APPENDIX M

PUBLIC COMMENTS AND AGENCY RESPONSES TO COMMENTS

Section 1.6.1 of the Final EIS summarizes the public comment period, public meeting and the resulting public comments received regarding the Draft EIS for the Minnesota Steel project. The first section of this appendix contains complete copies of all of the written comments received regarding the Draft EIS, as well as a copy of the pages of the public meeting transcript that contained verbal comments provided by meeting attendees. The comments are grouped by source in the following categories:

- Government Agencies (G)
- Interest Groups (IG)
- Individuals (I)
- Meeting Transcript Comments (T)
- Elected Officials (E)
- Businesses (B)

Within each grouping, the comments were numbered by source (e.g., G-1 through G-16, IG-1 through IG-14, etc.) and, if more than one point was made by a commentor, each of the comment points was assigned a separate number, indicated in the right margin (e.g., see comment letter G-02, which contains 36 separate comments, assigned numbers G-02.01 through G-02.36).

The second section of this appendix contains agency responses to the each of the comments made, grouped by comment number using the system described above.

Comment Letters received from
Government Agencies

ITASCA COUNTY

Courthouse
Administrative Services
123 NE 4th Street
Grand Rapids, MN 55744-2600
Office (218) 327-2847 • Fax (218) 327-2848
Telecommunication Device/Deaf (218) 327-2806

March 13, 2007

Scott E. Ek
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4025

RE: MN Steel Draft EIS

Dear Scott;

The Itasca County Board of Commissioners has reviewed the draft EIS and with input from staff, we offer the following comments:

The proposed location for the Project is primarily zoned industrial and development of the project is consistent with the goals of the Comprehensive Land Use Plan for Itasca County.

***Commercial/Industrial Goal**: Encourage a sound and diverse economy that meets the needs of Itasca County residents and visitors for employment and services.*

***Mining Industry Objective:** Support the continuation and expansion of the mining industry.*

***Industrial Location Objective**: Locate industrial development in areas that minimize conflict with other land uses and protect natural resources.*

The following issues are satisfactorily addressed:

- There will be no need for water appropriations from nearby water bodies.
- Stormwater runoff will be captured in a reservoir for future use as process water.
- Seepage will be controlled so there will be no threat to drinking water.
- There were detailed plans to protect the water quality of Oxhide, Snowball and Swan Lakes.
- There will be no significant effect on fish or wildlife and, in fact, reclamation plans include fish stocking and revegetation to benefit wildlife.
- Emissions will be monitored and controlled according to established standards.
- Fugitive dust and noise from blasting operations will be controlled so as to reduce the impact on surrounding communities.
- Oversight from many regulatory agencies will provide necessary controls.

G-1

The No Action Alternative would have negative social, economic and even environmental impacts if this project does not move forward. The location of the project has been previously mined and currently poses somewhat of a hazardous land formation in its current state. The steep sides of the pits with accumulating water are unstable. The No Action Alternative would result in a natural resource not being utilized to create wealth for the state of Minnesota. The economy of Itasca County would be negatively affected under the No Action Alternative as the large tract of land would remain unproductive. 1

We find the EIS to be a very thorough and complete document upon which decisions can be made to move this project forward.

Sincerely,

Catherine McLynn

Catherine McLynn
Chair, Itasca County Board of Commissioners

cc: Jon K. Ahlness
U.S. Army Corps of Engineers
190 Fifth Street East, Suite 244S
St. Paul, MN 55101-1638

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

MAR 30 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: Draft Environmental Impact Statement, Minnesota Steel Industries Taconite Mine and Steel Mill Project, CEQ # 20070047

Dear Mr. Ahlness and Mr. Ek:

I am writing to provide the U.S. Environmental Protection Agency's (EPA) comments on the draft Environmental Impact Statement (EIS) for the Minnesota Steel Industries (MSI) taconite mine and steel mill project under the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act. The project involves an open pit taconite mine operation, ore processing, and a related steel mill. The project is located in Itasca County, Minnesota, near Nashwauk, at the western end of the Mesabi Iron Range.

Project Background Summary: Project features include: the open pit mine, adjacent stockpile areas, and a new tailings basin on the site of a former tailings basin. The project also includes construction of new facilities for processing ore and producing steel: a crusher, a concentrator, a pellet plant, and a plant for producing direct reduced iron. The steel mill consists of two electric arc furnaces, two ladle furnaces, two thin slab casters, and a hot strip rolling mill. The purpose and need for the project is to mine taconite ore and produce steel on site in order to provide steel product to the domestic and world market. The project is proposed for a 20-year period and is planned to produce about 13 million metric tons of ore per year and 2.5 million metric tons of steel slabs per year.

Project Alternatives and Impacts: The MSI DEIS was prepared jointly by the Army Corps of Engineers (Corps), as the lead federal agency, and the Minnesota Department of

Natural Resources (MDNR), under the Minnesota Environmental Policy Act. EPA was involved at the scoping stage of this project and has provided input at several informal and intermediate stages at the request of the Corps. The DEIS presents a preferred alternative that would use the existing Butler tailings facility, rather than a new site, and dispose of sanitary waste at the Nashwauk wastewater treatment plant, rather than building an on-site wastewater treatment system. The project would have direct impacts to approximately 765 acres of wetlands. It will also require de-watering existing mine pits that feed local streams and lakes; MSI proposes to augment water bodies affected by the dewatering. The project is within 200 miles of four Class I air quality areas, designated to protect visibility in national parks and forests.

Project Rating: Based on our review, we have rated the draft EIS for the project **"Environmental Concerns – Insufficient Information (EC-2)."** Enclosed documents contain EPA's comments and an explanation of the rating system. We have identified areas where additional information is needed to either resolve EPA's concerns or further evaluate environmental impacts. In summary, we have concerns about the wetlands classification and mitigation, water quality impacts, air quality impacts, tribal resource uses, evaluation of connected actions, and ground water evaluation.

Thank you for the opportunity to review and provide comments on the MSI mining and steel mill DEIS. If you have any questions or would like to discuss our concerns and recommendations, please contact me at 312-353-1441 or Anna Miller of my staff at either miller.anna@epa.gov or (312) 886-7060.

Sincerely yours,

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

Enclosures

cc: Ann Foss, Minnesota Pollution Control Agency

EPA Region 5 Comments for the
Minnesota Steel Industries Mine and Steel Mill Project
Draft Environmental Impact Statement (DEIS)
March 2007

Alternatives analysis
We appreciate the thorough alternatives analysis prepared for the DEIS. While certain parts of the project, such as the mine pit itself, are fixed, other project features have the potential for different locations. Our review found that the proposed locations of the ore processing facilities, steel mill, stockpiles, and tailings basin considered wetland avoidance and mitigation. Overall, we found the selected alternatives for wastewater treatment, the processing and plant facilities locations, and the tailings basin site acceptable.

Consultation with U.S. Fish and Wildlife Service (USFWS) 1
Results of USFWS consultation should be summarized in the Final EIS (FEIS).

In-pit stockpiling alternative 2
In-pit waste rock stockpiling is an alternative dependent on many factors, such as mineral rights, how the mine pit is worked, and mine pit capacity. The DEIS indicates that the feasibility of in-pit stockpiling is not yet known. (See page 3-11); however, the DEIS later discusses in-pit stockpiling as mitigation (page 4-149). Since the alternative's feasibility is not known yet, we recommend the FEIS present it as provisional only, and not definitively factor it into mitigation or minimization.

