process on February 13, 2006. Pursuant to Minnesota Rules, part 4410.3900, subparts 1 and 2, the DNR and the USACE cooperated in preparing an EIS that fulfills the requirements of both the Minnesota Statutes, section 116D.04 and the NEPA (42 U.S.C. §§ 4321-4347) and its implementing regulations (40 C.F.R. parts 1500-1508).
27. A cumulative effects analysis of wetland loss was added to the Scoping Decision Document at the recommendation of the USACE. The Proposer agreed to add this study to the Scoping Decision Document and a notice of this addition was published in the EQB *Monitor* (Vol. 30, No. 5) in accordance with Minnesota Rules, part 4410.2100, subpart 8.

28. On Tuesday, February 28, 2006, the USACE requested public scoping comments by noticing the State's Final Scoping Decision Document as the Federal Draft Scoping Decision Document on the USACE Website and also mailed and emailed copies to persons on their public notice mailing list.
29. The federal comment period ended on Thursday, March 30, 2006 with no scoping comments received. The USACE adopted the State's Final Scoping Document as their own on Tuesday, April 4, 2006.
30. Pursuant to Minnesota Rules, part 4410.2300, the DNR, with assistance of a consultant, prepared the Draft EIS. The format of the Draft EIS was as follows: cover sheet; summary; table of contents; list of preparers; project description; governmental approvals; alternatives (including a discussion why particular alternatives were considered, but eliminated); environmental, economic, employment, and sociological impacts; mitigation measures; and appendices.
31. The Draft EIS evaluates and analyzes effects and alternatives commensurate with their importance as identified by the scoping process and identifies reasonable mitigative measures for identified adverse effects.
32. Pursuant to Minnesota Rules, part 4410.2400, the DNR incorporated material into the EIS by reference to reduce the bulk of the document without impeding governmental and public review of the project. All material incorporated by reference was made available for inspection by interested persons within the time allowed for comment.
33. According to Minnesota Rules, part 4410.2600, subpart 3, the DNR distributed copies of the Draft EIS to all parties designated on the EQB EIS Distribution List, government units with authority to permit or approve the proposed project; to the extent known, the Proposer, and to all individuals requesting a copy. Copies of the Draft EIS were also provided to the DNR Library in St. Paul, the DNR Regional Office Library in Grand Rapids, and the Gilbert Public Library.
34. An Executive Summary of the Draft EIS was supplied to all persons who submitted substantial comments on the Scoping EAW and Draft Scoping Decision Document, and any person requesting the Executive Summary.
35. Pursuant to Minnesota Rules, part 4410.2600, subpart 4, a Notice of Availability of the Draft EIS was published in the September 11, 2006, EQB *Monitor* (Vol. 30, No. 19). The notice included the date, time, and location of the public informational meeting, notice of where copies of the Draft EIS were available for public review, and indicated the comment period closure date and time (October 26, 2006 at 4:30 pm).
36. Pursuant to Minnesota Rules, part 4410.2600, subpart 6, the DNR supplied a press release on September 12, 2005, to at least one newspaper of general circulation in the vicinity of the Project. The press release included the date, time, and location of the public informational meeting, notice of where copies of the Draft EIS were available for public review, and indicated the comment period closure date and time (October 26, 2006 at 4:30 pm).
37. The USACE issued a Notice of Draft EIS Availability in the September 15, 2006, *Federal Register* (Vol. 71, No. 179) indicating the comment period ends on October 30, 2006.

38. In accordance with Minnesota Rules, part 4410. 2600, subpart 8, a public informational meeting was held on October 12, 2006, not less than 15 days after publication of the notice of Draft EIS availability in the EQB *Monitor* and a type-written transcript of the meeting was made.
39. The DNR received six comment letters during the public comment period and seven verbal comments on the Draft EIS during the public informational meeting. Following is the list of written and verbal comments:

Letters:

Dennis A. Gimmestad, Minnesota Historical Society, State Historical Preservation Office

Michael T. Cheznick, U.S. Department of the Interior, Office of the Secretary, Office of Environmental Policy and Compliance

Nancy J. Shuldt and Richard D. Gitar, Fond du Lac Reservation, Fond du Lac Environmental Program

Jerri-Anne Garl, U.S. Environmental Protection Agency, Region 5, Office of Science Ecosystem and Communities.

