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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In The Matter Of:

United States Steel Corporation

Mountain Iron, MN

Respondent.

Docket No. CWA-05-2012-0004

Consent Agreement

and

Final Order

Pursuant to

Section 309(g) of the Clean Water Act,

33 U.S.C. § 1319(g).

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

WHEREAS, the parties to this administrative action have agreed to simultaneously commence and conclude the above-captioned action before the filing of a complaint via the filing of this Consent Agreement and Final Order ("CAFO") pursuant to Section 309(g) of the Clean Water Act, (the "Act" or "CWA"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

WHEREAS, the Complainant is, by lawful delegation of the Administrator and the Regional Administrator, the Director of the Water Division, Region 5, United States Environmental Protection Agency ("EPA").

WHEREAS, the Respondent in this proceeding is United States Steel Corporation, a corporation doing business in the State of Minnesota.

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WHEREAS, the Respondent admits that the Administrator of EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319, and the regulations at 40 C.F.R. § 22.38, and pursuant to 40 C.F.R. § 22.18(b)(2).

WHEREAS, the Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms and conditions of this CAFO.

WHEREAS, the Respondent neither admits nor denies the factual allegations in this Consent Agreement.

WHEREAS, the Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

WHEREAS, settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in the public interest.

NOW, THEREFORE, the parties agree as follows:

### **Statutory and Regulatory Background**

1. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits any person from discharging any pollutant from any point source into navigable waters except, among other things, in accordance with the terms of a valid permit issued by the U.S. Army Corps of Engineers (“ACOE”) under Section 404 of the CWA, 33 U.S.C. § 1344.
2. Pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers, may issue permits for the discharge of fill material into the navigable waters at specified disposal sites.

3. The term “person” is defined as, among other things, a “...corporation...” 33 U.S.C. § 1362(5).
4. “Fill material” means “material placed in the waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States.” 33 C.F.R. § 232.2(e).
5. The term “discharge of fill material” means “the addition of fill material into waters of the United States” 33 C.F.R. § 232.2(f).
6. A “point source” is defined as “any discernible, confined and discrete conveyance.” 33 U.S.C. § 1362(14).
7. The term “navigable waters” is defined as all “...waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
8. The term “waters of the United States” is defined at 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2, to include the following: (i) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all other waters, such as, among others, rivers, streams or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; and (iii) tributaries of such waters.

#### **Factual Allegations and Alleged Violations**

9. At all times relevant to this CAFO, the Respondent either owned, leased or otherwise controlled parcels of property in Sections 7, 8 and 9 of Township 58N, Range 18W and

Sections 11 and 12 of Township 58N, Range 19W in St. Louis County, Minnesota (the “Impacted Properties”).

10. The Respondent conducts taconite mining in and around the Impacted Properties known as the Minntac Mine West Pit.
11. The Impacted Properties contained wetlands that were located adjacent to unnamed tributaries of the West Two River, which flow into the West Two River, which flows into the St. Louis River, a Traditionally Navigable Waters as defined by the United States Army Corps of Engineers (ACOE).
12. During the years 2009 and 2010 the Respondent conducted mining activities in and around the Impacted Properties which included mechanized removal of overburden and land clearing of wetland vegetation by means of electric shovels, loaders and bulldozers.
13. The Respondent’s mining activities resulted in brush, rock, dirt and sediment being placed into 5.2 acres of wetlands on the Impacted Properties.
14. In a letter dated May 17, 2010, the Respondent notified the ACOE of impacts on 4.82 acres of wetlands on the Impacted Properties which had not been included in the Respondent’s permit, MVP-2007-01868-TWP, issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.
15. In a letter dated March 22, 2011, the ACOE advised Respondent that Respondent had “discharged fill material into 4.82 acres of fresh meadow, shrub carr and wooded swamp wetlands...” and “that these wetlands are waters of the United States and are regulated by the Corps under Section 404 of the Clean Water Act.” Further, a permit had not been issued for this activity.