Connected actions 3
The DEIS is not clear about whether impacts due to connected actions are included in the overall impact totals. These connected actions include: gas line construction, electrical power lines, public roadway, railroad extensions, and water/sewer lines. Because these infrastructure projects are considered connected activities under NEPA, their impacts should be included and evaluated, even though other agencies or entities will permit or undertake these activities. As noted in the DEIS, 40 CFR 1508.25 states that connected actions are actions that are interdependent parts of a larger action and depend on the larger action for their justification.

For connected actions (listed on page 2-2 in table 2.2 Environmental Review and Permits for Connected Actions), we recommend that the FEIS:

- Include a discussion of the impacts due to connected actions in each of the appropriate media sections in 4.0 Environmental Consequences,
- Quantify acres and community type of wetlands impacted by connected actions, and explain whether the wetlands are previously disturbed or not. We understand, however, that avoidance and mitigation may be better addressed during the permitting phase for these connected actions and, if so, recommend the FEIS state that. 4

Wetlands

Classification System: Instead of using the Circular 39 system, EPA recommends using the Eggers and Reed system (1997) or the Cowardin Classification System. Both Eggers and Reed and Cowardin provide more specific plant community information that will be useful and necessary to determine adequate mitigation. We recommend their use to identify wetland impacts as well as to describe the wetland communities to be established for mitigation. We also request that the wetland impact summary tables 4.1.9 and 4.1.10 include the total acres of wetland impacted by community type using the Eggers and Reed or Cowardin system. 5

The use of the Circular 39 classification system to describe the wetlands impacted is problematic because it does not provide sufficient information on the wetland types being impacted. For example, Circular 39 Type 7 (wooded swamp) does not distinguish between hardwood swamps and coniferous swamps, which are two very different types of plant communities. Similarly, Circular 39 Type 2 does not differentiate between sedge meadow and calcareous fen - these are distinctly different wetland community types and each would be assessed differently regarding what constitutes adequate mitigation.

Natural vs. disturbed wetlands: The DEIS refers to wetlands of natural origin and wetlands of artificial origin, without defining the distinction. We suggest defining these terms in the FEIS. In addition, we recommend clearly identifying natural, artificial and disturbed wetlands by acreage rather than by percents for discrete project segments. This will help readers and decision-makers understand impacts. 6

Mitigation ratios: The DEIS proposes at least a 1:1 mitigation replacement ratio and indicates that the initial wetland mitigation work should be completed within 5 years. Although hydrology may be re-established in this time frame, the site is unlikely to be a fully functional wetland in 5 years. Due to the time lag between the impacts and the full restoration of functioning wetlands, we request a mitigation ratio of at least 1.5:1 for emergent and scrub shrub communities. We also note that the proposed project will impact approximately 32 acres of forested wetland. The DEIS does not indicate if the impacted areas are hardwood or coniferous forested wetlands. In either case, due to the length of time needed for forested systems to be restored, we request that all forested wetland impacts be mitigated in kind at a 2:1 ratio. 7

Indirect impacts to wetlands: The DEIS states that since the extent of potential indirect wetland impacts are not precisely known, mitigation for indirect impacts is undefined. To define indirect impacts, EPA supports adding the monitoring measures listed on page 4-30 as Clean Water Act (CWA) Section 404 permit conditions. Those measures are: (1) additional monitoring wells near mine pits where indirect impacts due to de-watering could occur, and (2) long-term wetland hydrology monitoring. EPA will discuss these measures further with the Corps during the Section 404 permit phase. 8

In-kind mitigation: The proposed wetland mitigation includes a 5-year plan and an additional 20-year plan. Although the proposed mitigation is difficult to assess since the mitigation discussion uses the Circular 39 classification system (see comments above), we conclude from our review that the proposed mitigation will not result in in-kind replacement of wetland type. The majority of the proposed restoration appears to be 7

either shallow or deep marsh or shallow fresh water, which does not reflect the composition of wetland community types to be directly impacted. Specifically, the mitigation at this site would result in more open water wetland systems, while providing very little forested or scrub shrub wetland habitat. EPA expects to continue discussions of in-kind mitigation with the Corps during the Section 404 permit process. 7

To ensure adequate mitigation, we recommend establishing a timeline indicating the type of wetlands to be impacted in each watershed as the project moves forward. This information can then be used to guide decisions regarding the most appropriate types of wetland communities to be restored in the 5-year and 20-year mitigation plans.

Concerning the Aitkin 229 and 248 sites, the DEIS provides little information on how wetland hydrology will be re-established and maintained on this mitigation site. The DEIS is also unclear how much, if any, management of water levels will be required to maintain the target wetland communities. Since the mitigation plan proposes to let vegetation naturally establish on the mitigation sites, we recommend that the CWA Section 404 permit establish interim performance standards that require seeding and/or planting the mitigation areas if the target wetland communities do not develop within several growing seasons. We also recommend that the mitigation plan include performance standards for the sites, both for vegetation and hydrology. A conservation easement should immediately be established over the mitigation areas. The plan should designate a long-term manager of the mitigation areas. 9

Approximately 140 acres of wetland restoration is proposed at Aitkin Site 1981 on land originally developed for farming. Initial wetland restoration planning for this site was conducted between 2003 and 2005, but no restoration work has actually been completed. This site appears to have the potential to provide restoration opportunities for forested and/or scrub-shrub communities. We recommend the FEIS include a complete restoration plan that clearly indicates the wetland communities to be established on the site, how the wetland vegetation will be established, and how hydrology will be restored. We also suggest including recent wetland delineations (those completed in the last three years) be available for review.

Mitigation credits: For proposed additional wetland mitigation at several other sites, including the proposed 150 acres of re-established wetlands in the tailings basins, the project may likely receive full mitigation credit. The mitigation plan also appears to rely on full (100 percent) credit for forest road decommissionings (projected to result in 88 acres of re-established wetlands), which we understand to be part of the Chippewa National Forest's long-term management plan. Under the Section 404 process, MSI can receive up to 25 or 50 percent credit for projects that are independent of the MSI mitigation plan, such as the Chippewa National Forest road removals. 10

Impacts to local hydrogeology and drinking water sources 11

The FEIS should demonstrate whether mine pits and ground water are or are not interconnected, to support the DEIS statement that de-watering will not have adverse affects. The results of a ground water analysis should be included in the FEIS, along with supporting maps and cross-sections, as well as a map showing public and private well locations. In particular, we recommend explaining the ground water flow regime near the

Hawkins/Halobe/Hadley Pits, which are approximately 200 yards from the Nashwauk City public water supply well #2. These materials will allow reviewers and the general public to understand the potential for impacts to water supplies. The FEIS should also discuss proposed monitoring to detect any impacts to the public or residential wells due to pit de-watering. 11

We note that Pickerel Creek originates from a spring-fed stream; the FEIS should address whether it will be affected by de-watering. 12

Underground injection control (UIC)

While we understand that the on-site wastewater treatment system is not the preferred alternative, should this alternative be selected, it will require a permit as a Class V well under the Safe Drinking Water Act UIC program. The FEIS should include the potential for a UIC permit in its discussion of this alternative. In the State of Minnesota, the UIC program is directly implemented by EPA. We would require an inventory to determine if the system would need an individual permit or be authorized by rule. 13

