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Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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September 30, 2010

Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

VIA U.S. MAIL AND ELECTRONIC MAIL

Re: Petition Requesting that the Administrator Object to Issuance of the Proposed Title V Operating Permit No. 13700113-005 for the United Taconite Facility in Forbes, St. Louis County, Minnesota

Dear Ms. Jackson:

Enclosed herewith please find:

- Petition Requesting that the Administrator Object to Issuance of the Proposed Title V Operating Permit No. 13700113-005 for the United Taconite Facility in Forbes, St. Louis County, Minnesota
- Index of exhibits in petition
- CD of exhibits, and
- Certificate of Service.

Thank you.

Sincerely,

Mary Winston Marrow
Staff Attorney

MM/ed

Enclosure

cc: Attached service list

Printed on 100 percent post-consumer recycled paper using soy inks.

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF THE TITLE V OPERATING AIR QUALITY PERMIT FOR THE UNITED TACONITE FACILITY ISSUED BY THE MINNESOTA POLLUTION CONTROL AGENCY	Air Emission Permit No. 13700113-005

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE TITLE V OPERATING PERMIT FOR THE UNITED TACONITE FACILITY IN FORBES, ST. LOUIS COUNTY, MINNESOTA

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INTRODUCTION

Pursuant to §505(b)(2) of the Clean Air Act, 42 U.S.C. §7661d(b)(2), and 40 C.F.R. §70.8(d), the Minnesota Center for Environmental Advocacy, National Parks Conservation Association, Voyageurs National Park Association, Sierra Club and Friends of the Boundary Waters Wilderness ("Petitioners") hereby petition the Administrator of the United States Environmental Protection Agency ("EPA") to object to the Title V permit for United Taconite LLC – Fairlane Plant ("United Taconite") Air Emissions Permit No. 13700113-005 ("Permit") that was issued by the Minnesota Pollution Control Agency ("MPCA") on August 19, 2010.[1] The Title V permit issued for United Taconite unlawfully and improperly allows United Taconite to avoid prevention of significant deterioration ("PSD") permitting requirements for modifications at the facility. As a result, the EPA Administrator must object to the proposed Title V permit for the United Taconite facility because it fails to assure compliance with all applicable requirements of the Clean Air Act ("CAA").

PROCEDURAL BACKGROUND

The MPCA published the draft Permit for the United Taconite facility on April 12th, 2010. The Minnesota Center for Environmental Advocacy, National Park Conservation Association, Voyageurs National Park Association and Friends of the Boundary Waters Wilderness ("Environmental Organizations") submitted comments on the draft Permit to MPCA on May 7, 2010[2] and May 11, 2010.[3] The National Park Service ("NPS") submitted comments to MPCA on the draft permit on May 11, 2010.[4]

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[1] *See* Ex. 1 (United Taconite Title V Permit).
[2] *See* Ex. 2 (Comment Letter, dated May 7, 2010).
[3] *See* Ex. 3 (Supplemental Comment Letter, dated May 11, 2010).
[4] *See* Ex. 4 (National Park Service Comments, dated May 11, 2010).

The United States Forest Service ("USFS") submitted comments to MPCA on May 10, 2010.[5] The EPA provided brief initial comments on May 11, 2010.[6] The MPCA responded to comments[7] and brought the draft permit before the MPCA Citizen's Board for approval on June 22, 2010.[8] The MPCA issued this Permit in two stages under the MPCA's authority in Minn. R. 7007.0750, Subp. 7. In the first stage, MPCA's issuance of the construction permit on June 22, 2010 authorized United Taconite to begin construction of the proposed modifications to the facility. MPCA then submitted the proposed Part 70 major amendment operating permit to the EPA on June 22, 2010, beginning EPA's 45-day review period of the Title V Permit.

MPCA issued the final Part 70 major amendment operating permit on August 19, 2010 without adequately responding to Petitioners' comments.[9] EPA's 45-day review period on the draft United Taconite permit ended on August 6, 2010. EPA did not object to the permit within its 45-day review period.[10] The public petition period ends 60 days following the end of the EPA's 45-day review period, or on October 5, 2010. This petition is filed within sixty days following the end of the EPA's 45-day review period, as required by Clean Air Act §505(b)(2) and therefore is timely. Petitioners base this petition on the comments, including all exhibits, filed by Environmental Organizations on May 7 and 11, 2010, as well as on comments and all attachments filed by the EPA and other federal agencies cited herein.

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[5] *See* Ex. 5 (Forest Service Comments, dated May 10, 2010).
[6] *See* Ex. 6 (Email from EPA to MPCA, dated May 11, 2010).
[7] *See* Ex. 7 (MPCA Response to Comments).
[8] *See* Ex. 8 (PCA Board Packet, dated June 11, 2010).
[9] *See* Ex. 1 (United Taconite Final Permit, dated August 19, 2010).
[10] *See* Ex. 10 (Email from EPA to MPCA, dated August 19, 2010).

The Administrator must grant or deny this petition within sixty days after it is filed.[11] If the Administrator determines that the Permit does not comply with the requirements of the CAA, or any "applicable requirement," the Administrator must object to issuance of the permit.[12] "The Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document. . . . Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable new source review requirements."[13] Therefore, the Administrator must ensure that an emission unit has gone through the proper New Source Review or PSD permitting process, including whether "applicable requirements" such as accurate best available control technology ("BACT") limits, are incorporated into the Title V permit.[14]

PETITIONERS

The United Taconite facility is located in northern Minnesota within roughly 62 miles from Voyageurs National Park ("VNP") and the Boundary Waters Canoe Area Wilderness ("BWCAW") and within roughly 186 miles from Isle Royale National Park. Petitioners consist of five environmental, non-profit organizations, including the Minnesota Center for Environmental Advocacy, National Parks Conservation Association, Sierra Club, Voyageurs National Park Association and Friends of the Boundary Waters Wilderness.

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[11] 42 U.S.C. §7661d(b)(2).
[12] 42 U.S.C. §7661d(b)(1); 40 C.F.R. § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.").
[13] *In re Monroe Electric Generating Plant,* Petition No. 6-99-2 at 2 (EPA Adm'r 1999).
[14] *In re Chevron Products Co., Richmond, California,* Petition No. IX-2004-OS at 11-12 and n. 13 (EPA Adm'r 2005).

The Minnesota Center for Environmental Advocacy ("MCEA") is a Minnesota-based non-profit environmental organization whose mission is to use law, science, and research to preserve and protect Minnesota's natural resources, wildlife, and the health of its people. MCEA has state-wide membership. MCEA's members live, work, and recreate in the BWCAW, VNP, and Isle Royale National Park. The air emissions from the United Taconite facility impact many of the areas of MCEA's work, including air quality, public health, and protection of natural resources.

The Friends of the Boundary Waters Wilderness ("Friends") is the only organization in the country focused squarely on protecting the Boundary Waters Canoe Area Wilderness. The Friends, a non-profit organization, exists to protect, preserve, and restore the recreational and ecological treasures of the BWCAW, and to defend the BWCAW against pressures created by excessive logging, invasive species, overuse, development, and industrial pollution. The Friends represent nearly 2,500 individuals, many of whom live adjacent to or regularly visit the BWCAW. Friends' members, along with 258,000 annual visitors, travel to the BWCAW in part to enjoy and seek the health benefits of its clean air. That enjoyment and those health benefits are curtailed on days where high levels of pollutants cause low visibility and render the air in and around the BWCAW less safe for human health.

