

**MEMORANDUM OF UNDERSTANDING
AMONG
THE U.S. ARMY CORPS OF ENGINEERS,
THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES,
AND MINNESOTA STEEL INDUSTRIES, LLC
FOR THE PROPOSED PROJECT IN
NORTHEASTERN MINNESOTA**

This Memorandum of Understanding (MOU) is made and entered into this date, 3/7/05, by and among the U.S. Army Corps of Engineers (USACE), the Minnesota Department of Natural Resources (MnDNR), and Minnesota Steel Industries LLC (MSI) for the purposes of preparing a joint Environmental Impact Statement on the environmental impacts of the proposed project near Nashwauk, Minnesota, referred to hereafter as the proposed project.

WHEREAS, MSI proposes to reactivate the former Butler Taconite mine and tailings basin near Nashwauk, Minnesota, and construct a new crusher, concentrator, pellet plant, direct reduction plant, and mini-mill consisting of two electric arc furnaces, two ladle furnaces, two thin slab casters, and a hot strip rolling mill to produce steel;

WHEREAS, the proposed project requires preparation of a mandatory state Environmental Impact Statement (EIS) under Minnesota Rules 4410.4400(8)(C), which designates the MnDNR as the Responsible Governmental Unit (RGU);

WHEREAS, the MnDNR is responsible for ensuring the Project's compliance with the Minnesota Environmental Policy Act (MEPA; Minn. Stat. ch. 116D);

WHEREAS, the proposed project will require a permit from the USACE under Section 404 of the Clean Water Act (33 U.S.C. § 1344);

WHEREAS, the proposed project is a major Federal action significantly affecting the quality of the human environment, requiring 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);

WHEREAS, the USACE is responsible for complying with NEPA;

WHEREAS, the USACE, the MnDNR, and MSI have a common interest in preparing an EIS that satisfies both state and Federal requirements;

NOW THEREFORE, the USACE, the MnDNR, and MSI agree as follows:

GENERAL

This MOU describes the respective responsibilities of, and procedures to be used by, the aforementioned parties. The goals of the USACE, the MnDNR, , and MSI are:

- to evaluate the proposed project in accordance with NEPA (42 U.S.C. §§ 4321-4347), NEPA's implementing regulations (40 C.F.R. parts 1500-1508), and MEPA (Minn. Stat. ch. 116D);
- to objectively identify, examine, and analyze the potential environmental, social, and economic impacts of the proposed project and reasonable alternatives in order to avoid, minimize, and/or

mitigate the adverse impacts of the proposed project;

- to identify information that assists MSI in making project-related decisions;
- to ensure public involvement in the preparation and review of the EIS;
- to ensure that sufficient information is provided to assist the USACE, the MnDNR, and other Federal, state and local agencies in regulatory decisions; and
- to reduce duplication of effort for the USACE, the MnDNR, and MSI.

RESPECTIVE RESPONSIBILITIES

The USACE and the MnDNR agree to:

- Jointly develop a scope of work for EIS preparation and evaluate the MnDNR's selection of a third-party contractor to prepare the EIS.
- Utilize the MnDNR's third-party contractor process for EIS preparation.
- Jointly prepare an EIS to evaluate the proposed project in accordance with the National Environmental Policy Act (NEPA), *42 U.S.C. §§ 4321-4347*, NEPA's implementing regulations, 40 C.F.R. parts 1500-1508, and the Minnesota Environmental Policy Act (MEPA), *Minn. Stat. ch. 116D*.
- Complete a final EIS that contains the positions of both the USACE and the MnDNR, and complies with their respective legal requirements.
- Report periodically on the progress of the joint EIS to MSI, with particular regard to identifying issues and matters that may result in delays or cost impacts and to advise on proposed actions/measures to minimize delays or cost impacts.