Water discharges and water quality

We recommend the FEIS discuss whether or not a National Pollutant Discharge Elimination System (NPDES) is necessary for stream and lake augmentation activities. Generally, augmentation would require an NPDES permit, but the DEIS does not identify a permit for this activity. The DEIS states that all waters meet the state water quality standards; however, in the absence of specific information about chemistry and temperature of the individual pit waters, we are concerned that surface water quality of receiving water bodies (Snowball Lake, Oxhide Lake, Swan lakes, and Oxhide Creek) may be affected by the addition of nutrients (i.e. phosphorus) or sulfates or by changes in temperature due to water transfers or augmentation. We recommend the FEIS provide more information about water chemistry of the pits and discuss possible changes due to inflows from dewatering or augmentation. 14 15

Information on page 4-56 states that in the area surrounding the processing plant, surface water would be collected and discharged to a wetland southeast of the processing plant, although the DEIS states elsewhere that no surface water discharges will occur from this project. The FEIS should explain whether this discharge requires an NPDES storm water permit or is otherwise regulated. 16

We recommend including the following information in the FEIS: 17

- Page 4-47, Section 4.3.2.2: Oxhide Lake: Will proposed increases and decreases in lake levels cause erosion of the banks or other impacts, or are these fluctuations within the natural range for this lake?
- Page 4.47, Section 4.3.2.2: Snowball Creek: the DEIS mentions that in the post-mining period, the level of Snowball Creek may increase to the point where Pit 6 may not continue to discharge into the creek. This appears to mean that creek levels may not return to pre-mine levels, which differs from statements elsewhere in the DEIS. We recommend clarifying in the FEIS whether the creek levels will or will not return to pre-mining levels. 18

- We note that Page 4-39, at the end of the first paragraph, refers to additional water appropriations that are likely in the future. The FEIS should be clear about this as a future action and discuss sources and possible impacts. 19

Risk levels and subsistence consumption

Cancer risk levels:

While we acknowledge that the DEIS has used Minnesota's approved cancer risk level of 1 additional cancer in a population of 100,000 people ($1x10^{-5}$), we suggest that the State regulators consider using the more protective level of 1 additional cancer in a population of 1,000,000 people ($1x10^{-6}$) to characterize possible impacts to subsistence fish consumers in the area of the project. We suggest considering the ($1x10^{-6}$) cancer risk level because of the following reasons: 20

- In 2000, EPA's water quality standards program recommended the use of the more protective ($1x10^{-6}$) cancer risk level when deriving criteria for several cancer-causing pollutants (see Federal Register, Vol. 65, No. 214); some of these pollutants occur in the project area and are evaluated in the DEIS.
- The Grand Portage Tribe has EPA-approved water quality standards and uses the updated recommended risk level of ($1x10^{-6}$) and has treaty rights to consume fish in the area of the project.
- If subsistence fish consumers (not only tribal members) will also be consuming produce similar to the subsistence farming levels in the area, then additional exposure to these pollutants and cancer risk could occur. In the DEIS, subsistence fish consumers are expected not to exceed the ($1x10^{-5}$) cancer risk level for Arsenic, Benzo(a)pyrene, and Dibenzo(a,h)anthracene (the expected rate was 0.8 in 100,000). If they consume produce similar to higher subsistence farming levels in the area, however, instead of the lesser residential levels, as assumed in the DEIS, they could possibly exceed the ($1x10^{-5}$) rate.

Non-cancer risks: We recommend that the FEIS include a discussion of the potential non-cancer health effects due to mercury, because the DEIS indicates that exposures may potentially pose non-cancer health risks for subsistence fish consumers (page 4-118). Combined mercury exposure figures - existing mercury exposure levels added to potential incremental increases due to the MSI project - appear to indicate that subsistence fish consumers may have a higher potential for non-carcinogenic health risks due to mercury (see Table 4.7.22). We also recommend that the FEIS consider presenting a similar exposure analysis for other pollutants with non-cancer effects to fully describe the project's potential impacts. 21

Tribal uses and impacts

While the DEIS identifies impacts to nearby resources (including those in tribal ceded territories), it does not identify all relevant tribal uses or assess potential impacts to those uses. In particular, the DEIS does not investigate wetland resources potentially used by the Tribes. Possible uses include harvesting wild rice, medicinal wetland plants, and plants used for basket-making (e.g. reeds, willow, birch), as well as hunting and trapping wildlife such as fishers and beaver. There may be other cultural uses in the area, such as sweat lodge ceremonies, which could be affected particularly by noise from the mining activities. Project-related or cumulative wetlands loss, water quality changes, air quality 22

changes, or noise could potentially affect resources and uses that are important to the tribes. We recommend the Final EIS better define tribal uses in the project-affected area and explain potential impact to these uses. We suggest coordinating with tribal governments on these issues. 22

Air emissions

The DEIS uses sulfur dioxide (SO2) and nitrogen oxides (NOx) background concentrations from a 1999 permit application (for an unrelated facility) for modeling this project's impact. The FEIS should explain why more recent data wasn't used and how the impacts evaluation accounted for changes in emissions from any additional emission sources since 1999. 23

The discussion of boilers under Industrial, Commercial and Institutional Boiler Maximum Available Control Technology (MACT) does not identify a control for the vacuum degasser boiler (pg. 4-85). The National Emission Standards for Hazardous Air Pollutants (NESHAP) requires boilers to install a continuous emissions monitoring system (CEMS) to track carbon monoxide (CO) emissions. The DEIS should clarify whether a CEMS is needed or whether the boiler is exempt. Since the Minnesota Pollution Control Agency (MPCA) does not have delegated authority for the Boiler MACT, EPA would need to make any case-by-case determination of its applicability. EPA will work with MPCA if a case-by-case determination is necessary. 24

Although the DEIS states that the furnace will use 100% direct reduced iron (DRI), it identifies that in-house scrap will likely be added to the furnaces. We recommend the DEIS clearly state whether furnaces will use in-house scrap in addition to DRI and clarify whether the addition of in-house scrap will change emissions. 25

We recommend the FEIS cumulative impacts assessment describe, at least generally, the fate of the mercury that is not deposited locally, since the DEIS notes that about 93% of project mercury emissions are expected to be elemental mercury, which typically does not deposit locally near the source (see page 4-99). 26

EPA advises using clean diesel technology and fuels for construction and operational vehicles and equipment at this facility. We recommend any clean diesel commitments be included in the FEIS and the Record of Decision (ROD). 27

Risk assessment

The DEIS provides a summary of the results of the Human Health Screening-Level Risk Assessment (HHSRA) (May 2006). We reviewed the HHRSA and are providing comments insofar as it affects conclusions in the DEIS.