Voyageurs National Park Association ("VNPA") is a private, non-profit organization with the mission of protecting and promoting Minnesota's largest national park, Voyageurs National Park. VNPA achieves its mission by addressing policy issues, providing direct support to Park projects, and advocating to ensure long-term protection of the Park's resources.

The National Parks Conservation Association ("NPCA") is a national non-profit organization founded in 1919 working to protect and enhance America's National Parks for present and future generations. NPCA plays a crucial role in ensuring that these magnificent lands and their natural, historical and cultural resources are protected. The work of NPCA includes advocating for air quality protection in our national parks and educating decision makers and the public about the importance of park preservation. NPCA represents more than 325,000 members that live, work, and recreate in or near all the National Parks, including those in the Midwest. NPCA's Midwest office works to protect national parks in the region, including Voyageurs and Isle Royale National Parks.

Sierra Club was founded in 1892, and is the nation's oldest grass-roots environmental organization. Headquartered in San Francisco, California, it has more than 700,000 members nationwide. The Sierra Club is dedicated to the protection and preservation of the natural and human environment. The Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Petitioners have a strong interest in protecting and enhancing the quality of ambient air in Minnesota and the region. The aesthetic, recreational, environmental, economic and health-related interests of Petitioners' organizations will be injured and otherwise adversely impacted by the emissions of the United Taconite facility if it is constructed and operated as authorized under the Permit at issue in this Petition.

REGULATORY FRAMEWORK

Title V of the Clean Air Act, 42 U.S.C. §§7661 - 7661f, prohibits any person from operating a major stationary air pollution source such as United Taconite without an operating permit. A Title V operating permit must include all applicable requirements including emission limitations and standards for the source and must include provisions assuring compliance with those requirements.[15] The federal operating permit regulations provide that "[w]hile title V does not impose substantive new requirements. . .[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."[16]

The regulations in 40 C.F.R. Part 70, which govern state operating permit programs required under Title V of the Clean Air Act, require Title V permits to assure compliance with all "applicable requirements." The term "applicable requirements" is defined in the federal rules as including any provision of the state implementation plan ("SIP"), any term or condition of a preconstruction permit issued pursuant to regulations approved under Title I of the Clean Air Act, including under Parts C and D of the Act, and any standard or requirement under Sections 111, 112, 114(a)(3), or 504 of the Act.[17]

EPA disapproved Minnesota's PSD program on August 7, 1980 and incorporated the PSD regulations of 40 C.F.R. §52.21(b) through (w) into the Minnesota SIP at 40 C.F.R. §52.1234.[18] EPA delegated to the MPCA the authority to review and process PSD permit applications, and to implement the federal PSD program.[19] EPA approved Minnesota's Title V operating program on an interim basis on June 16, 1995, and fully

[15] 42 U.S.C. §7661c(a), 40 C.F.R. §70.1(b), Minn. R. 7007.0100 – 7007.1850.
[16] 40 C.F.R. §70.1(b).
[17] 40 C.F.R. §70.2; Minn. R. 7007.0100, Subp. 7 (definition of "applicable requirement").
[18] 45 Fed. Reg. 52741 (August 7, 1980), as amended at 53 Fed. Reg. 18985 (May 26, 1988). *See also* Minn. R. 7007.3000.
[19] 46 Fed. Reg. 9580 (Jan. 29, 1981).

approved the program on December 1, 2001.[20] Minnesota's Title V operating permit program regulations are codified at Minnesota Rules Chapter 7007, and are federally enforceable pursuant to Section 113(a)(3) of the CAA.[21] Minnesota Rules 7007.0100 – 7007.1850 are incorporated into the State Implementation Plan under 40 C.F.R. §52.1220 and as such are enforceable by the U.S. EPA Administrator or citizens under the Clean Air Act. Minnesota statutes and rules authorize the MPCA to issue, continue in effect or deny both construction and operation permits, under such conditions as it may prescribe for the emission of air contaminants, or for the installation or operation of any regulated emitting facility.

The MPCA issued the United Taconite permit using the authorities provided in Minnesota Statutes Section 116.07, subdivision 4a(a) and Minnesota Rules Chapter 7007. Minnesota rules allow for a two-stage issuance of part 70 permits and part 70 permit amendments authorizing construction of or modification to a major source that is subject to significant permit modification procedures.[22] Minnesota Rules 7007.0750, Subpart 7 states:

> A. If a part 70 permit or part 70 permit amendment authorizing construction or modification:
>
> (1) is subject to the requirements of a new source review program under part C (Prevention of Significant Deterioration of Air Quality) . . . ; or
>
> (2) would include an enforceable limitation assumed to avoid being subject to a new source review program under part C or D of the act,
>
> the agency shall send the permit to the permittee after all requirements of the new source review program have been satisfied or after all requirements

[20] 60 Fed Reg. 31637, and 66 Fed Reg. 62967.
[21] 42 U.S.C. §7413(a)(3).
[22] Minn. R. 7007.0750, Subp. 7.

to avoid applicability of new source review have been completed including any required notice and comment period. The agency shall at the same time notify the permittee in writing that those permit conditions required by the new source review program or developed to avoid applicability of new source review and designated as such by the agency in the permit or amendment, and only those conditions, shall be considered issued.

B. The agency shall issue the remaining permit conditions . . . after the EPA's 45-day review period . . . . and in compliance with all other applicable provisions of parts 7007.0100 to 7007.1850. If there is no change to the remaining permit conditions, the agency shall issue the remaining permit conditions by means of notifying the permittee in writing that the remaining permit conditions of the permit previously sent under item A shall be considered issued.

C. The permittee may begin actual construction and operation of a stationary source or modification upon issuance of the conditions under item A to the extent authorized by those conditions.

Under Minnesota Rules 7007.0100, Subpart 14 a "modification" includes:

A. any change that constitutes a title I modification, as defined in subpart 26; or

B. any physical change or change in the method of operation of an emissions unit, emission facility, or stationary source that results in an increase in the emission of a regulated air pollutant. Emissions are considered to increase if there is an increase in the rate of emissions of any regulated air pollutant, or new emissions of a regulated air pollutant not previously emitted, from any unit at the source. To determine if there is an increase in the rate of emissions, the agency shall compare the pounds per hour of emissions at maximum capacity before and after the physical or operational change, using the method of calculation described in part 7007.1200. Subitems (1) to (5) are not, by themselves, considered modifications under this definition:

(1) a physical change or a change in the method of operation that is explicitly allowed under a permit, or allowed under a court order, consent decree, stipulation agreement, schedule of compliance, or order issued by the agency if the document states that no permit amendment is required;

(2) routine maintenance, repair, and replacement;

> (3) an increase in production rate of an existing emissions unit if that increase is not in violation of a permit condition, applicable requirement, court order, consent decree, stipulation agreement, schedule of compliance, or order issued by the agency; [and]
>
> (4) an increase in the hours of operation that does not increase the rate of emissions and is not in violation of a permit condition, applicable requirement, court order, consent decree, stipulation agreement, schedule of compliance, or order issued by the agency . . . .

Minnesota has incorporated by reference the federal PSD regulations of 40 C.F.R. §52.21 at Minnesota Rules 7007.0050; 7007.0100, Subp. 7 and 26; and 7007.3000.