U.S. ARMY CORPS OF ENGINEERS (USACE)

The USACE will serve as co-lead agency in the EIS preparation with the MnDNR. The USACE will conduct scoping jointly with the MnDNR, pursuant to both NEPA and MEPA, and provide input to the MnDNR for the EIS scope of work. The USACE will assist the MnDNR in third-party consultant selection by reviewing the Request for Proposals, reviewing the proposals submitted, and participating in consultant evaluation and interviews. The USACE will provide input to the MnDNR on consultant requirements and the acceptability of consultant candidates. The USACE will not be a party to the contract between the MnDNR and the third-party contractor. The USACE will coordinate with other Federal agencies (e.g. the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service), and will consult with Native American Tribes, as appropriate, in the preparation of the EIS. The USACE will schedule and hold agency and public meetings jointly with the MnDNR pursuant to NEPA and MEPA. The USACE will determine whether the EIS satisfies NEPA and will prepare the Federal Record of Decision.

MINNESOTA DEPARTMENT OF NATURAL RESOURCES (MnDNR)

The MnDNR will serve as the other co-lead agency in the EIS preparation. The MnDNR will conduct scoping jointly with USACE, pursuant to both NEPA and MEPA, and propose a preliminary scope for the EIS. The MnDNR will include NEPA-related issues, submitted by the USACE, in the proposed scope.

The MnDNR will assume the lead role in third-party consultant selection, enter into a contract with the consultant, and perform all requisite contract oversight. The MnDNR will enter into a cost agreement with MSI to obtain funds to cover third-party consultant fees, and other EIS-related costs incurred by the MnDNR. The MnDNR will assume primary responsibility for managing the EIS preparation and review. The MnDNR will coordinate with other state agencies (e.g., the Pollution Control Agency and the Department of Transportation) and will participate with the USACE at any public meetings, public hearings, or other public involvement pursuant to NEPA and MEPA. The MnDNR will be responsible for determining EIS adequacy pursuant to MEPA, and prepare the state Record of Decision.

STANDARD OPERATING PROCEDURES

The agency points of contact, as designated herein, are authorized to develop Standard Operating Procedures (SOPs) to govern the conduct of this effort. The procedures should be adopted within ten (10) working days of execution of the MOU and may be modified from time to time by agreement of the point of contacts identified below.

CONFLICT RESOLUTION PROCEDURES

Every effort will be made for the USACE and the MnDNR to reach mutual agreement regarding the issues addressed in the joint EIS. In the event that conflicts arise between the USACE and the MnDNR on any aspect of this effort, the following procedures will be used, in sequence, to attempt to resolve these conflicts.

- The agency points of contact will make a concerted effort to resolve the dispute within the existing schedule.
- Matters unresolved by the agency points of contact will be referred to the Commissioner or his/her designee and the USACE District Engineer or his/her designee for resolution.
- In the event that unresolved issues remain, both agency positions will be presented in the EIS and any public summaries. Should disagreement remain over issues, impacts, or alternatives to be included and analyzed, the respective lead agency promoting inclusion or analysis of the issue shall be responsible for its analysis and documentation.

SELECTION OF A THIRD-PARTY CONSULTANT

The USACE and the MnDNR will formulate criteria for selecting a third-party consultant in consultation with MSI. The criteria will satisfy requirements imposed upon the USACE and the MnDNR by the statutes and regulations applicable to selecting a consultant for EIS preparation.

TIME TO PREPARE EIS

To facilitate the preparation of a joint EIS, MSI consents to MnDNR exceeding the rule-designated EIS preparation timelines, which are found in Minnesota Rules 4410.2000 to 4410.2800, and consents to the proposed schedule provided at Attachment 1. The proposed schedule provided at Attachment 1 is based upon the work product of the Minnesota Metallic Mining Environmental Review and Permitting Workgroup, which included representatives of the mining industry, state and Federal resource agencies, and environmental interest groups. The attached schedule is a best-case scenario, assuming no delays in the process, and may be exceeded.

EFFECTIVE DATE

The MOU will be effective upon execution by all parties hereto.

AMENDMENT

The MOU may be amended only by written agreement of all parties.

EXPIRATION OR TERMINATION

Unless specifically terminated by either the USACE or the MnDNR, this MOU will remain in effect until issuance of the state Record of Decision on the Adequacy of the EIS and the federal Record of Decision. Agency termination of the MOU is accomplished upon written notice to the other agency and MSI.

MSI may withdraw from this agreement upon written notice to both the USACE and MnDNR. Any such termination does not negate MSI's obligation to reimburse the State for any costs incurred to date by the third-party contractor and in closing out the third-party contract. In addition, any such termination does not negate MSI's obligation to provide information to the USACE and the MnDNR for their permit evaluations.