Michele D. Wood, Mayor and David Sherek, City of Biwabik

Darren Vogt and David Woodward, 1854 Authority

Transcribed Verbal Comments:

Terry Lowell (five comments)

David Sherek (one comment)

Marty Halverson (one comment)

40. The EQB rules require the RGU to prepare a Final EIS that responds to timely substantive comments on the Draft EIS, consistent with the Final Scoping Decision Document and to include any necessary revisions to the Draft EIS.
41. The DNR prepared written responses to comments made at the public informational meeting and to substantive comment letters consistent with the Final Scoping Decision Document received during the public comment period. Responses can be found in Chapters 3 and 4 of the Final EIS.
42. The DNR made minor changes to the Draft EIS. These changes can be found in Chapter 2 of the Final EIS.
43. In response to comments received on the Draft EIS the Final EIS added a new chapter to the Draft EIS (Chapter 3, Section 3.13 – Cultural Resources) that can be found in Chapter 2 of the Final EIS. Additionally, a Phase I Archaeological Assessment and a Historic Mining Landscape Literature Search were performed in response to comments received on the Draft EIS and can be found in Appendix B and C of the Final EIS, respectively.

44. Additional survey work was performed after publication of the Draft EIS to identify the species present in the discharge streams. In response to comments received on the Draft EIS the two reports were included as Appendix D and E of the Final EIS.
45. The DNR prepared a Final EIS comprising minor changes and revisions to the Draft EIS, copies of all comment letters received, the transcript from the public informational meeting, and responses to all timely and substantive comments.
46. Together the Draft EIS and Final EIS comprise the complete EIS for the Project.
47. Pursuant to Minnesota Rules, part 4410.2700, subpart 3, the Final EIS was distributed to all parties that received a copy of the Draft EIS, to all parties that submitted comments on the Draft EIS, and to all parties requesting a copy. The DNR also provided a copy of the Final EIS to the DNR Library in St. Paul, the DNR Regional Office Library in Grand Rapids, and the Gilbert Public Library.
48. Pursuant to Minnesota Rules, part 4410.2700, subpart 4, a notice of Final EIS availability was published in the *EQB Monitor* (Vol. 30, No. 26) on December 18, 2006. The notice included the location of review copies of the Final EIS and the opportunity for public comment on the adequacy of the Final EIS.
49. Pursuant to Minnesota Rules, part 4410.2700, subpart 5, the DNR supplied a press release on December 19, 2006, to at least one newspaper of general circulation in the vicinity of the Project. The press release included the location of review copies of the Final EIS and the opportunity for public comment on the adequacy of the Final EIS.
50. The *EQB Monitor* notice, the press release, and cover letters accompanying the Final EIS identified the three criteria used in determining EIS adequacy (Minnesota Rules, part 4410.2800, subpart 4) and the deadline for submitting comments.
51. Minnesota Rules, part 4410.2800 require the RGU to accept comments on the adequacy of the Final EIS for a period of not less than ten days following publication in the *EQB Monitor*.
52. The DNR established January 3, 2007, as the deadline for receiving comments on the adequacy of the Final EIS in the *EQB Monitor* notice, the press release, and cover letters accompanying the Final EIS.
53. The USACE issued a notice of Final EIS availability in the December 22, 2006, *Federal Register* (Vol. 71, No. 246) indicating the federal comment period concludes on January 22, 2007.
54. Written and emailed comments on the adequacy of the Final EIS were accepted from December 18, 2006 to January 22, 2007.
55. The RGU must consider comments received during the Final EIS comment period when determining Final EIS adequacy.
56. Four comment letters were received during the Final EIS comment period.
57. Mr. Bob Lloyd submitted comments indicating he is in favor of the Project.
58. Mr. Ken Wainionpaa submitted comments indicating his support for this project and the economic benefits it would provide for the area.