Certain compounds were eliminated from consideration in the risk assessment due to lack of emission rate data or due to lack of an approved toxicity value (pgs. 35-36; also mentioned in the DEIS, page 4-103); we can provide the relevant values. In particular, the dose/response non-cancer toxicity values for acenaphthylene can be found on the Integrated Risk Information System (IRIS). Toxicity values for ferrochromium and ferromanganese are listed under Chromium Compounds and Manganese Compounds. 28

We recommend the FEIS identify whether the pellet plant may emit manganese. If manganese emissions are likely, we recommend that the HHSRA and the DEIS discuss the possible effect of manganese and consider it as a chemical of potential interest (COPI) in the section discussing metal bioavailability and bioaccessibility in the risk assessment. 29

We recommend adding the following information into the risk assessment and FEIS: a discussion of how lead impacts were modeled (in the HHSRA section), soil ingestion rates, model default numbers, and age-dependent categories. In addition, we recommend defining background lead levels in the risk assessment. 30

Solid and hazardous waste

Since the project may include an on-site construction debris landfill, the FEIS should include information on possible impacts from the facility, as well as regulatory requirements for the facility, such as monitoring. 31

We recommend including information in the FEIS on whether these waste streams described on page 40-71 to 72 (Table 4.6-2: Description of Solids, Sludges, and Hazardous Wastes) are exempt under the Resource Conservations and Recovery Act. Though, the DEIS assumes wastes associated with steel mill, kiln and DRI refractory operations and slag will be non-hazardous based on results from other mine projects, we suggest that the FEIS and the ROD include a commitment to test wastes in this facility once it is operational to confirm whether these waste streams are non-hazardous. 32

We request that the FEIS describe the post-closure care of solid waste management facilities. 33

Cumulative impacts

Regarding foreseeable projects: 34

- Table 5.3.1: List of Proposed Projects (page 5-19) should include the Mittal Steel and US Steel/Minntac projects, as well as any current facilities in the area.
- Future Reasonably Foreseeable Conditions (page 5-33) should include and consider all of the projects listed in Tables 5.3.1 and 5.4.1.

We note that data in Table 5.4.1: Maximum Potential emissions Page (5-25) is blacked out. We recommend the blacked out data be added in the FEIS. 35

Note: Page EX-8 refers to a permit by MPCA and EPA. The reference to EPA should be deleted, since MPCA has authority for implementing the Clean Air Act in Minnesota. 36

SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION*

Environmental Impact of the Action

LO-Lack of Objections
The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns
The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections
The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory
The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS sate, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1-Adequate
The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alterative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information
The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate
EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640 Policy and Procedures for the Review of the Federal Actions Impacting the Environment

From: Environmental Review
To: Ek, Scott
Date: 3/22/2007 10:27 AM
Subject: Fwd: Mesabi Bike Trail
Attachments: Garrett Ous.vcf

>>> "Garrett Ous" <Garrett.Ous@co.itasca.mn.us> 3/22/2007 9:58 AM >>>
Hello,

Figure 1.2 on the DNR website shows the ambient air quality boundary crossess over the existing portion of the Mesabi bike Trail between Calumet and Snowball Lake. This is a concern of users of this segment of the bike trail maintained by Itasca County Land Department.

Q. Will this affect public use of this segment of the trail?

Thank you for addressing this matter.

GO

Garrett Ous
Itasca County Land Commissioner
1177 LaPrairie Avenue
Grand Rapids, MN 55744
garrett.ous@co.itasca.mn.us
Phone 1-218-327-2855 Fax -4160

April 2, 2007

Scott Ek
Minnesota Department of Natural Resources
Division of Ecological Services
Environmental Review Unit
500 Lafayette Road, Box 25
St. Paul, MN 55155

RE: Minnesota Steel Draft EIS

Dear Mr. Ek:

The Fond du Lac Band ("the Band") wishes to respond to the Minnesota Department of Natural Resources's (MDNR) Draft Environmental Impact Statement (EIS) proposing to allow Minnesota Steel Industries (MSI) to construct and operate a taconite processing facility, direct reduced iron plant, and steel mill near Nashwauk on the Mesabi Iron Range. While this proposed project is located outside the Ceded Territories to which the Band is a signatory, we remain concerned about the substantial industrial 'footprint' of this project, the permitting of a significant new source of mercury and other air emissions, and about the cumulative impacts to tribal trust resources of this project and many other existing, expanding, and new mining projects.

Visibility

The Band is concerned with visibility impairment in Minnesota's Class I areas. It is our understanding as a member of Policy Oversight Group of the Central Regional Air Planning Association (CENRAP) and as a partner in the Northern Class I Consultation group that **Minnesota is currently not on target to achieve reasonable progress in reducing visibility impairment in its Class I areas**. The Midwest Regional Planning Organization (MRPO)'s memo Regional Haze in the Upper Midwest: Summary of Technical Information (Dec. 20, 2006) shows in Table 2, and the graphs that follow, that emission reductions due to "existing controls plus Best Available Retrofit Technology (BART)" will not meet the glide paths to return visibility to natural conditions in the Boundary Waters Canoe Area (BWCA) or Voyageurs' National Park (VNP) by the year

1

2064, as required in the Clean Air Visibility Rule (CAVR - issued by the Environmental Protection Agency in July, 1999, as the Regional Haze Rule and amended on June 15, 2005). Further reductions will be needed in order to meet or exceed the glide path. Likewise, CENRAP's document Particulate Matter Source Apportionment Technology (PSAT) Modeling Results and Alternate Uniform Rates of Progress Glide Paths, by Environ International Corporation and the University of California at Riverside (document available on the CENRAP website), shows that, **at best, VNP and the BWCA are projected to meet only 55-65% of their target reduction by 2018**. 1

While the Minnesota Pollution Control Agency (MPCA), who is charged with carrying out the requirements of the CAVR in Minnesota, may proceed with a course of action that does not meet this goal, it is obligated to explain to the public why it is not doing so and how it will meet the glide path and return these areas to natural conditions in the future. We are uncertain as to how the MPCA plans to meet this goal while still allowing construction of major new sources of visibility-impairing pollutants so close to Minnesota's Class I Areas. The Band feels strongly that the CAVR goals should be met and natural conditions should be restored to VNP and the BWCA by 2064. Clean air and the ability to see long distances and appreciate beautiful vistas is part of the Band's mission to protect the natural environment for the use and enjoyment of its members. In addition, the pollutants that contribute to regional haze can lead to health problems. Their reduction will be good for human health and for other environmental sectors, as well as for regional haze. The MDNR and the US Army Corps of Engineers (USACE) need to partner with the MPCA to ensure that this project meets the requirements of the CAVR.

The Band has some concerns with this EIS's analysis of potential visibility impacts. Item #4 in Section 5.1.2 of the EIS shows that the expected emissions of PM_{10}, nitrous oxides (NOx), and sulfur dioxide (SO_2) from MSI are relatively small compared to statewide emissions. However, proximity to Class I areas is important, as shown by modeling performed by the MPCA in Regional Haze: Modeling with PSAT, presented at a regional haze stakeholder meeting on January 31, 2007 and posted on the MPCA website. This document recommends "Emissions Reductions emphasis on electrical generating units **and other industrial point sources**, which contribute to much of the light scattering at the northern Class I areas". Of twenty-eight sources chosen by MPCA for further study, several taconite facilities were included. A graph ("Sulfate Contributions of Individual Minnesota Facilities to Voyageurs, Boundary Waters and Isle Royale Class I Areas", page 13 of the report) showing the results of this study indicates that EVTAC, Hibbing Taconite, and US Steel (KeeTAC and Minntac) each show appreciable effects on the visibility in these Class I areas. A second graph detailing nitrate contributions shows similar conclusions. Since emissions of SO_2 and PM_{10} from MSI will be roughly similar compared to those from Hibbing Taconite, we can conclude that MSI could have an adverse effect on visibility in the BWCA and VNP. 2

The text of the Draft EIS leads the reader to believe that visibility problems at Minnesota Class I areas are mostly caused by sources in other states or countries, although the specific modeling studies used to reach this conclusion are not cited. Specifically,