FUNDING

All obligations of the USACE under this agreement are subject to and dependent upon the appropriation and allocation of sufficient funds to the St. Paul District for such purposes.

All obligations of the MnDNR are contingent upon receipt of appropriations from the Legislature and/or other funds allotted or lawfully available for preparation of the EIS.

JUDICIAL REVIEW

Nothing in this MOU shall affect any otherwise available review of agency action. This MOU is intended only to facilitate preparation of a joint EIS and does not create any right, benefit, or legal obligation, substantive or procedural, enforceable at law or equity against the MnDNR or the USACE.

LIABILITY

Each party to this MOU shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Nothing in this agreement shall be deemed to be a waiver by any of the parties of any applicable state or federal immunities or limits of liability.

POINTS OF CONTACT

The agency points of contact may be changed at the discretion of the respective agencies with written notice to the other. The points of contact for this MOU are:

Jon Ahlness, U.S. Army Corps of Engineers, St. Paul District, Regulatory Branch, 190 5th Street East, St. Paul, MN 55101.

Tom Balcom, Minnesota Department of Natural Resources, Division of Ecological Services, Box 25, 500 Lafayette Road, St. Paul, MN 55155

Howard Hilshorst, Minnesota Steel Industries, LLC, 555 West 27th St., Hibbing, MN 55746

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE AUTHORITY TO COMMIT TO THIS MOU ON BEHALF OF THE PARTIES THAT THEY REPRESENT.

Michael F. Pfenning

Michael F. Pfenning, Colonel

District Engineer

U.S. Army Corps of Engineers

Gene Merriam

Gene Merriam

Commissioner

Minnesota Department of Natural Resources

Howard Hilhorst

Howard Hilhorst

Minnesota Steel Industries, LLC.

3/7/05

Date

3-11-05

Date

3/15/05

Date

Attachment 1: Proposed EIS Schedule

Phase I: EIS Scoping	
Publish Notice of Intent (NOI) to prepare an EIS.	
Finalize Scoping EAW/Draft Scoping Decision Document (DSDD).	
Publish Scoping EAW/DSDD; initiate public review and comment period.	
Close comment period; adopt Final Scoping Decision.	
Time allotted: completed within 5 months of MSI data submittal.	
Phase II: Draft EIS	
Conduct State RFP process; negotiate EIS Cost Agreement; hire consultant; issue State EIS Preparation Notice.	
Prepare working Draft EIS Version I.	
Agency review of working Draft EIS Version I.	
Submit comments to consultant; revised Draft EIS Version II due.	
Finalize Public Review Draft EIS.	
Publish Public Review Draft EIS; initiate public review and comment period; close comment period.	
Time allotted: completed within 9 months of adoption of Scoping Decision.	
Phase III: Final EIS	
Develop Responses to Comments on Draft EIS; develop additional information from review of Draft EIS.	
Publish Final EIS; initiate public review and comment period; close comment period.	
Time allotted: completed within 5 months of close of DEIS comment period.	
Phase IV: Record of Decision	
Adopt State EIS Adequacy Decision; publish Federal Record Of Decision.	
Time allotted: completed within 2 months of close of FEIS comment period.	
Total time allotted Phases I-IV: 21 months	



Minnesota Department of Natural Resources

500 Lafayette Road
St. Paul, Minnesota 55155-4010

Date: January 13, 2006

To: Jon Ahlness
U.S. Army Corps of Engineers
St. Paul District
Regulatory Branch
190 5th Street East
St. Paul, MN 55101

From: Scott Ek
Principal Planner
Environmental Policy and Review

RE: Minnesota Steel MOU

Dear Mr. Ahlness:

The purpose of this letter is to advise you that the point of contact for the Minnesota Department of Natural Resources, as identified in the Minnesota Steel Memorandum of Understanding (MOU), dated March 3, 2005 has changed. The new point of contact will be: Scott Ek, Minnesota Department of Natural resources, Division of Ecological Services, 500 Lafayette Road, Box 25, St. Paul, MN 55155. The previous point of contact, Mr. Tom Balcom, has retired from the Minnesota Department of Natural Resources.