59. Mr. Jim Samargia submitted comments indicating his concerns the Project could have on access to his property on County Road 715. He also had concerns with his property value as it pertains to the Project.
60. Ms. Jerri-Anne Garl, Director, Office of Science, Ecosystems, and Communities, U.S. Environmental Protection Agency submitted a comment letter suggesting inclusion of the wetland mitigation with the Record of Decision (ROD); recommendation that the proposed 5-year mercury compliance schedule in the National Pollution Discharge Elimination (NPDES) permit be shortened to 2 or 3 years; requesting an explanation on how the proposed mine will affect or be incorporated into the overall zero discharge of mercury goal by 2020; recommending a testing protocol for asbestos and related fibers be included in the ROD; stating the EIS has not adequately discussed the relationship of mining activities and the impact to resources for hunting, fishing, and gathering under the 1854 Treaty; stating detailed information on mining alternatives was not included in the EIS; and recommendation that Mittal be committed to minimize the overburden stockpiles and place them in previously impacted areas and have the commitments included in the ROD and Section 404 permit decision.
61. Letters from Findings of Fact 57, 58, and 59 did not specifically address the Final EIS adequacy as defined in Minnesota Rule. The letter in Finding of Fact 60 specifically addresses Final EIS adequacy as defined in Minnesota Rule.
62. The letters and the DNR's responses to the specific comments are included and incorporated as an attachment to this Record of Decision.
63. Minnesota Rules, part 4410.2800, subpart 3, requires the RGU to determine the adequacy of the Final EIS at least ten days after publication in the EQB *Monitor* of the Notice of Availability of the Final EIS, and within 280 days after the Draft EIS preparation notice was published unless time is extended by consent of the proposer and the RGU.
64. By consent of the proposer and the RGU, the timeframe for completing the Final EIS was extended.
65. Minnesota Rules, part 4410.2800, subpart 1, requires the RGU to determine adequacy of the Final EIS unless notified by the EQB that the EQB will make the determination. If the EQB decides to make the adequacy determination, it must notify the RGU of its decision no later than 60 days following publication of the Preparation Notice in the EQB *Monitor*. The EQB has not given such notification to the DNR.
66. Minnesota Rules, part 4410.2800, subpart 1, requires the RGU to find the Final EIS adequate if it: a) addresses the potentially significant issues and alternatives raised in the scoping process so that all issues for which information can reasonably be obtained have been analyzed; b) provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping process; and c) was prepared in compliance with the procedures of the Minnesota Environmental Policy Act (Minnesota Statutes, chapter 116D.04) and the Environmental Quality Board Review Program rules (Minnesota Rules, parts 4410.0200 to 4410.6500).

CONCLUSIONS

1. The DNR is charged with determining the adequacy of the EIS for the Mittal Steel USA – Minorca Mine, Inc. (formerly Ispat Inland Mining Company), East Reserve Project in St. Louis County.

2. The EIS meets the content requirements of Minnesota Rules, part 4410.2300.
3. The DNR prepared the EIS in compliance with the procedures of Minnesota Statutes, section 116D.04 and Minnesota Rules, parts 4410.0200 to 4410.6500.
4. The public has been afforded opportunities for input to the scope of the EIS, the content of the Draft EIS and Final EIS, and the adequacy of the Final EIS in accordance with all applicable provisions of the EQB Environmental Program Rules.
5. The EIS is adequate because it meets the criteria set forth in Minnesota Rules, part 4410.2800, subpart 4, which require that it:
 - a. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed;
 - b. provides responses to the substantive comments received during the Draft EIS review concerning issues raised in the scoping process; and
 - c. was prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minnesota Rules, part 4410.0200 to 4410.6500.
6. That any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

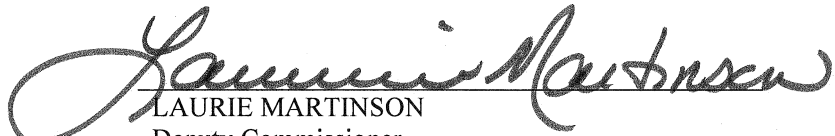
ORDER

Based on the Findings of Fact and Conclusions contained herein and the entire record of the proceeding:

The Department of Natural Resources hereby determines that the Environmental Impact Statement for the proposed Mittal Steel USA – Minorca Mine, Inc. (formerly Ispat Inland Mining Company), East Reserve Project in St. Louis County Minnesota is adequate.