A Title V permit is issued for up to five years[23] and the source owner must submit an application for renewal of a permit at least 180 days prior to the date of the expiration of the existing permit unless the permit specifies that the application must be submitted sooner.[24] Permits being renewed are subject to the same procedural requirements, including those for public participation and affected state and EPA review that apply to initial permit issuance.[25] Under federal and Minnesota Title V regulations, the public has the right to petition EPA to object to a Title V permit if EPA fails to object to the proposed permit during its 45-day review period.[26]

GROUNDS FOR OBJECTION

The EPA Administrator should object to the Title V permit for the United Taconite facility because the permit fails to comply with all applicable requirements, including SIP requirements and PSD permitting requirements.

United Taconite processes crude taconite ore into a pellet product. Ore is supplied from the United Taconite Thunderbird Mine. A taconite concentrate is

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[23] 40 C.F.R. §70.6(a)(2).
[24] 40 C.F.R. §70.5(a)(1)(iii), Minn. R. 7007.1050; 7007.0400, Subp. 2.
[25] 40 C.F.R. §70.7(c)(1)(i); Minn. R. 7007.0450.
[26] 40 C.F.R. §70.8(d), Minn. R. 7007.0950, Subp. 3.

produced through grinding and fine crushing of ore, and taconite pellets are then made from the taconite concentrate. The taconite pellets are hardened in grate-kiln indurating furnaces. United Taconite has two indurating furnace lines (Line 1 and Line 2). Line 1 had been shut down from July 1999 to November 2004.[27] Line 1 has been fueled with natural gas. In 2005, United Taconite installed a particle scrubber.[28] According to the MPCA's Technical Support Document for the Permit, this pollution control equipment was installed to comply with the Industrial Process Equipment Rule.[29] Also, according to MPCA, Line 1 was unable to comply with the Industrial Process Equipment Rule prior to shutting down in 1999.[30] The pollution control equipment was required by the Minnesota SIP and by United Taconite's Title V permit (Air Emission Permit No. 13700113-004) to be installed prior to Line 1 being restarted in 2004. Also in 2005, United Taconite undertook a heat recuperation project, which reduced nitrogen oxides ("NO_X") by 46%.[31] This was done to reduce energy usage, however other projects were undertaken at the same time that increased particulate matter ("PM") emissions by 20.6 tons per year ("tpy") and PM_{10} emissions by 14.9 tpy.[32] The Line 2 indurating furnace is fueled with coal and petroleum coke.[33]

In the permit action that is the subject of this petition, MPCA was primarily authorizing a project titled "Permit Action G." "Permit Action G" is described in

[27] *See* Ex. 9 (2008 Permit Application, Table 11 including baseline emissions data.)
[28] *See* Minnesota Regional Haze SIP at 71-82, available at http://www.pca.state.mn.us/index.php/air/air-quality-and-pollutants/general-air-quality/minnesota-regional-haze-plan.html. As this plan has also been submitted to EPA for approval, Petitioners are not attaching a copy of this document here.
[29] *See* Ex. 8 Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 at 2). The Minnesota Industrial Source Process Rule at MN R. 7011.0700 – 7011.0735 has been approved by EPA as part of the SIP. 60 Fed. Reg. 27411 (May 24, 1995).
[30] *Id.*
[31] *See* Minnesota Regional Haze SIP, United Taconite's Analysis of Best Available Retrofit Technology (BART) at 16.
[32] *See* Ex. 8 Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 (Table 2) at 2-3, 5.)
[33] *See* Minnesota Regional Haze SIP at 72.

MPCA's Technical Support Document as a modification to the United Taconite concentrator and pellet plant to increase pellet production from the Line 1 indurating furnace from 5.3 million long tons per year to 6.0 million long tons per year.[34] Further, this project includes a change in fuel type used in the Line 1 indurating furnace from natural gas to coal and petroleum coke and also possibly to a wood-based manufactured fuel.[35]

MPCA found that this project would result in a significant emissions increase of PM, PM_{10}, $PM_{2.5}$, NO_X, sulfur dioxide ("SO_2"), and sulfuric acid mist.[36] Specifically, MPCA identified the following emission increases from "Permit Action G":

Projected Emission Increases From "Permit Action G" (Increase in Taconite Production and Change in Fuel from Natural Gas to Coal/Petroleum Coke)[37]

Pollutant	Emission Increase from Modifications	PSD Significance Level
PM	256.1 tpy	25 tpy
PM_{10}	240.5 tpy	15 tpy
$PM_{2.5}$	240.5 tpy	10 tpy
NO_X	1,266.2 tpy	40 tpy
SO_2	1,275.9 tpy	40 tpy
Sulfuric Acid Mist	67.3 tpy	7 tpy

Although the "Permit Action G" would result in a significant emissions increase of these pollutants, MPCA determined that the net emissions increase from "Permit Action G", considering other emission decreases required by the Minnesota regional haze

[34] *See* Ex. 8 Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 at 3).
[35] *Id.*
[36] *Id.* at 7.
[37] *Id.* at 6-7 (Table 4).

SIP, would be less than significant for all of these pollutants.[38] Accordingly, MPCA did not require that "Permit Action G" be subject to PSD permitting requirements for any pollutant and instead allowed United Taconite's increased pellet production and switch from natural gas to coal and petroleum coke to net out of PSD review. MPCA's determination of net emissions increase was legally and technically flawed. MPCA's netting analysis failed to comply with the PSD regulations at 40 C.F.R. §52.21, for which EPA has delegated the authority to MPCA to implement, and relevant EPA policy and guidance. The specific legal deficiencies in the netting analysis are detailed below.

SPECIFIC OBJECTIONS

I. MPCA IMPROPERLY ALLOWED UNITED TACONITE TO NET OUT OF PSD REVIEW FOR "PERMIT ACTION G" BY USING EMISSION LEVELS AND REDUCTIONS RELIED UPON IN THE MINNESOTA REGIONAL HAZE SIP TO SATISFY BART REQUIREMENTS

The United Taconite Permit improperly allows the facility to net "Permit Action G" (the increase in pellet production and the change from natural gas to coal and petroleum coke at the Line 1 indurating furnace) out of PSD review by taking credit for SO_2 emission reductions relied upon in the Minnesota Regional Haze SIP. Petitioners' commented on this issue in their May 7, 2010 comment letter.[39] This issue was also raised by the National Park Service in its May 11, 2010 letter[40] and by the USFS in its May 10, 2010 letter.[41]

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[38] *Id.* at 7-8.
[39] *See* Ex. 2 at 5-7 (Comment Letter, dated May 7, 2010).
[40] *See* Ex. 4 (National Park Service Comments, dated May 11, 2010).
[41] *See* Ex. 5 (Forest Service Comments, dated May 10, 2010).