Section 5.4.2.2, Item #4 states that out-of-state sources contribute 65-90% of the secondary sulfate and nitrate particulates in Minnesota (citation not provided), coming primarily from the eastern United States and Canada. Although out-of-state sources could potentially contribute 65% of the pollutants of concern, the 90% figure seems to be unrealistically high. The Dec. 20, 2006 Technical Memo by the MRPO shows in Table 1 that **of the 20% worst days at the BWCA and VNP, the state of Minnesota contributes 37.63% and 36.88%,** respectively. The next highest state contributors (Wisconsin and Iowa) contribute only about 10% each in the worst 20% days scenario. States east of Wisconsin do not show much contribution at all, contrary to assertions presented in the EIS. In fact, the MPCA is a member of CENRAP rather than the MRPO (although it collaborates with the MRPO) because most out-of-state emissions come from states located south of Minnesota. 2

The findings in the paragraph above are also confirmed by CENRAP's PSAT Modeling Results and Alternate Uniform Rates of Progress Glide Paths document. A graph found on page 36 of this report shows that **the largest percent contribution to the extinction coefficient at VNP from 20% worst days is the state of Minnesota, at 26.9%-28-.9%**. While these percentages are not super-majorities, the state of Minnesota is still the highest contributor and is obligated under the CAVR to take action to fulfill the rule's requirements. In fact, through the MPCA's presentation Regional Haze: Modeling with PSAT (January 31, 2007) the agency concludes that: "Minnesota is (the) largest contributor to BWCA and VNP" and should "…limit consultation with immediate neighboring states", probably in recognition Minnesota needs to take steps to solve its own visibility problems. It is important to note that modeling performed for PSD or BART purposes shows that local emissions can certainly have an impact on nearby Class I areas. The BART analyses performed for the taconite industry and BART-affected utilities within the state of Minnesota show that these facilities do indeed impact visibility in VNP and the BWCA (documents available on MPCA website). In conclusion, the modeling studies relied upon in the EIS are inaccurate and should be replaced by current CENRAP and MRPO information.

While it is true that out-of-state sources contribute roughly 60-65% of Minnesota's visibility-forming pollutants, it is also true that Minnesota contributes to visibility impairment in other states. That is why Regional Planning Organizations like CENRAP and the MRPO were formed - so that states can work cooperatively on pollution transport problems. Minnesotans cannot expect to let other states do all the work and not address our own emissions. This is not just a matter of being a good neighbor, the state could be sued over its regional haze State Implementation Plan if its contributions to visibility problems in other states are not addressed. The Band is curious whether nearby states have been consulted in a meaningful way about this proposed project, since its construction could have an impact on their air quality and visibility improvement efforts.

The Band does not believe this project is approvable by local Federal Land Managers (FLMs). According to Table 4.7.14 of the EIS (page 4-93), the expected maximum changes in the daily extinction coefficient resulting from the construction of this source are expected to range from 0.83% to 36.06%, depending on which Class I location is 3

studied, which modeling protocol is chosen, and whether NOx control technology is considered. **The Federal Land Managers' Air Quality Related Values Workgroup (FLAG) Phase I Report (December 2000) states in Section A.1.that a single-source contribution to a change in extinction of greater than 10% will likely lead to FLM objections to the source's air permit** (a predicted change that falls into the range of 2-10% prompts FLM interest). As shown above, the EIS estimates that the maximum changes in daily extinction coefficient could exceed 10% in the BWCA and in VNP, even with the proposed use of low temperature oxidation technology (LoTOx) to control NOx emissions. Without LoTOx, the changes would be even greater. For this reason, we do not see how an air permit could be approved for this project and do not believe this EIS should be approved, either. The ranges of expected outcomes at VNP and the BWCA are too large and lead to too much unpredictability. MSI needs to work with the FLM's to tighten these ranges and ensure that visibility is not affected in the Minnesota Class I areas. 3

The EIS shows that not only could the "2-10%" range be exceeded, this could happen numerous times each year. The number of days per year with at least a 5% change in the daily extinction coefficient from this project is predicted to be 46 in the BWCA and 47 in VNP, roughly 13% of the total days in a year at each area – with NOx emission controls. Without LoTOx, the number of "greater than or equal to 5%" days grows to 106 days per year for each area, or 29% of the total days per year. The number of days per year with at least a 10% change in the daily extinction coefficient is predicted to be 8 in the BWCA and 9 in VNP, assuming LoTOx control, and grows to 32-38 days per year without LoTOx. Information is not shown on when these days are predicted to fall throughout the year. Again, it is hard to see how this project can be approved in its proposed form with this type of potential impact on visibility in Minnesota Class I areas.

This section of the EIS devoted to changes in daily extinction coefficient is not written in a way that is easily understood by the general public. The 2-10% range looked for by FLM's is not fully explained in the EIS, but is only mentioned in passing, therefore casual readers of the EIS do not know that MSI may exceed this important measure. Please re-write this section to make it clearer and please explain how the facility proposes to work with FLM's to address the fact that this project is not approvable in its current form. Also, Table 4.7.14 and its associated text do not explain whether different times of year could effect the change in daily extinction coefficient, although the FLAG document (Section D.2.c.) indicates that calculations for changes in extinction coefficient should account for seasonal differences, as differing meteorological conditions can lead to problems under certain circumstances.

It also appears as though the **cumulative** change in daily extinction coefficient from several proposed sources on the Iron Range was not calculated, only the change expected from this specific project. The FLAG document contains a decision flowchart (Section A.1.) indicating that if the cumulative change in daily extinction coefficient (as predicted by modeling) equals or exceeds 10% and the single-source contribution equals or exceeds 0.4%, the FLM is likely to object to air permit issuance. **This analysis was not included in the cumulative impacts section of the EIS.** In fact, the cumulative impacts section 4

does not include any modeling data at all. The list of emissions increases and reductions shown in Table 5.4.1 does not prove that there will be no cumulative impacts on visibility in Class I areas as a result of the projects considered. Many factors affect visibility, including not only the type and magnitude of emissions, but also where the emissions take place and meteorological effects. Since modeling to predict the expected change in daily extinction coefficient was done for the project impacts, we see no reason why it should not be done for the cumulative impacts. Including emissions reductions from project closures such as Butler Taconite and LTV without showing modeling results obtained using all available data is misleading and provides no real information as to the expected changes in visibility from cumulative impacts. 4

Increment Analysis

According to a letter from FLM's James Sanders (Superior National Forest) and Anne Archie (Chequamegon-Nicolet National Forest) to the MPCA on November 13, 2006, the increment analysis outlined in the EIS needs revisions. This letter states that **several sources were not included in the cumulative assessment that should have been.** For PM emissions, the draft EIS should consider emissions from United Taconite Mine in Eveleth. For SO_2 emissions, please consider: Minnesota Power (Hibbard); Duluth Steam, Georgia Pacific (Duluth); CLM Corp. (Superior); Rhinelander Paper (Rhinelander); Fraser Papers (Park Falls); Empire (Palmer); Tilden (Ishpeming); WEPCO Presque Isle (Marquette); Marquette Power (Marquette). NOx emissions from any of the above-mentioned facilities should also be considered, since they contribute to secondary PM formation. It is also difficult to compare emissions increases and reductions from different time periods because the methods of emissions estimation change over time. Emissions estimates from several years ago are unlikely to be as reliable as those from recent years. The Band supports the FLM's proposal to look at ambient monitoring data to supplement these outdated emissions estimates. The EIS should also have addressed future growth in utility emissions due to increased demand and should have studied different CAIR scenarios that might come into play, due to the unpredictability of which sources might reduce emissions and which ones might buy credits instead. 5