Approved and adopted this 31 day of January 2007.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES


LAURIE MARTINSON
Deputy Commissioner

**RESPONSES TO COMMENTS ON FINAL ENVIRONMENTAL IMPACT
STATEMENT**

**Mittal Steel USA – Minorca Mine, Inc.
(formerly Ispat Inland Mining Company)**

**Attachment to the Record of Decision on
Final Environmental Impact Statement Adequacy**

**MINNESOTA DEPARTMENT OF NATURAL RESOURCES
JANUARY 2007**

INTRODUCTION

The Department of Natural Resources (DNR), as the Responsible Governmental Unit (RGU) for the Mittal Steel USA – Minorca Mine, Inc., East Reserve Project Environmental Impact Statement (EIS) received three comment letters during the Final EIS review period.

Minnesota Environmental Quality Board Review Program rules (Minnesota Rules, parts 4410.0200 to 4410.6500) specify that comments on the Final EIS shall address the adequacy of the Final EIS, which is measured against the criteria in Minnesota Rules, part 4410.2800, subpart 4.

The Final EIS shall be determined adequate if it:

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in the scoping; and
- C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.

One of the letters specifically addresses Final EIS adequacy as defined in Minnesota Rule. The three of the letters did not specifically address the Final EIS adequacy as defined in Minnesota Rule.

Although not required by rule, the DNR has responded to each comment and has included the comment letters and responses as an attachment to the Record of the EIS Adequacy Decision.

COMMENT LETTER 1

Mr. Bob Lloyd, Aurora, Minnesota (via email)

From: Environmental Review
To: Ek, Scott
Date: 12/21/2006 9:35 AM
Subject: Fwd: "East Reserve"

>>> "Bob Lloyd" <LloydB@co.st-louis.mn.us> 12/20/2006 2:16 PM >>>
This is a fine place for a mine. I am all in favor of it.

1

bob lloyd
21 n erie st
aurora, mn 55705

Comment 1: Comment noted.

COMMENT LETTER 2

Mr. Ken Wainionpaa, Gilbert, Minnesota (via email)

From: Environmental Review
To: Arkley, Stuart; Ek, Scott
Date: 12/28/2006 11:03 AM
Subject: Fwd: taconite mine near Biwabik

>>> "ken" <klwain@cpinternet.com> 12/21/2006 9:03 AM >>>

Please approve this taconite mine.....the entire area, (Iron Range) will benefit greatly...More jobs, more people, more sales etc... | 1

Ken Wainionpaa Gilbert MN.

And also approve the new mine sites around Hoyt Lakes and Babbitt.....The entire Northern part of St Louis and Lake County will benefit greatly.....

Comment 1: Comment noted.

COMMENT LETTER 3

Mr. Jim Samargia, Gilbert, Minnesota (via U.S. Mail)

Page 1 of 1

Samargia, Jim

Attn: Scott Ek,

I am responding to the legal advertisement in the Mesabi Daily News 12-05-06, in regards to the proposed development of Mittal Steel (Inland Steel) East Mining reserve between Mckinley and Biwabik Mn.

I am a property owner on the Pike River between Mckinley and Biwabik and have concerns as to access to my property on County Rd.715 (AKA Whiskey Creek Road or Pike River Road.) I also have concerns with my property value. | 1 & 2

Please advise,

Thank You

Jim Samargia
602 Dakota Ave
Gilbert Mn. 55741
cell 218-749-1514
(e-mail) jsamargia@cirrusdesign.com

1/17/2007

Comment 1: Comment noted. Section 4.6.2 (Transportation) of the Draft EIS details the sequence of activities that would go into the potential realignment of County Road 715. The chapter explains that road realignment is not certain at this time and would be the responsibility of St. Louis County, if required.