A. Background

1. Regional haze requirements

The United Taconite facility is subject to best available retrofit technology ("BART") requirements under federal regulations and under the Minnesota regional haze SIP. Specifically, 40 C.F.R. §51.308 requires states to adopt and submit to EPA implementation plans to reduce emissions from sources in the state contributing to regional haze in Class I areas (i.e., those national parks and wilderness areas exceeding certain size thresholds that were in existence as of August 7, 1977) that are affected by sources within the state. The goal of the regional haze plans, as mandated by the Clean Air Act, is "to assure reasonable progress toward meeting the national goal of preventing any future, and of remedying any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution...."[42] States' regional haze SIPs are required to show reasonable progress toward attaining the national visibility goal of natural visibility conditions by 2064.[43] A primary component of the regional haze plans is the requirement that sources which began operating between 1962 and 1977 and which the state determines "may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area" be required to comply with BART requirements.[44] Such BART requirements apply to the regional haze-causing pollutants (including NO_X, SO_2, and PM). BART is to be determined on a case-by-case basis for each source, and is to be met as expeditiously as

[42] 40 C.F.R. §51.300(a), 42 U.S.C. 7491(a)(1).
[43] 40 C.F.R. §51.308(d)(1).
[44] United Taconite is a BART-eligible facility. *See* 40 C.F.R. §51.308(e).

practicable but no later than five years from the date EPA approves a state's regional haze SIP.[45]

EPA intended the regional haze program to be integrated with strategies to meet the national ambient air quality standards ("NAAQS") for ozone and PM because of the common precursor pollutants to these air quality issues.[46] The level of the secondary PM NAAQS was based on protection against visibility impairment and EPA envisioned that the secondary PM standards would work in conjunction with the regional haze plans.[47] The deadlines for regional haze SIP submittals to EPA were associated with $PM_{2.5}$ area designations, with the regional haze SIPs due to EPA by December 17, 2007.[48] On January 15, 2009, EPA issued a finding that 37 states, including Minnesota, had failed to submit their regional haze SIPs to EPA for approval.[49] This EPA finding started a 2-year clock for EPA to have regional haze SIPs approved or for EPA to promulgate regional haze Federal Implementation Plans ("FIPs") by January 2011.[50] As a result of Minnesota's failure to submit its SIP by the December 17, 2007 deadline, the numeric BART limits included in Minnesota's regional haze SIP have not yet been approved by EPA for United Taconite's facility. (A BART determination for United Taconite was included in Minnesota's regional haze SIP which was submitted to EPA for approval on December 30, 2009.)

Development and adoption of a regional haze plan to clean up the nation's Class I areas has proven to be a long process. For example, Minnesota began initial work on its

[45] 40 C.F.R. §51.308(e)(1)(ii)(A) and (e)(1)(iv).
[46] *See,* e.g., 64 Fed.Reg. 35719-20 (July 1, 1999). *See also* 71 Fed.Reg. 61203-8 (October 17, 2006).
[47] *Id.*
[48] 74 Fed.Reg. 2392 (January 15, 2009); *see also* Consolidated Appropriations Act for Fiscal Year 2004, Public Law 108-199, January 23, 2004 (42 U.S.C. 7407(d)(7).
[49] *Id.* Subsequently, the MPCA adopted Minnesota's regional haze SIP in December 2009 and sent it to EPA for approval.
[50] 74 Fed.Reg. 2392 (January 15, 2009).

regional haze plan and development of underlying BART requirements for taconite plants in 2003.[51] Yet, the Minnesota regional haze plan and BART requirements were not adopted by the MPCA Citizens' Board until December 2009, after which the plan was submitted to EPA for approval – a full two years late. As of the date of this petition, EPA has not yet acted on Minnesota's regional haze SIP submittal.

The Minnesota regional haze SIP identifies the following requirements as BART for the United Taconite plant: continued firing of natural gas in the Line 1 indurating furnace, along with operation of the particle scrubber and the heat recuperation project (which reduced NO_X emissions by 46%) - both of which were implemented in 2005; and, for the Line 2 indurating furnace, fuel blending and good combustion practices along with continued operation of the existing particle scrubber.[52] The Minnesota regional haze SIP identifies SO_2 BART emission limits of 0.121 lb/long ton pellet fired for Line 1 and 1.7 lb/MMBtu for Line 2.[53]

2. Limitations on crediting emission reductions in determining net emissions increases

After determining that a project would result in a significant emissions increase for one or more pollutants, the permitting authority must determine whether a significant net emissions increase will occur as a result of the project. A net emissions determination is reached by considering certain previous and prospective emissions changes at a facility to determine if a "net emissions increase" of a pollutant will result from a proposed

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[51] *See* Barr Engineering Company, Potential Impacts of the Federal Regional Haze and Best Available Retrofit Technology Rules on the Taconite Industry in Minnesota, Final Report for the Minnesota Pollution Control Agency, September 30, 2003, Attachment C, March 18, 2003 Working Group Minutes, available at http://www.pca.state.mn.us/index.php/air/air-quality-and-pollutants/general-air-quality/minnesota-regional-haze-plan.html.

[52] *See* Minnesota Regional Haze SIP at 71-82. *Available at* http://www.pca.state.mn.us/index.php/air/air-quality-and-pollutants/general-air-quality/minnesota-regional-haze-plan.html:

[53] *Id.* at 78.

modification.[54] A "net emissions increase" occurs when the answer to the following equation is greater than zero.

Net Emissions Change =	***Emissions <u>increases</u> associated with the proposed modification*** **MINUS** ***Source-wide creditable contemporaneous emissions <u>decreases</u>*** **PLUS** ***Source-wide creditable contemporaneous emissions <u>increases</u>***[55]

An increase or decrease in actual emissions is "contemporaneous" with the increase from the particular proposed modification only if it occurs between:

> "(a) the date five years before construction on the particular change commences; and
> (b) the date that the increase from the particular change occurs."[56]

A contemporaneous emission decrease or increase is "creditable":

> "(vi) [...] only to the extent that:
>
> (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions..."[57]

For the purposes of determining creditable emissions decreases or increases, baseline actual emissions are used to reflect the old level of actual emissions.[58] The

[54] EPA's New Source Review Workshop Manual, Chapter A, Section III.B. "Emissions Netting," at A.34-5 (providing extensive guidance on "creditable" emission decreases), *available at* http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf.
[55] *Id.*
[56] *See* 40 C.F.R. §52.21(b)(3)(ii).
[57] *See* 40 C.F.R. §52.21(b)(3)(vi).

definition of "actual emissions" applies in determining the "new level of actual emissions" and, for an emissions unit on which normal source operations have not yet begun, actual emissions would equal the potential to emit of the unit.[59] This would include both Lines 1 and 2 at the United Taconite facility, because both will be modified as a result of this permit.

Potential to emit is defined as:

> The maximum capacity of a stationary source under its physical and operational design. Any physical or operational restriction on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable . . ."[60]

Allowable emissions, in turn, are defined as:

> (16) Allowable emissions means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:
>
> (i) The applicable standards as set forth in 40 C.F.R. parts 60 and 61;
> (ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or
> (iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date."[61]

These limitations on creditable emissions reductions are intended to allow only surplus emissions reductions to be creditable to avoid PSD review. That is, they may not be double-counted with emissions reductions required by or used for planning purposes

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[58] *See* 40 C.F.R. §52.21(b)(3)(i)(b); §52.21(b)(48).
[59] *See* 40 C.F.R. §52.21(b)(21)(iv).
[60] *See* 40 C.F.R. §52.21(b)(4).
[61] *See* 40 C.F.R. §52.21(b)(16).

as part of a state's regional haze SIP.[62] It is and has been EPA's consistent position for nearly 25 years that only surplus emissions can be creditable:

> A. Creating Emissions Reduction Credits
>
> ...
>
> 1. Surplus. At minimum, only emission reductions not required by current regulations in the SIP, not already relied on for SIP planning purposes, and not used by the source to meet any other regulatory requirement, can be considered surplus. ...[63]

EPA's 2001 Economic Incentive Program guidance which allows for emissions trading programs also reiterated this policy. Specifically, a fundamental principle of EPA's guidance document entitled "Improving Air Quality with Economic Incentive Programs (EIPs)" requires all economic incentive programs to provide for programmatic integrity.[64] What this means is that emissions trading must work in concert with, not interfere with, the programmatic requirements of the federal Clean Air Act as well as a state's clean air programs.[65] To meet this programmatic integrity principle, EPA has stated emissions reductions must be surplus as well as quantifiable, enforceable, and permanent.[66] EPA has stated that emissions reductions are surplus as long as they are not

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[62] EPA's New Source Review Workshop Manual, Chapter A, Section III.B. "Emissions Netting," at A35. *Available at* http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf.