Mercury

Emissions of mercury from MSI are also a concern to the Band. Mercury emitted into the air methylizes and bioaccumulates in fish and other animals. Band members become exposed to mercury through their higher-than-average consumption of fish and wild game. Because methylmercury can cause neurological problems and has been linked to heart disease, the Fond du Lac Band feels it must take action wherever possible to prevent high amounts of mercury from getting into the environment. We know that the MDNR and MPCA are concerned about this issue, too. The MPCA's recently-approved Total Maximum Daily Loading (TMDL) document for mercury lists 1,312 mercury impairments in the state, including 442 rivers and 870 lakes. The TMDL calls for cutting statewide mercury emissions by an additional 2,552 pounds per year from 2005 levels, limiting statewide emissions to 789 pounds per year. MSI predicts maximum mercury emissions of 81 pounds per year. We believe it would be reckless to permit a source 6

emitting 81 additional pounds of mercury per year when a reduction of 2,552 pounds per year is being called for. This new mercury emission source will also need to be considered in the context of the Lake Superior Binational Program's contaminants tracking inventory, as it runs contrary to the agreement signed by the states, provinces and two federal governments within the Basin calling for Lake Superior to be a "zero discharge demonstration zone" for nine bioaccumulative chemicals of concern, including mercury. 6

Acidification of Water Bodies

The Band is concerned with acidification of water bodies resulting from deposition of emissions from MSI. The EIS states that 90% of acid deposition in Minnesota comes from out of state (page 5-9), however the reference given is over twenty years old (MPCA, 1985). An additional reference on the same page is similar, but is over fifteen years old (NAPAP, 1990). Many regulatory actions have come into effect since 1990, including the Clean Air Non-Road Diesel Fuel, the Tier II Mobile Source Standards, and the Heavy Duty Diesel Standards. According to the NAPAP Report to Congress – An Integrated Assessment (2005), the greatest reductions in SO_2 emissions from utilities have taken place in states that originally had the highest emissions, such as Ohio, Illinois, Indiana, Missouri, and Tennessee. Therefore, these states may have less of an effect on acid deposition in Minnesota today than they did in 1985 or 1990, meaning that Minnesota sources could be more important in terms of local acidification today than they were twenty years ago. 7

In the "Summary of Potential Sulfur Dioxide and Nitrogen Oxide" (Part 4.7.2.5.5), the EIS cites Eilers and Bernert (1997) in a report to the MPCA, concluding that "Minnesota's water bodies are well protected against acid deposition impacts". **That may be true for certain ecoregions within the state, but most emphatically is not true in the Northern Lakes and Forests Ecoregion**, where the underlying geology provides poor to barely-detectable acid neutralizing capacity. This claim is made again in Part 5.2.2, Acid Deposition Overview, Environmental Consequences: "Lake survey work from the early 1990s indicates that Minnesota's aquatic and terrestrial ecosystems have sufficient buffering capacity to withstand current levels, and projected future levels, of acid deposition. There is virtually no "inherent buffering capacity" in northeastern Minnesota aquatic or terrestrial ecosystems, and any analysis that includes this assumption is flawed. In addition, more study on increased methylization of mercury in water bodies due to acidification is needed. This is a major concern due to contamination of fish. Where the acid deposition data is outdated, improved data may indicate that increased methylization will take place. 8

Potential aquatic effects in Class I areas from pellet plant uncontrolled NOx are addressed in Table 4.7.13. Deposition resulting from both project emissions and background sources is shown, along with green line values and Deposition Analysis Thresholds (DATs). Although the text says that "SO_2 and NOx emissions from the project (without LoTOx) are not expected to have an adverse effect on terrestrial or aquatic ecosystems in the Class I areas", not enough explanation is given for how this 9

conclusion is reached. The total deposition (project plus background) exceeds the DATs for both Isle Royale National Park and VNP. If only the project deposition is to be compared with the DAT's, then please state this in the text. Many of those reviewing the EIS are not familiar with DAT's. 9

In Section 5.2.1.3 Analysis Boundaries, the EIS defines the parameters of ecosystem acidification Cumulative Impacts Study. We believe this analysis should also consider emissions from the sources listed previously in this letter with regard to increment analysis. In your Cumulative Impacts Study, please also consider emissions of SO_2 and NOx from: Minnesota Power (Hibbard); Duluth Steam, Georgia Pacific (Duluth); CLM Corp. (Superior); Rhinelander Paper (Rhinelander); Fraser Papers (Park Falls); Empire (Palmer); Tilden (Ishpeming); WEPCO Presque Isle (Marquette); and Marquette Power (Marquette). If past reductions are considered, then past increases need to be considered, too. 10

LoTOx

The Band is pleased that MSI has proposed studying LoTOx as a control option for NOx and mercury emissions and that MSI has agreed to install LoTOx if tests show it to be "technically and economically feasible". However, the Band believes that the cost figures that would be considered "technically and economically feasible" need to account for co-control of mercury and for the potentially detrimental effects of NOx on nearby Class I area visibility if the LoTOx were not installed. Therefore, traditional Best Available Control Technology (BACT) control cost ranges may be too low. In addition, during the time that the LoTOx is being tested, the facility has assumed that the second Direct Reduced Iron and Electric Arc Furnace units would not yet be installed, so their emissions were not included in the modeling. The Band wants to ensure this will be made a condition in any air quality construction permit issued to MSI. 11

Fairness

A recurring theme in the EIS is that emissions are not a concern because they will be transported out of state and will, essentially, become someone else's problem. This view runs contrary to long-held tribal beliefs. Native Americans look upon themselves as caretakers of Mother Earth and do not hold the view of "out of sight, out of mind". While we understand that people in Minnesota need jobs, we want to see Minnesota sources held to the very highest environmental standards. For this reason, we encourage the MDNR and the USACE to work with MSI to ensure that the best possible controls are used at the plant as well as offsets, green fuels, and other potential sources of mitigation. 12

The EIS also states several times that the emissions from MSI will not have much impact because of past and future reductions at several other facilities. The Band reminds the MDNR and the USACE that these reductions were made due to regulatory or voluntary efforts to clean up pollution. Regulators and emitters did not decide to perform these reductions so they could be promptly replaced by further emissions, but to improve the

environment. Removing emissions from one sector and replacing them with additional emissions from another sector doesn't make much sense.

Water Concerns

It is noteworthy that the proposed project is designed to capture, treat and reuse all surface water runoff from the site, and will result in no discharge of sediment or pollutants from the site to surface waters, and will preclude the necessity of a NPDES permit. The proposed project will not discharge scrubber blowdown or contact cooling water to the tailings basin, and a Water Recovery and Reuse System would treat and reuse process water without any surface water discharge. However, the tailings basin will leak or seep around its perimeter, through the dike walls, and through the bottom of the basin, affecting ground water in close proximity to hundreds of private drinking water wells and several municipal drinking water systems. The proposed project design includes a collection system for seepage around the basin, but acknowledges that an SDS permit will be required for the seepage through the bottom of the basin to ground water. The state of Minnesota does not have a classification system for ground water, but has defined all ground water as potentially potable, with a policy of nondegradation. In this context, we express concerns about the "small" discharge to ground water from the tailings basin, variously estimated from 105 gallons *per day* (NPDES/SDS Permit Application, Attachment 6A, Existing/ Proposed land treatment or disposal site) upwards to 158-798 gallons *per minute* of seepage to ground water (p. 29, NPDES/SDS Permit Application, Narrative Part 1). It is difficult for those reviewing this Draft EIS to reconcile those wildly disparate estimates of ground water seepage. 13

Also, there appears to be a discrepancy between estimates of water quality constituents between Table 6.7.1 in the EIS and Attachment 2A from the SDS permit application, particularly for sulfate. The applicable drinking water standard for sulfate, 250 mg/l, would likely be exceeded, according to the estimate of tailings basin seep water quality provided in Attachment 2A. It appears that tailings basin seeps to ground water are likely to exceed the secondary drinking water standard for total dissolved solids.