Comment 2: Comment noted. The EIS is intended to provide information about potential environmental impacts and how they may be avoided or minimized; property value issues are beyond the scope of the EIS.

COMMENT LETTER 4
U.S. Environmental Protection Agency (via U.S. Mail)

JAN-22-2007 19:27 FROM:US EPA REGION 5 312 353 5374 TO:916512905330 P.2/4

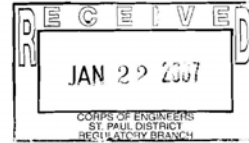


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 22 2007

REPLY TO THE ATTENTION OF
B-19J

Jon K. Ahlness
Regulatory Branch, St. Paul District
U.S. Army Corps of Engineers
190 Fifth Street East, Suite 401
St. Paul, Minnesota 55101-1638



Scott E. Ek
Principal Planner
Environmental Policy and Review
Minnesota Department of Natural Resources
Division of Ecological Services
500 Lafayette Road, Box 25
St. Paul, Minnesota 55155-4025

RE: Final Environmental Impact Statement Mittal Steel USA-Minorca Mine, Inc.
East Reserve Project CEQ number: 2006525

Dear Mr. Ahlness and Mr. Ek:

I am writing to provide the U.S. Environmental Protection Agency's (EPA) comments on the final Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act. The final EIS is for two new mining pits being proposed by Mittal Steel USA-Minorca Mine Inc. (Mittal). Operation of the mine would include overburden removal and stockpiling, haul road construction, open pit mining, closure and post-closure actions. Over the estimated 18-year life of mining operation, approximately 119 million long tons of ore are expected to be removed from the East Reserve.

Our October 30, 2006 comment letter rated the draft EIS "Environmental Objections-insufficient information (EO-2)." The rating was based on the need for additional information on: wetland mitigation, water quality, asbestos and related fibers, cumulative impact analysis, Tribal rights, and alternatives analysis. We have determined that the responses by your agency to our comment letter have not fully addressed our issues. Our detailed comments follow.

Wetland Mitigation

The final EIS did not include details on the wetland mitigation plan. We understand that detailed information on wetland mitigation plans has already been submitted to the U.S. Army Corps of Engineers as part of a wetland permit

1

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COMMENT LETTER 4

U.S. Environmental Protection Agency (continued)

JAN-22-2007 19:27 FROM:US EPA REGION 5

312 353 5374

TO:916512905330

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application. We recommend that the wetland mitigation plan be included in the Record of Decision (ROD) to support a determination that these impacts have been adequately addressed. We further recommend that the ROD be made available to the public for review.

1 (cont.)

Water Quality

We understand that key components of the permit compliance schedule will promote the development of data and necessary information to achieve the mercury requirements (1.3 ng/L). Since the 5-year compliance schedule for the NPDES permit coincides with life of the permit, we recommend that Mittal and the State consider shortening the compliance schedule to 2 or 3 years. We are formally requesting a copy of the draft NPDES permit. Please send the copies of the draft NPDES permit to:

2

George Azevedo
U.S. EPA
Mail Code: WQ-16J
77 West Jackson Blvd.
Chicago, Illinois 60604
Phone: 312 886-0143

The Lake Superior Bi-national Program set forth a goal of zero discharge of mercury to the Lake Superior basin by 2020. In 1990, the U. S. and Canadian governments, the states of Michigan, Wisconsin and Minnesota, and the Province of Ontario announced a Bi-national Program to Restore and Protect Lake Superior. The Program established that Lake Superior would be a Zero Discharge Demonstration Project for nine critical pollutants, including mercury. A timetable was set for interim reduction targets on the path to zero discharge of the critical pollutants by 2020. Mercury reductions were to meet a 60 percent reduction target (from a 1990 baseline) by 2000, 80 percent by 2010 and 100 percent by 2020. Since the proposed mine is located within the Lake Superior Basin, the ROD should address how this proposed mine will affect or be incorporated into the overall goal of zero discharge of mercury by 2020.