[63] *See* 51 Fed. Reg. 43814, 43832 (December 4, 1986) EPA's Emissions Trading Policy Statement ("ETPS"), Section I.C. (*emphasis added*); *see also* Ex. 8, Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 at 20 fn.22), where MPCA cites to a 1997 EPA memorandum, "Crediting of Maximum Achievable Control Technology (MACT) Emission Reductions for New Source Review (NSR) Netting and Offsets" [EPA memorandum] (*available at* http://envinfo.com/caain/1297/mactnet.html). The EPA memorandum states, "[t]o be creditable for NSR netting an emissions reduction should be consistent with State rules, EPA's NSR rules [see, e.g., 40 CFR 51.165(a(1) (vi)(E)(3)], and EPA's Emissions Trading Policy Statement (ETPS) [see 51 FR 43814, December 4, 1986]. As stated in the ETPS, an emissions reduction must be considered "surplus" to be creditable for NSR netting." The EPA memorandum also says, "[o]f course, if MACT reductions are relied on in State implementation plans for criteria pollutant attainment purposes [...], then the reductions are not creditable for NSR netting since this would be "double counting" of the emissions reduction within the same criteria pollutant program."

[64] *See* EPA's Improving Air Quality with Economic Incentive Programs, January 2001, EPA-452-R-01-001 at 33-45.

[65] *Id.* at 35.

[66] *Id.*

required by the state's SIP, SIP-related requirements, and other adopted state air quality programs that are not in the SIP.[67] As EPA states: "[i]n other words, you may not claim programmatic [economic incentive program or "EIP"] emission reductions that result from any emission reduction or limitation of a criteria pollutant precursor that you require to attain or maintain a NAAQS or satisfy other CAA requirements for criteria pollutants, such as NSR Class I protection."[68] While this policy was not written to provide guidance on determination of net emissions increase, it makes clear that EPA continues to follow its longstanding policy that for emissions reductions to be creditable, they must be surplus to requirements established to meet Clean Air Act requirements.

The requirement that emissions reductions be surplus to be creditable so as not to hurt the integrity of state or federal clean air requirements, whether used for netting out of PSD requirements or to meet other Clean Air Act requirements, has been EPA's policy for at least the past 25 years. EPA's 1986 Emission Trading Policy Statement, which specifically applies to netting as well as other emission trading, must be followed by states, like Minnesota, with delegated authority to implement federal PSD regulations.[69]

B. United Taconite Cannot Take Credit for BART Reductions Required in the Minnesota Regional Haze SIP to Net "Permit Action G" Out of PSD Review

Comments to MPCA regarding the draft United Taconite permit made by Environmental Organizations, the National Park Service, and the USFS specifically noted that United Taconite should not be allowed to net out of PSD review with emission requirements that the MPCA identified as satisfying BART in Minnesota's regional haze

[67] *Id.*
[68] *Id.*
[69] *Supra*, note 63.

SIP.[70] MPCA responded that because EPA had not yet approved the Minnesota regional haze SIP, BART requirements included in Minnesota's regional haze SIP were not enforceable. Specifically, MPCA stated:

> Because EPA has not approved the draft Regional Haze SIP, it is not part of Minnesota's applicable SIP and the BART emissions limits proposed in it are not applicable requirements at this time. Because the emissions limitations proposed under BART are not applicable requirements at this time, they are not excluded from being creditable reductions under PSD regulations and are available for PSD netting purposes.[71]

This response completely ignores the longstanding EPA policy, discussed above, that emissions reductions relied upon for SIP planning purposes cannot be considered surplus or creditable for netting.

Adoption of plans to address Clean Air Act mandates has in many cases taken a significant amount of time. This has been especially true for nonattainment area SIPs, for which the timeframe from the beginning of SIP development to final EPA SIP approval can exceed a decade. EPA was well aware of this challenge when it wrote its Emission Trading Policy Statement in 1986, after having gone through the development, state adoption, and EPA approval of numerous nonattainment SIPs required under the 1977 Clean Air Act. EPA's 1986 policy specifically stated that emissions reductions relied upon for "SIP-planning" purposes are not surplus.[72] If EPA were to allow a permitting authority to rely on emissions reductions that EPA was in the process of adopting into the SIP to meet the NAAQS or other Clean Air Act requirements, the integrity of that state's plan to meet the Clean Air Act would be compromised. Allowing a source to net out of PSD review with emissions reductions it has to make to meet another Clean Air Act

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[70] *See* Exs. 2, 4-5 (Comment Letter, dated May 7, 2010; National Park Service Comments, dated May 11, 2010; Forest Service Comments, dated May 10, 2010).
[71] *See* Ex. 7 at 2 (MPCA Response to Comments).
[72] *Supra*, note 63 at 43819.

program would be contrary to the purpose and intent of the Clean Air Act; indeed, such a policy would encourage sources to increase their emissions during the gap between SIP proposal and approval, so as to evade PSD review.

This limitation on netting is especially important for the Clean Air Act requirement of visibility protection for Federal Class I areas. The Clean Air Act requirements for visibility protection and the PSD program both fall under the same part of Title I of the Clean Air Act –Part C "Prevention of Significant Deterioration of Air Quality."[73] Congress declared as the purpose of this part of the Clean Air Act to, among other things, "...*protect* public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution..." and to "preserve, protect, and *enhance* the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value..."[74] As both the regional haze and BART requirements are part of the PSD program of the Clean Air Act, the MPCA may not allow United Taconite to use emissions reductions that the state adopted as BART requirements in its regional haze SIP to allow United Taconite to increase pellet production and switch from burning natural gas to coal and petroleum coke and avoid PSD permitting requirements.

The PSD permitting requirements that United Taconite would avoid by netting out of PSD review are significant. Had the change in fuel and increase in production at the United Taconite facility been subjected to PSD permitting requirements, its indurating furnaces would have been subject to best available control technology ("BACT")

[73] 42 U.S.C. §§7470-7492.
[74] 42 U.S.C. §7470(1)(b) and (2) [emphasis added].

requirements, which are typically more stringent than BART requirements.[75] Further, the company would have been required to demonstrate that its emissions would not cause or contribute to a violation of any NAAQS or PSD increment, including any PSD increments in Class I areas.[76] In addition, the company would have had to demonstrate to the Federal Land Managers that its emissions would not adversely impact any air quality related values ("AQRVs") in any Class I areas.[77] Had the change in fuel from natural gas to coal and petroleum coke and the increase in production at the United Taconite facility been properly permitted under PSD, the resulting permit would not conflict with the regional haze SIP that MPCA submitted to EPA in December 2009. Instead, the United Taconite permit would likely have ensured more stringent emission limits than under the regional haze SIP *and* there would have to be an adequate demonstration that the facility would not adversely impact the AQRVs, including visibility in any Class I area. Thus, consistent with Congressional mandates, the PSD permitting requirements would have worked in concert with the state's regional haze plan and may have even resulted in an enhancement in air quality above and beyond the regional haze requirements. Instead, MPCA has allowed United Taconite to both avoid the BACT and air quality protection requirements of the PSD program *and* at the same time increase emissions above what was planned in Minnesota's regional haze SIP that the MPCA adopted and submitted to EPA in December 2009.

