



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

MAR 18 2015

REPLY TO THE ATTENTION OF:
WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Therese Vande Hey
ArcelorMittal USA LLC
Law Department
1 South Dearborn, 19th Floor
Chicago, Illinois 60603

Re: Docket No: CWA-05-2015-0009

Dear Ms. Vande Hey:

I have enclosed one copy of the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed March 18, 2015, with the Regional Hearing Clerk.

The penalty amount agreed upon is \$95,000, which is due 30 days after the effective date of the CAFO. A Certified or Cashier Check should be made payable to the "Treasurer, United States of America," at the following address:

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

When submitting your check, please be sure that the Case Docket No. is included at the bottom of your check.

There is now an Online Payment Option available through the Department of Treasury at <http://www.pay.gov>; which allows you to make payments using your credit card, checking, or saving account. Using the Search Public Forms field (left side of page) enter "SFO 1.1" to access the EPA Miscellaneous Payments – Cincinnati Finance Center Form. Follow the instructions for payment.

As indicated in your CAFO, a copy of the check or electronic transfer must be sent to:

LaDawn Whitehead
Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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

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

If you have any questions, please contact Yone Yu at (312) 886-2260.

Sincerely,



Peter Swenson, Chief
Watersheds and Wetlands Branch

Enclosure

Cc: Tamara E. Cameron, Chief (w/ enclosure)
Regulatory Branch
U.S. Army Corps of Engineers, St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

Dana Bloom (w/ enclosure)
Lands and Minerals Division
Minnesota Department of Natural Resources
1525 Third Avenue East
Hibbing, MN 55746

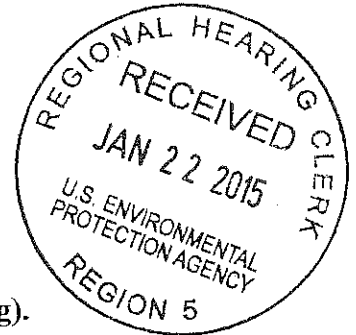
John Thomas (w/ enclosure)
Minnesota Pollution Control Agency
525 Lake Avenue South, Suite 400
Duluth, MN 55802

Jaime L. Johnson (w/ enclosure)
ArcelorMittal Minorca Mine Inc.
5950 Old U.S. Highway 53
Virginia, MN 55792

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
ArcelorMittal Minorca Mine Inc.,)
Virginia, Minnesota,)
)
Respondent.)
_____)

Docket No. CWA-05-2015-0009
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 ArcelorMittal Minorca Mine Inc., 5950 Old Highway 53, Virginia, MN 55792, a corporation doing business in the State of Minnesota.

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 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(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person except in compliance with, inter alia, a permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344.
2. Section 404 of the Act authorizes the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers (“Corps”), to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites. 33 U.S.C. § 1344.
3. Section 502(5) of the Act defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
4. Section 502(12) of the Act defines “discharge of pollutants” as, inter alia, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
5. Section 502(6) of the Act defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological

materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

6. Section 502(14) of the Act defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
7. Section 502(7) of the Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
8. 40 C.F.R. § 230.3(s) defines the term “waters of the United States” to include, among other things:
 - a. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which could affect interstate or foreign commerce;
 - d. tributaries of waters identified above; and
 - e. wetlands adjacent to waters (other than waters that are themselves wetlands) identified above.

9. Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), authorizes the Administrator to assess a Class II civil penalty under 33 U.S.C. § 1319(g)(2)(B), “whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of” Section 301 of the Act, 33 U.S.C. § 1311.
10. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty not to exceed \$16,000 per day for each day during which the violation continues, to a maximum amount of \$177,500, for violations of Section 301 of the Act, 33 U.S.C. § 1311, which occurred from January 12, 2009, through December 6, 2013. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the Administrator to assess a Class II civil penalty of up to \$16,000 per day for each day during which a violation continues, up to a maximum amount of \$187,500 for violations occurring after December 6, 2013.

Factual Allegations and Alleged Violations

11. Respondent, ArcelorMittal Minorca Mine Inc., 5950 Old Highway 53, Virginia, MN 55792 (“ArcelorMittal” or “Respondent”), is a corporation under the authorities of the State of Minnesota.

12. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
13. Respondent, ArcelorMittal, neither admits nor denies the factual allegations and alleged violations in this CAFO.
14. The wetlands referenced in paragraph 15 are “waters of the United States” as defined under 40 C.F.R. § 232.2 and “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).
15. On April 7, 2014, a six to ten foot section of the west abutment of the Main Basin Dam was found by ArcelorMittal to have breached causing a washout of the perimeter dam and an access road, and depositing up to 18 inches of fill material consisting of coarse tailings, other road construction materials, and fine tailings into 11.64 acres of wetland. An outline of the discharge area is illustrated on Exhibit 1 to this CAFO.
16. The fill material discharged into the wetlands referenced in paragraph 15 constitutes “pollutants” as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6).
17. The breached section of the west abutment of the Main Basin Dam constitutes a “point source” as defined under Section 502(14) of the Act, 33 U.S.C. § 1362(14).
18. The addition of fill material into waters of the United States constitutes a “discharge of a pollutant” as defined under Section 502(12) of the Act, 33 U.S.C. § 1362(12).
19. At no time did Respondent have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to discharge dredged or fill material into the wetlands described in paragraph 15.

20. Therefore, Respondent is a person who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1344.

21. Each day the pollutants remain in the waters of the United States constitutes a continuing violation of the Act and an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

Civil Penalty

22. 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 ArcelorMittal in the amount of \$95,000.00 for the violation of Section 301 of the CWA, 33 U.S.C. § 1311, alleged in this CAFO.

23. 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

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

Copies of the transmittal letter and the check 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

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

25. This civil penalty is not deductible for federal tax purposes.
26. 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.
27. 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.

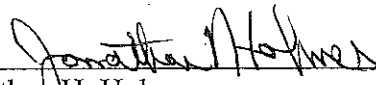
28. This CAFO constitutes a complete and full settlement of, and resolves the Respondent's liability with prejudice for, the violations alleged in this CAFO.
29. This CAFO does not affect the right of the Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
30. This CAFO does not affect the Respondent's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.
31. The terms of this CAFO bind EPA and the Respondent and their successors and assigns.
32. 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.
33. Each party agrees to bear its own costs and fees, including attorney's fees, for this action.
34. This CAFO constitutes the entire agreement between the parties.
35. 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.
36. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

In the Matter of ArcelorMittal Minorca Mine Inc.

Docket No. CWA-05-2015-0009⁰²

ArcelorMittal Minorca Mine Inc., Respondent

Date: Jan 9, 2015



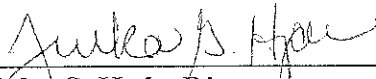
Jonathan H. Holmes
Vice President/Operations Manager

In the Matter of ArcelorMittal Minorca Mine Inc.

Docket No. *CWA-05-2015-0009 22*

United States Environmental Protection Agency, Region 5, Complainant

Date: *January 21, 2015*



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

In the Matter of ArcelorMittal Minorca Mine Inc.

Docket No. CWA-05-2015-0009



FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: 3-13-2015

A handwritten signature in black ink, appearing to be "S Hedman".

Susan Hedman
Regional Administrator
United States Environmental Protection Agency,
Region 5



Bar: Proter ArcGIS 10.2.2, 2014/12/16 11:08 File: I:\Chart\Map\Wetland\Work_Condoc\Wetland\Map\Non-Report\MainEPA_Figure_Pages\2014 Upland Basin Restoration.mxd User: njl

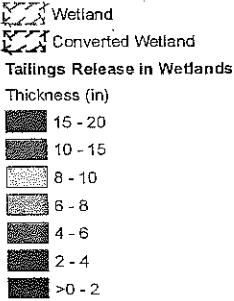
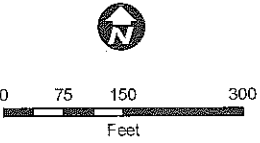


Exhibit 1

Main Basin Dam Wetland Impacts
 ArcelorMittal Minorca Mine
 St. Louis County, MN



East 1/2 of Section 15, Township 59 North, Range 17 West

In the matter of: ArcelorMittal Minorca Mine, Inc.
Virginia, Minnesota
Docket Number: CWA-05-2015-0009

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on March 18, 2015, this day in the following manner to the addressees:

Copy by certified mail return-receipt requested:

Therese Vande Hey
ArcelorMittal USA LLC
Law Department
1 South Dearborn, 19th Floor
Chicago, Illinois 60603

Copy by e-mail to
Complainant:

Jeff Cahn
cahn.jeff@epa.gov

Yone Yu
yu.yone@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

March 18, 2015 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

7011 1150 0000 2640 7292

CERTIFIED MAIL RECEIPT NUMBER(S): _____