The Band is concerned about the extensive cumulative impacts from the long history of taconite mining in the region, and the unprecedented expansion of new mining activity that will impact thousands of acres of wetlands, degrade wildlife habitat and disrupt migratory and foraging patterns, degrade surface and ground water resources, and increase air emissions. Neither this draft EIS, nor any of the other state and federal EIS's prepared in the past two years, have adequately addressed cumulative impacts to natural resources protected for the tribes through federal treaties. The cumulative impacts portion of this EIS is narrowly defined, to only include an analysis of the cumulative impacts of "reasonably foreseeable" new air emissions sources. Section 4.4.1 acknowledges that "past mining in the area has led to extensive and irreversible alterations in the landscape cover and surface water flowpaths. Mitigation and reclamation procedures following past mining operations have resulted in stabilized landscapes of erodable material with alteration in surface water routing, compared to pre-mining conditions." 14

There was no analysis of cumulative mercury methylation/bioavailability impacts of this new air emissions source, in conjunction with other taconite industry permits granted or under review, for Mittal Steel and U.S. Steel-Minntac, both of which will discharge high-sulfate water from their tailings basin to tributaries of the St. Louis River, upstream of the Fond du Lac Reservation. It is disingenuous to conclude, as the draft EIS does in section 5.3.2, Environmental Consequences, that "Based on the findings summarized above, potential cumulative impacts from the future reasonably foreseeable projects analyzed… do not appear to have the potential to significantly cause or contribute to mercury deposition and/or bioaccumulation in fish in northeast Minnesota lakes or streams." Critical discharges that were clearly "reasonably foreseeable projects" (the aforementioned taconite NPDES permitted discharges) were excluded from the cumulative impacts analysis. This is a major flaw in the analysis that has serious implications for fish mercury concentrations in the St. Louis River, which is the most important on-Reservation fishery for the Band, and widely used by recreational fishermen from throughout the state. 15

Section 6.10.2.1, dealing with Cultural and Archaeological Resources, lays out the plan for acquiring the necessary information to determine whether historic properties exist on the site, and references a draft programmatic agreement between the U.S. Army Corps of Engineers, the Minnesota State Historic Preservation Office (SHPO), and Minnesota Steel. In several meetings between Minnesota Steel staff and tribal environmental staff, the tribes have strongly advised the company to consult with tribal cultural resources specialists so that potential cultural resources within the project area could be identified. It seems premature to finalize an EIS before this important consultation and review process has occurred. 16

If you have any questions regarding this letter, please contact Nancy Schuldt (878-8010) or Joy Wiecks (878-8008) of my staff.

Sincerely,

Wayne Dupuis
Fond du Lac Environmental Program Manager

c.c. Fond du Lac Reservation Business Committee Members
Dennis Peterson, FDL Legal Counsel
Dan Cozza, EPA Region V- Water Division
Ben Giwojna, EPA Region V – Air and Radiation Division
Anna Miller, EPA Region V- NEPA
David Thornton, Assistant Commissioner, Air Policy - MPCA
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March 29, 2007

Re: Minnesota Steel Draft EIS

Dear Mr. Ahlness:

Thank you for the opportunity to review and comment on the Minnesota Steel Draft EIS. Please find listed below our comments.

The assumption of long range transport of elemental mercury is flawed on several levels. Elemental mercury can be deposited directly on tree foliage, which then drops in the fall and transfers the mercury into the forest soil (Driscoll et. al 2007). This mercury can find its way higher into the food web through worms and insects, and has been quantified in studies of insectivorous birds in the Northeast (Rimmer et. al. 2005). The rugged topography downwind of the proposed project could enhance the rate of deposition. This added mercury could then find its way into the human population through birds such as ruffed grouse, which are a common staple in the Ojibwe diet. 1

In addition to mercury, the increased levels of nitrogen and sulfur emissions caused by the project are troubling. Have critical loads of these pollutants been established in the airshed? Critical loads can help determine target emissions for a region and have been successfully developed in Europe and Canada (Porter et. al. 2005). With this information the ecological impact of an increase in N and S levels can be determined. 2

The National Park Service and the Fish and Wildlife Service have calculated Depositional Analysis Thresholds (DATs) for parks and refuges considered Class I, for both total nitrogen and total sulfur. According to this formula the DAT for Eastern parks and refuges is 0.01 kg/ha/yr for N ***or*** S (http://www2.nature.nps.gov/air/Pubs/pdf/flag/nsDATGuidance.pdf). This amount is far lower than the value given in table 4.7.12 (EIS p. 4-91) of 5-7 kg/ha/yr S and 5-8 kg/ha/yr N. Why is there such a large discrepancy between the numbers cited in the EIS table and the numbers published by the NPS? 3

In the human health risk assessment portion of the draft EIS page 4-117, the **Incremental Mercury Hazard Quotient for Subsistence Level Fish Consumers** (which would apply to Tribal members) shows the health risks associated with mercury exposure will be increased by 100 percent, however recreational fish consumers are only impacted incrementally increasing their risk by 25 percent. The mercury emissions from this project are expected to cause a hazard index of 1 for Tribal subsistence fish consumers, a number which ***exceeds acceptable health risks*** using this model. Subsistence level fish consumers should be protected against unacceptable health risks. 4

Swan Lake is considered an important regional fishery managed by the DNR for walleye and northern pike. Walleye and northern pike tend to accumulate mercury at relatively high concentrations in their tissues. Mitigation efforts should be used to sustain and enhance the walleye and northern pike fisheries of Swan Lake and reduce methyl-mercury concentrations in fish tissue. 5

Cumulative effects have not been considered fully. Several major projects that are in the initial stages of development were not mentioned in regards to cumulative impacts to air, surface and groundwater discharges, wetland losses, and loss of wildlife habitat. The projects that should at a minimum be included to review potential cumulative impacts are those projects that the MN DNR Division of Land and Minerals included in their map "Mesabi Range and Duluth Complex Projects" dated 7/7/05. The projects listed are as follows: 1) UPM Blandin Paper Company Thunderhawk Project and Unit 7 Expansion; 2) Excelsior Energy proposed power plant near Deer River; 3) US Steel Keewatin Taconite particle wet scrubber, air quality permit amendments; 4) Laurentian Energy Hibbing project; 5) US Steel Minntac tailings basin discharge water quality permit amendments; 6) United Taconite line 1 restart, air quality permit amendments; 7) Laurentian Energy Virginia project; 8) Mittal Steel East Reserve Development; 9) Excelsior Energy proposed power plant near Hoyt Lakes; 10) Mesabi Nugget; 11) Polymet Plant and Tailings Basin and Northmet deposit development; 12) Northshore Mining furnace restart, air and water permit amendments; 13) Franconia Minerals Birch Lake Project; 14) Franconia Minerals Dunka project; 15) Natural Ore; and 16) HiSmelt. 6