MPCA has already made clear that the regional haze SIP it submitted to EPA in December 2009 will need to be revised as a result of United Taconite's permit action and,

[75] *See* 40 C.F.R. §52.21(j)(3).
[76] *See* 40 C.F.R. §52.21(k).
[77] *See* 40 C.F.R. §52.21(p).

in particular, that BART for United Taconite will most likely need to be revisited.[78] In particular, MPCA stated that, "[a]lthough United Taconite hopes to reduce both its SO_2 and NO_X emissions to levels below BART, it remains unclear whether such a project is feasible. . . ."[79] The consequences of the improper permitting of the modifications at United Taconite include the additional delay in obtaining an EPA-approved SIP for Minnesota and cleaning up regional haze in furtherance of national goals established by Congress decades ago. The United Taconite permit action exemplifies why EPA's longstanding policy has prohibited allowing sources to net out of PSD with emissions reductions relied upon for SIP planning purposes. Not only will such emissions trades negate the benefits of a state's long-awaited regional haze SIP, but it will also exempt the facility from meeting the air quality protections of the PSD program. To allow United Taconite to net out of PSD review with emissions reductions relied upon in the Minnesota regional haze SIP, duly adopted by the state and submitted to EPA for approval, flies in the face of Congressional mandates for Class I area visibility protection and the prevention of significant deterioration program.

MPCA also justified using emissions reductions included in the regional haze SIP to allow United Taconite to net out of PSD review by relying on the fact that BART is not required to be implemented until five years after EPA approves the regional haze SIP.[80] Specifically, MPCA cited to Minnesota Rules 7007.5000, Subpart 3 which requires compliance with BART within five years of EPA approval of the SIP. With respect to creating creditable emissions reductions, it does not matter if the reduction

[78] *See* Ex. 7 at 4-6 (MPCA Response to Comments).
[79] *Id.* at 5.
[80] *Id.* at 4.

relied upon in the SIP has a future compliance date.[81] Additionally, the Minnesota rule cited by MPCA is inconsistent with the Clean Air Act and EPA's regulations which require that BART be installed "as expeditiously as practicable" and no later than five years from the date EPA approves the SIP.[82] The BART requirements adopted as part of the Minnesota regional haze SIP for United Taconite's indurating furnaces are: continued firing of natural gas in the Line 1 indurating furnace, along with operation of the particle scrubber and the heat recuperation project (which reduced NO_X emissions by 46%) - both of which were implemented in 2005; and, for the Line 2 indurating furnace, fuel blending and good combustion practices along with continued operation of the existing particle scrubber.[83] With the exception of fuel blending with lower sulfur fuel at the Line 2 indurating furnace, the BART controls have already been implemented at United Taconite.[84] Further, because Line 2 was projected to meet its SO_2 BART limit of 1.7 lb/MMBtu by blending with lower sulfur coal rather than installation of additional control equipment, it is practical for Line 2 to implement such fuel switching immediately. Accordingly, MPCA's claims that BART does not have to be met at United Taconite until five years from the date when EPA approves Minnesota's regional haze SIP are not supported by federal regulations.

[81] *See* 40 C.F.R. §52.21(b)(3)(b)(vi)(a) in the definition of "net emissions increase" and see 40 C.F.R. §52.21(b)(16)(ii) in the definition of "allowable emissions."
[82] *See* 42 U.S.C. §7491(b)(2)(A); 40 C.F.R. §51.308(e)(1)(iv).
[83] *See* Minnesota Regional Haze SIP at 78, 81, *available at* http://www.pca.state.mn.us/index.php/air/air-quality-and-pollutants/general-air-quality/minnesota-regional-haze-plan.html.
[84] *Id.*

C. The Title V Permit Fails to Assure Compliance with All Applicable Requirements Because MPCA Improperly Relied on Emissions Reductions Required Under the Minnesota Regional Haze SIP and Unlawfully Exempted the Modifications at United Taconite from PSD Permitting Requirements

For all of the reasons discussed above, MPCA improperly and unlawfully exempted the modifications at United Taconite from PSD review. As a result of MPCA's failure to evaluate BACT for United Taconite's modifications and to conduct the required air quality analyses, the Title V permit fails to include BACT and other requirements imposed to ensure compliance with air quality standards and AQRVs. Thus, the Title V permit fails to assure compliance with all applicable requirements of the Clean Air Act.

The SO_2 emissions reductions which MPCA allowed United Taconite to use are the same reductions MPCA required of United Taconite to meet BART as part of Minnesota's regional haze SIP. The Minnesota regional haze SIP specifies an SO_2 BART limit for the Line 2 indurating furnace of 1.7 lb/MMBtu.[85] According to the United Taconite permit application for the increased production capacity and fuel switch from natural gas to coal and petroleum coke, the heat input of the Line 2 indurating furnace is determined by the maximum Line 2 design capacity of 600 long ton pellets per hour (i.e., prior to the modification to increase capacity) of Line 2 (600 long ton pellets per hour) multiplied by 0.52 MMBtu heat input per long ton pellets produced, which results in a heat input of 312 MMBtu/hr.[86] The allowable SO_2 emissions for the Line 2 indurating furnace considering the 1.7 lb/MMBtu BART limit and assuming continual

[85] *Id.* at 78.
[86] *See* Ex. 8 (April 8, 2010 United Taconite Draft Permit, Attachment C at Table 13 and footnote 3).

operation throughout the year would be 2,323 tons per year.[87] The United Taconite permit authorizing the increase in production and change in fuel imposed an SO_2 emissions limit of 197 tons 30 day rolling sum in order to limit SO_2 emissions from the Line 2 indurating furnace (EU 042) to 2,394 tons per year.[88] This reduction in SO_2 emissions is based on blending with lower sulfur coals.[89] MPCA violated federal regulations by allowing United Taconite to take credit for the SO_2 BART requirements applicable to the Line 2 indurating furnace (EU 042) in the SO_2 net emissions increase analysis for "Permit Action G".[90] Without such creditable emissions reductions of SO_2, the net emissions increase from "Permit Action G" would be 1,275.9 tpy,[91] well in excess of the 40 tpy SO_2 PSD significance level. Thus, the United Taconite permit is deficient for authorizing this modification without requiring the facility to meet all PSD requirements for SO_2 and without imposing BACT requirements for SO_2.