16. In response to an information request from Complainant, Respondent has disclosed that an additional .38 acre of wetlands was impacted by Respondent's mining activities and that no permit had been obtained for these impacts.
17. The Respondent's mining operations at the Minntac Mine West Pit are ongoing.
18. The Respondent is a corporation and a "person" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
19. The 5.2 acres of wetlands on the Impacted Properties and the St. Louis River and its tributaries are "navigable waters" as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "waters of the United States" as defined at 40 C.F.R. § 232.2.
20. The mechanized land moving equipment constituted a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
21. The sediment, dirt, rock and/or vegetation constituted "fill material" within the meaning of the set forth in 33 C.F.R. § 232.2(e).
22. The placement of fill material by the Respondent in the wetlands on the Impacted Properties constituted a "discharge of fill material" within the meaning of 33 C.F.R. § 232.2(f).
23. Each placement of fill material, by the Respondent, into navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constituted a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.
24. Each day the material placed by the Respondent remains in navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

25. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted the Minnesota Pollution Control Agency regarding the assessment of this civil penalty.
26. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Administrator may assess a Class II civil penalty of \$10,000 per day for each day during which the violation continues, up to a total of \$125,000, for violations of, among other things, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or any limit or condition in a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, provides for the increase of penalty amounts to account for inflation. The rule increasing the civil monetary penalty amount for a Class II civil penalty to \$16,000 per day of violation, up to a total of \$177,500, took effect on January 12, 2009, 73 Fed. Reg. 75340-6 (Dec. 11, 2008).

#### **Civil Penalty**

27. Based upon the facts alleged in this CAFO; upon the nature, circumstances, extent and gravity of the violations alleged; after consideration of the Respondent's ability to pay, prior history of such violations, degree of culpability and economic benefit resulting from the violation; the Respondent's good faith and cooperation in resolving this matter; and such other matters as justice may require; EPA hereby proposes to issue a Final Order assessing civil penalties to United States Steel Corporation in the amount of \$161,000 for the violations of Section 301 of the CWA, 33 U.S.C. § 1311.

28. The Respondent shall pay this civil penalty within 30 days of the effective date of this CAFO by certified or cashier's check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the CAFO, to:

**For checks sent by regular U.S. Postal Service mail**

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**For checks sent by express mail**

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

or by one of the following methods:

**For wire transfer**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read  
" D 68010727 Environmental Protection Agency"

**For ACH**

Automated Clearing House (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> St. NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**For On line payment**

Access at [www.PAY.Gov](http://www.PAY.Gov)

Enter sfo 1.1 in the search field; open form and complete required fields

29. The check must be annotated with the docket number and with the name of the case.

Copies of the transmittal letter and the check, or confirmation of payment by one of the other methods listed in paragraph 28, shall simultaneously be sent to these recipients:

Yone Yu  
Watershed and Wetlands Branch (WW-16J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and

John Tielsch  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

30. This civil penalty is not deductible for federal tax purposes.

31. If the Respondent fails to timely pay the civil penalty, the Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and EPA's enforcement expenses for the collection action.

32. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. The Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty days past due.



The Complainant will assess a six percent per year penalty on any principal amount not paid timely pursuant to this CAFO.

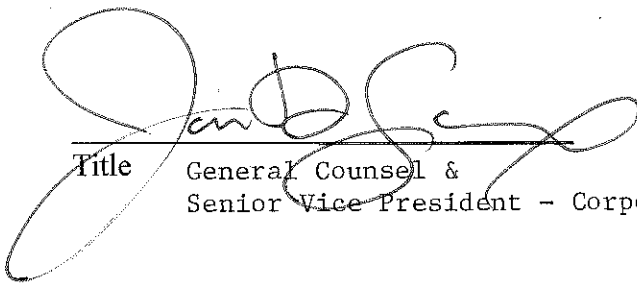
33. This CAFO constitutes a complete and full settlement of, and resolves the Respondent's liability with prejudice for, the violations alleged in this CAFO.
34. This CAFO does not affect the right of the Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
35. This CAFO does not affect the Respondent's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.
36. The terms of this CAFO bind EPA and the Respondent and their successors and assigns.
37. Each person signing this CAFO certifies he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.
38. Each party agrees to bear its own costs and fees, including attorney's fees, for this action.
39. This CAFO constitutes the entire agreement between the parties.
40. No modification shall be made to this CAFO without written notification to, and written approval of, all parties hereto and no oral modification of this CAFO shall be effective.
41. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

In the Matter of United States Steel Corporation

Docket No. **CWA-05-2012-0004**

United States Steel Corporation, Respondent

Date: January 4, 2012




Title

General Counsel &  
Senior Vice President - Corporate Affairs

In the Matter of United States Steel Corporation  
Docket No. **CWA-05-2012-0004**

United States Environmental Protection Agency, Region 5, Complainant

Date: January 12, 2012

  
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Tinka G. Hyde, Director  
Water Division  
United States Environmental Protection Agency,  
Region 5