2A

Asbestos and Related Fibers

The final EIS concludes that there is little, if any, reason to suspect the ore deposit poses any asbestos-related health concerns. It appears that the final EIS relied on 50-year old data and did not utilize current information on the potential presence of asbestos and related fibers. In a recent study entitled, "**Mineralogy and Morphology of Amphiboles Observed in Soils and Rocks in El Dorado Hills, California**" (Open File Report 2006-1362), the United States Geological Survey did not equate definitions of commercial asbestos properties or lack thereof, with toxicity. The study also stated, "Therefore, a collaborative research effort is needed by the health community, with assistance from experienced mineralogists and analysts, to develop a better understanding of potential health effects of what is currently called "naturally occurring asbestos." In the absence of analytical data to the contrary, we remain concerned that

COMMENT LETTER 4

U.S. Environmental Protection Agency (continued)

JAN-22-2007 19:27 FROM:US EPA REGION 5

312 353 5374

TO:916512905330

P. 4/4

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asbestos and related fibers may be present. A suitable testing protocol for asbestos and related fibers during mining activities has not been included in the development and operation of the proposed mine. We strongly recommend that a protocol for testing be included in the ROD.

3

The final EIS does not indicate that the Mine Safety and Health Administration (MSHA) has been contacted. MSHA is the Federal agency responsible for protecting worker safety and health associated with mining operations, and it is presently engaged in a proposed rulemaking to tighten its asbestos exposure limits applicable to taconite mines. Your agency needs to coordinate with MSHA to ensure that the required exposure assessments for asbestos are completed prior to the commencement of facility operations. The results of such exposure assessments may indicate a need for engineering controls, such as continued air monitoring for asbestos fiber emissions.

3A

Tribal Rights

The final EIS provided detailed information on the cumulative impacts to wetlands, wildlife, and water quality. However, the final EIS does not adequately discuss the relationship of mining activities with the potential impacts to tribal resources for hunting, fishing, and gathering under the 1854 Treaty.

4

Alternatives Analysis

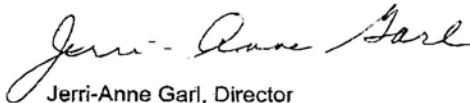
Detailed information on the mining alternatives was not in the final EIS. We recommend that this information on mining alternatives be included in the ROD to substantiate the decision to select open pit mining as the most reasonable option. The final EIS does commit Mittal to minimize the overburden stockpile and to place the material in areas that already experienced adverse impacts. We also recommend that these commitments be included in the ROD and Clean Water Act (CWA) Section 404 permit decision.

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Thank you for the opportunity to review and provide comments on the final EIS for this project. Based on our review, we still have outstanding issues that should be in the ROD and Section 404 permit. We are willing to discuss our concerns, comments, and recommendations with you. If you have any questions or would like to discuss our concerns and recommendations, please contact me at 312-353-1441 or Al Fenedick of my staff at either fenedick.al@epa.gov or 312-886-6872.

Sincerely yours,



Jerri-Anne Garl, Director
Office of Science, Ecosystems, and Communities

COMMENT LETTER 4

U.S. Environmental Protection Agency (continued)

Comment 1: Comment noted. Chapter 4, section 4.2.3.2.4 (Wetland Mitigation) of the Draft DEIS describes in detail the steps Mittal would be required to take in order to comply with the Clean Water Act (CWA) and the Wetland Conservation Act (WCA).

The wetland compensatory wetland mitigation plan is available for review upon request to the U.S. Army Corps of Engineers (USACE) and/or Department of Natural Resources (DNR).

The DNR's Record of Decision will be published in the Environmental Quality Board (EQB) *Monitor* and will be available for public review.