Regarding NO_X, MPCA assumed in its regional haze SIP that United Taconite's Line 1 indurating furnace would be fueled by natural gas and that United Taconite would continue with its heat recuperation process which reduced NO_X by 46%. MPCA intends to impose a BART limit for NO_X that will be based on forthcoming data collected by the NO_X continuous emissions monitors ("CEMs") at each furnace. Therefore, United Taconite can only get netting credit for reductions below those NO_X BART limits (once

[87] It is not clear if there were restrictions on production in prior permits which would have limited allowable emissions to even less than this amount. If so, then those limitations must be taken into account along with the SO_2 BART limit in determining allowable SO_2 emissions.
[88] *See* Ex. 1 (June 2010 United Taconite Permit at A-56).
[89] *See* Ex. 8, Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 at 19).
[90] Further, the SO_2 emission reductions required in the Minnesota BART rule cannot be credited because the baseline actual emissions of United Taconite must be adjusted downward to reflect emission limits with which the facility must currently comply. *See* 40 C.F.R. §52.21(b)(48)(ii)(c). Minnesota's BART requirements must be met as expeditiously as practicable, and because blending with lower sulfur fuels can be readily implemented, the baseline actual emissions must be adjusted downward to reflect the SO_2 BART requirements of the Minnesota regional haze SIP.
[91] Ex. 8, Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 at 6-7 (Table 4)).

they are set) for the same reasons as discussed for SO_2. "Permit Action G" should not be allowed to net out of PSD review for NO_X based on a comparison of the past actual emissions identified in the Northeast Minnesota Plan Emissions Tracking Spreadsheet include in MPCA's regional haze SIP with allowable emissions (based on PSD avoidance limits) in the Permit. Specifically, the Emissions Tracking Spreadsheet shows United Taconite's NO_X emissions ranging from 1,771 to 4,263 tpy between 2002-2006. MPCA projected total NO_X emissions for the United Taconite facility to be 3,729 tpy in 2012 and 2018. Yet the draft permit allows Line 1 to emit 1,655 tpy of NO_X and Line 2 to emit 3,692 tpy of NO_X, for a total of 5,347 tpy of NO_X - well in excess of the projected emissions included in Minnesota's regional haze SIP.

Likewise, MPCA impermissibly relied upon the 0.02 gr/dscf limits for the indurating furnaces in the taconite maximum achievable control technology ("MACT") to meet BART for PM. Therefore, MPCA cannot allow any credit for reductions to meet MACT, which are now also BART requirements under the Minnesota regional haze SIP - only reductions that go beyond MACT/BART can be credited in a netting analysis.

MPCA has issued a permit action that will subvert Minnesota's regional haze SIP which was submitted to EPA in December of 2009. This is precisely why longstanding EPA policy has made clear that emissions reductions relied upon for SIP planning purposes cannot be credited to allow a modification to "net out" of PSD review. For all of the above reasons, EPA must object to the United Taconite permit because it is based on an unlawful PSD applicability determination and because it fails to ensure compliance with the applicable PSD permitting requirements of the Clean Air Act.

II. EMISSIONS FOR LINE 1 (EU-040) MAY NOT BE INCLUDED IN BASELINE EMISSIONS BECAUSE LINE 1 WAS SHUT DOWN FOR OVER FIVE YEARS

United Taconite's Line 1 was shut down from July 1999 to November 2004. A shutdown of more than two years is considered by EPA to be permanent. If a facility has been shutdown for over two years, owners and operators "must continuously demonstrate concrete plans to restart the facility sometime in the reasonably foreseeable future. If they cannot make such a demonstration, it suggests that for at least some period of the shutdown, the shutdown was intended to be permanent."[92]

Environmental Organizations raised this issue in comments, dated May 11, 2010.[93] In its Response to Comments, MPCA responded to Petitioner's concerns regarding the shutdown of Line 1 by noting that the shutdown of Line 1 was in response to a period of low taconite pellet demand, Line 1 was never decommissioned, Line 1 emission units remained in the Title V permit and were included in the air dispersion model for the permit, United Taconite included Line 1 emissions in its annual emissions inventory, and United Taconite maintained the equipment to be able to start up after routine maintenance similar to annual maintenance.[94] These facts do not rebut the assumption that United Taconite's Line 1 was permanently shutdown between 1999 and 2004.

A. Background

EPA has a longstanding policy that addresses when a source that has been shutdown for some time would trigger applicability of new source review permitting

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[92] *In re Monroe Electric Generating Plant,* Petition No. 6-99-2 at 10-11 (EPA Adm'r 1999).
[93] *See* Ex. 3 (Supplemental Comments, dated May 11, 2010).
[94] *See* Ex. 7 (MPCA Response to Comments).

requirements as a new source.[95] A source that has been shut down for more than two years is presumed to be permanently shut down, and the burden is on the owner of the facility to rebut the assumption.

According to EPA,

> To determine the intent of the owner or operator, EPA has examined factors such as the amount of time the facility has been out of operation, the reason for the shutdown, statements by the owner or operator regarding intent, cost and time required to reactivate the facility, status of permits, and ongoing maintenance and inspections that have been conducted during shutdown. No single factor is likely to be conclusive in the Agency's assessment of these factors, and the final determination will often involve a judgment as to whether the owner's or operator's actions at the facility during shutdown support or refute any express statements regarding the owner's or operator's intentions.[96]

EPA requires that sources must "...:continuously demonstrate concrete plans to restart the facility sometime in the reasonably foreseeable future" in order for the shutdown of a facility to not be considered permanent.[97]

B. United Taconite Failed to Show it Continuously Planned to Restart Line 1 During Line 1's Shutdown Between 1999 and 2004

Neither United Taconite nor MPCA have provided factual evidence that United Taconite continuously planned to restart Line 1 throughout the period that Line 1 was shutdown.[98] A facility's intention at the time of a shutdown, maintenance of a Title V permit for the facility, and shutdown in response to market conditions are not determinative in deciding if a facility's shutdown is considered permanent under federal

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[95] *See In re Monroe Electric Generating Plant,* Petition No. 6-99-2, fn 9 at 8 (EPA Adm'r 1999).
[96] *In re Monroe Electric Generating Plant,* Petition No. 6-99-2 at 9 (EPA Adm'r 1999).
[97] *Id.* at 9.
[98] *Communities for a Better Environment v. CENCO Refining Company*, 179 F.Supp.2d 1128, 1145-46 (E.D. Cal. 2001) (which held that mere maintenance-oriented activities were not enough to consider an oil refinery permanently shut down for not continuously demonstrating concrete plans to restart the facility for more than two years, rather, the facility must "continuously demonstrate concrete plans to restart the facility") [hereinafter "CBE"].

regulations.[99] Rather, a permittee must be able to show it continually planned on using the facility in the foreseeable future throughout the period the facility was shutdown.[100] United Taconite has not shown that it had definite plans to restart Line 1 or an expectation to use Line 1 in the foreseeable future throughout the shutdown period.