Further, ***cumulative impacts that have been considered in the EIS are not considered in the context of treaty reserved Tribal natural resources.*** For example, water from springs holds special significance to some tribes and modification of the source or character of the water may render it unsuitable for use. This is an impact to water that makes it unsuitable for cultural uses. Water is one of the four original elements. According to Basil Johnston, Canadian Ojibwe writer: 7

> "Out of nothing he (The Creator) made rock, water, fire and wind. On each one he breathed the breath of life. On each he bestowed with his breath a different essence and nature. Each substance had its own power which became its soul-spirit". (Johnston 1990:12)

Writing of the prehistoric Henschel mounds near Sheboygan marsh, Robert Birmingham and Leslie Eisenberg note that the mounds are built around a spring, and summarize the cosmological relevance of this fact in terms that relate well to Ojibwe concepts:

"The construction of the Henschel mounds around a spring is also significant because springs issue life-giving water and are the sources of special earth, fine sands and muck, all of which are associated with concepts of rebirth and fertility in many Native American belief systems. Springs are believed to be entrances to the watery underworld, the residence of the great and powerful water spirits." (Birmingham and Eisenberg 2000:90) Birmingham, Robert, and Leslie Eisenberg 2000 Indian Mounds of Wisconsin. University of Wisconsin Press, Madison.

7

Additional analysis of cumulative impacts to Tribes should include reduction in availability of, or access to, habitats that host culturally important resources: e.g. dry, rocky sites that are host to sage; rock formations that have spiritual significance; wetlands that host medicinal or otherwise culturally important plants (see GLIFWC documents re: culturally important plants: e.g. "Non-Medicinal Plants Used by the Great Lakes Ojibwe" or "Plants Used by the Great Lakes Ojibwa"). Visual and noise impacts that make an area no longer suitable for the practice of traditional activities: e.g. visual and noise impacts that disrupt ceremonies, general noise, traffic or blasting activities that disturb wildlife making them harder to use in a traditional way. Social impacts to traditional activities or social bonds within tribal communities: e.g. Shift in wildlife management focus from subsistence use to "recreational" use. The Cleland report (1995) touches on these issues and makes several recommendations to better evaluate these types of impacts. Although the cumulative effects section does review these issues with a partial list of projects, they are not considered at all in terms of cumulative effects to Tribal natural and cultural resources.

8

Water appropriations are unclear. Unmitigated reductions in flow to Snowball Lake/Creek and Ox Hide Creek will reduce flows to Swan Lake which is unacceptable. However, it is stated that there will be no water augmentation flow for Snowball Lake during dry years after the Draper Annex pit is dewatered. Source water for augmentation to Snowball Lake has not been conclusively determined.

9

Warmer weather associated with global climate change will increase evapotranspiration rates and exacerbate water shortages. Both Excelsior Energy and MN Steel are requesting water allocations from the Hill Annex pit along with at least three other entities. It is reasonable to assume that MDNR would have some approximation of all the requested allocations from Hill Annex pit revealing whether enough water will be available. The water quality from the Hill Annex pit was not discussed in enough detail to determine if it would be an acceptable source of water for augmentation to Oxhide and Snowball Creeks. Simply suggesting that the Hill Annex pit has similar water quality to Pits 1 and 2 is not adequate. Swan, Snowball, and Ox Hide lakes are all listed as impaired waters of the state in the 2006 list due to mercury contamination, excess nutrients and low dissolved oxygen. Therefore, nutrient, sulfate, and mercury concentrations are a great concern in the pit waters used for augmentation. Unless there is sufficient water quantity and quality available to MN Steel from the Hill Annex pit for operations and water augmentation, not only in years of average rainfall, but also in drought years this project should not move forward.

10

Although the proposed collection and treatment for tailings basin water may be adequate, it is likely that some untreated tailings water will seep into the groundwater adding nutrients, sulfate and mercury. Mitigation should include in-lake monitoring of Snowball, Ox Hide and Swan

11

Lakes to determine water column concentrations of nutrients, sulfate and mercury, in case the predicted water quality is not as good as the actual water quality due to air emissions or groundwater seepage. 11

The no net loss laws for wetlands have seriously been overlooked in this project. Polymet and MN Steel are proposing to impact at a minimum approximately 2,500 acres of wetlands without considering potential impacts from several other projects including Mittal Steel, Minntac, Excelsior Energy, UPM Blandin, Laurentian Energy, Messabi Nugget, Excelsior Energy, Franconia, Natural Ore, or HiSmelt that are all proposed for the same small geographic area. Further, a comparison of historical and existing wetlands losses in the MN Steel project area indicates 3,000 acres of wetlands were lost during the Butler Steel mining operations period. 12

The amount and type of financial assurance MN Steel will be required to set aside to ensure mitigation or remediation of the site in the event of bankruptcy or foreclosure does not appear to be included in any of the materials associated with or included in the draft EIS. Financial assurance is critical to ensure that millions of dollars of clean-up bills will not have to be paid for by State and/or Federal agencies. It is our understanding from conversations with MN DNR staff that a letter of credit may be used as the financial assurance administration instrument. Because the State has already been required to pay millions of dollars for clean-up of mine sites without adequate financial assurance (e.g. Reserve Mining) this information should be made available for public review. 13

A full list of references cited in our comments is available upon request.

If you have any questions regarding these comments please call (218) 475-2415.

Sincerely,

Bradley E. Frazier
Grand Portage Environmental Department Director

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March 19, 2007

Scott E. Ek
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St. Paul, MN 55155-4025

Dear Scott;

The Draft EIS for Minnesota Steel Project contains information on proposed highway improvements and proposed railroad spur improvements as connected actions undertaken by Itasca County. This information is found in sections 6.8 – Traffic Impacts and 6.13 – Infrastructure. These sections were well written and accurately represent the efforts being made by Itasca County in regard to the highways and rail line. 1

Itasca County, also acting as the Regional Rail Authority, has taken the lead in securing the necessary permits for the railroad construction. The Surface Transportation Board (STB) will be the lead federal agency to review and comply with the NEPA requirements. The Environmental Assessment process has commenced with the STB and is expected to be complete in early 2008. This Environmental Assessment process will allow the opportunity to address impacts caused by rail line construction or any new highway construction.

Sincerely,

Catherine McLynn

Catherine McLynn
Itasca County Board Chair

cc: Jon K. Ahlness
U.S. Army Corps of Engineers
190 Fifth Street East, Suite 244S
St. Paul, MN 55101-1638

ITASCA COUNTY

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March 27, 2007

Scott Ek, Principal Planner
Environmental Policy & Review
Minnesota Department of Natural Resources
Division of Ecological Services
500 Lafayette Road, Box 25
St. Paul, MN 55155-4025
Fax: (651) 297-1500

Mr. Ek:

There has been mention of the intent of Minnesota Steel to close O'Brien Reservoir, known locally as Blue Lake, to public use if their project moves forward. Searching the Draft EIS we have found a reference to the "gravel, user-developed, boat access on the west side of the basin". We have seen no mention however of closing the lake to public use. We feel closing this water body to public use is within the scope of the EIS and therefore should be addressed. We look forward to this topic being addressed in the final EIS document. 1

Sincerely,

Catherine McLynn

Catherine McLynn, Chairperson
Itasca County Board of Commissioners