Comment 2: Comment noted. The five-year compliance schedule for mercury in the proposed permit was established in accordance with Minnesota Pollution Control Agency (MPCA) permitting guidance for facilities in the Lake Superior basin in the absence of a finalized total maximum daily load (TMDL), with the guidance being developed in consultation with EPA Region V water quality standards staff. The five-year timeline is considered reasonable to accomplish the sequenced tasks required by the proposed permit which include the evaluation of mercury removal technologies, the pilot testing of an applicable technology, and ultimately, if technically feasible, the design and construction of the approved wastewater treatment system. Condensing the compliance schedule to two or three years would not provide a sufficient timeframe to properly conduct the required tasks.

A copy of the draft NPDES permit is being forwarded to Mr. Azevedo at the specified address.

Comment 2A: Comment noted. The Lake Superior Binational Program (LSBP) is a non-regulatory program that set forth a "goal" of zero discharge (i.e., "virtual elimination") of mercury to the Lake Superior basin by the year 2020. It is a voluntary program that establishes "goals", but has no regulatory authority. In addition, by incorporating the term "virtual elimination" the LSBP recognizes that "it may not be possible to achieve total elimination from the Great Lakes System for some persistent toxic substances produced by natural processes...". This is the case for mercury for the Mittal project.

The permit being proposed for the Mittal project is an National Pollution Discharge Elimination System (NPDES) permit which is part of a regulatory program authorized by the Clean Water Act. The effluent limitation for mercury included in the proposed permit complies with requirements of the Great Lakes Initiative (GLI) which is a regulatory program and in particular with the "Final Water Quality Guidance for the Great Lakes System, Final Rule" published in the Federal Register on March 23, 1995.

Comment 3: Comment noted. Minnesota's agencies have rejected arguments regarding a differential toxicity of commercial asbestos and non-asbestos amphibole. The agencies are concerned with all fibers generated from amphibole mineral and the potential for asbestos-related diseases as a result from exposure to both natural fibers and fibers generated from the processing of ore. Fibrous amphiboles have not been reported in the literature for the part of the formation being mined nor were they reported in drill core analysis performed by the proposer in the East Reserve mining areas.

Comment 3A: Comment noted. See Comment 3 (above).

COMMENT LETTER 4

U.S. Environmental Protection Agency (continued)

Comment 4: Comment noted. Afforded efforts and opportunities for government-to-government consultation were initiated by the USACE. In May 2006, the USACE distributed a letter to Northern Minnesota Tribes soliciting interest for formal consultation. Two tribes, the Fond du Lac Band of Lake Superior Chippewa and the Red Lake Band of Chippewa Indians, requested to consult with the USACE regarding the Mittal project. Copies of the Scoping EAW and the Final Scoping Decision Document (SDD) were sent to the Tribal Government contact list in August 2005 requesting their review and comments. The DEIS did not discuss the significance of the 1854 Treaty because no tribal comments on the Scoping EAW or the SDD were received by the DNR or USACE, prior to publication of the DEIS. Copies of the DEIS were distributed to the Tribal Government contact list in September 2006. Comments received from tribal agencies on the DEIS were responded to in the Final EIS. Additional government-to-government consultation and cultural resource investigations have occurred since publication of the DEIS and is discussed in Chapter 2 on page 6 of the Final EIS.

Comment 5: Comment noted. Minnesota Rules, part 4410.2300, item G, indicate “An alternative may be excluded from analysis in the EIS if it would not meet the underlying need for or purpose of the project, it would likely not have any significant environmental benefit compared to the project as proposed, or another alternative, of any type, that will be analyzed in the EIS would likely have similar environmental benefits but substantially less adverse economic, employment, or sociological impacts.” The Final Scoping Decision Document did not propose to evaluate technology alternatives for the following reason, as discussed in the SDD:

The location of the ore deposit is such that it is not suitable for underground mining and thus would not meet the underlying purpose and need for the project. No alternative open pit mining technologies exist that would provide the same combination of economic efficiency and minimized environmental effects.

Comment 5A: Comment noted. Pursuant to Minnesota Rules, part 4410.2000, subpart 1, “The purpose of the EIS is to provide information for governmental units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.” The EIS is not a means to approve or disapprove a certain measure, but is simply a source to guide permit and/or approval decisions.