The fact that the particle scrubber was not installed at Line 1 until 2005 clearly indicates that Line 1 was not anticipated to be restarted continuously during the five year period of shutdown. According to MPCA, United Taconite notified MPCA that it intended to install a particle scrubber in an August 27, 2004 notification to the state.[101] MPCA also stated that the installation of the particle scrubber required under the Minnesota Industrial Process Equipment Rule coincided with the restart of Line 1, and that Line 1 had not been in compliance with the Minnesota Industrial Process Equipment Rule prior to its shutdown in 1999.[102] As Petitioners stated previously, the Minnesota Industrial Process Equipment Rule in Minnesota Rules 7011.0700 – 7011.0735 has been approved as part of the SIP since 1995. Thus, Line 1 was not operated in accordance with the SIP prior to its shutdown in 1999 and it could not have restarted until pollution controls were installed so it could operate in compliance with the SIP. Yet, the particle scrubber was not installed until 2004 or 2005. Line 1 could not have restarted without the installation of the particle scrubber. Therefore, any claim by United Taconite that it was continuously planned on restarting Line 1 is meritless when considering that United Taconite never took the time or made the capital investment to install the scrubber until 2004 or 2005. It is also significant to note that the timing of the restart of Line 1 and the

[99] *In re Monroe Electric Generating Plant,* Petition No. 6-99-2 at 16-18 (EPA Adm'r 1999).
[100] *CBE*, 179 F.Supp.2d at 1145-46.
[101] *See* Ex. 8, Att. 3 (Technical Support Document for Air Emission Permit No. 13700113-005 at 1–2 regarding "Permit Action A".)
[102] *Id.* at 2.

installation of the particle scrubber coincides with the purchase by the companies Cleveland Cliffs and Laiwu of the Evtac mining company assets in a November 2004 bankruptcy auction.[103]

Accordingly, when Line 1 restarted in 2004, it should have been required to obtain a PSD permit as a new source. Because Line 1 should have been subject to PSD review but was not, its emissions are unlawful. Line 1 should have been considered to have zero baseline emissions when determining the net emissions increase from "Permit Action G" (the increase in production and the switch from gas to coal and petroleum coke at Line 1) for the United Taconite permit at issue in this Petition.

"NSR regulations indicate that for a long-dormant facility (at least those shutdown for two years or more), the emissions baseline for determining whether it has undergone an emissions increase subject to NSR will be zero. Therefore, such a facility is subject to NSR upon restart, assuming the requisite increase in emissions over the zero baseline."[104] Additionally, when there is a fundamental change in a facility's operational status, from several years of non-operation to full operations, and the restart of the facility is accompanied by independent physical modifications, it is appropriate that the restart of the facility trigger a comparison of new emissions to the zero baseline.[105]

As a result of MPCA's failure to require Line 1 to obtain a PSD permit as a new source when it was restarted in 2004 and subsequent use of inaccurate Line 1 emissions in determining baseline emissions for this permit action, the MPCA's PSD applicability determination for United Taconite was flawed. The baseline emissions from Line 1

[103] *See* Ex. 11 at 2 (Mesabi Iron Range, Large Scale Development Projects); downloaded from the Arrowhead Regional Development Commission website at http://www.arrowheadplanning.org/documents/Itasca%20Readiness/Project%20Summary%20Handout%2011.15.06.pdf.
[104] *CBE*, 179 F.Supp.2d 1128, 1143-1144.
[105] *CBE*, 179 F.Supp.2d 1128, 1144.

should be considered to be zero when determining the net emissions increase for Project G at the United Taconite facility.

CONCLUSION

The Permit impermissibly relies on non-creditable, i.e., non-surplus, emissions reductions in the net emissions determination. Accordingly, the results of the net emissions determination in the Permit are invalid, and the significant increases in SO_2 and PM emissions as a result of "Permit Action G" may not be netted below their significance thresholds. "Permit Action G" must undergo PSD analysis and permitting for these pollutants at a minimum. Further, "Permit Action G" should not be allowed to net out of PSD review for NO_X based on a comparison of the past actual emissions identified in Minnesota's regional haze SIP and the emissions identified in the United Taconite permit.

EPA should make clear that facilities such as United Taconite cannot take credit for emission reductions used in planning for or required under states' regional haze SIPs to net out of new source review permitting requirements, even if EPA has not yet approved the SIP. This has been EPA's policy for 25 years for nonattainment areas, and regional haze plans should be treated no differently – especially because the pollutants that form haze also contribute to fine particulate matter and ozone, two pollutants for which EPA has adopted more stringent ambient air standards in recent years but for which most states have not yet adopted plans to address.

For the reasons detailed above, Petitioners request that EPA object to the Title V Permit and require the MPCA to review the main project under Prevention of Significant

Deterioration permitting for net emissions increases in criteria pollutants, including SO_2, NO_X, PM, PM_{10}, $PM_{2.5}$, and sulfuric acid mist.

Respectfully submitted this 30th day of September 2010.

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Minneapolis, MN 55401
612-333-5424 (p)

Index of Exhibits Referenced in United Taconite Title V Petition
Title V Operating Permit No. 13700113-005

Exhibit #	Document
1	United Taconite Final Permit (August 19, 2010)
2	MCEA, VNPA, FOBWW Comments on Proposed Issuance of Air Emissions Permit No. 13700113-005 to United Taconite, LLC (May 7, 2010) Attachments: -Memorandum on Crediting of MACT Emission Reductions for New Source Review Netting and Offsets (November 12, 1997) -United Taconite Analysis of BART (August 30, 2006) -DRAFT Chapter A PSD Applicability (October 1990) -EPA Notice: Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits (December 4, 1986) -Regional Haze SIP (December 2009) -Permit Application major modifcation – Action G (April 8, 2010) -MPCA Amended Administrative Order (May 18, 2009) -New Hampshire Regional Haze SIP Revision (May 22, 2009) -New Hampshire Regional Haze SIP Revision, slide show
3	Supplemental Comment Letter of MCEA, VNPA, FOBWW and NVPA (May 11, 2010)
4	National Park Service Comments (May 11, 2010) Attachments: -PSD/Technical Comments -Comments
5	Forest Service Comments (May 10, 2010) Attachments: -Cover Letter -Technical Comments
6	Email from EPA to MPCA (May 11, 2010)
7	MPCA Response to Comments
8	MPCA Board Packet (June 11, 2010)
9	Permit Application Re: Application for a Major Permit Amendment (Green Production Project) United Taconite LLC – Fairlane Plant, Forbes, Minnesota AQ Facility ID No. 13700113 (July 18, 2008)
10	Email from EPA to MPCA (August 19, 2010)
11	Mesabi Iron Range Large Scale Development Projects (November 15, 2006)

CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Emily Deering being duly sworn, says on the 30th day of September 2010 I served the following:

- Petition Requesting that the Administrator Object to the Issuance of the Proposed Title V Operating Permit No. 13700113-005 for the United Taconite Facility of Forbes, St. Louis County, Minnesota (via U.S. mail and electronic mail)
- Index of exhibits in the petition (via U.S. mail and electronic mail)
- CD containing exhibits to the petition (sent via U.S. mail only)

on the following persons, in this action, through electronic mail or mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at St. Paul, Minnesota, directed to said persons at the last know mailing address of said persons:

Attached Service List.

Emily Deering

Subscribed and sworn to before me
this 30th day of September, 2010

Notary Public

KEVIN SCOTT REUTHER
Notary Public
State of Minnesota
My Commission Expires
January 31, 2010

Service List

Petition Requesting that the Administrator Object to Issuance of the Proposed Title V Operating Permit No. 13700113-005 for the United Taconite Facility in Forbes, St. Louis County, Minnesota

Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Ms. Susan Hedman
Region 5 Administrator
US EPA Region 5
77 West Jackson Boulevard
Mail Code: R-19J
Chicago, IL 60604-3507

Mr. Jason Aagenes
Section Manager Environmental Affairs
United Taconite
Cliffs Mining Company
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Chris Nelson
Manager
Minnesota Pollution Control Agency - 4
520 Lafayette Road N
St. Paul, MN 55155

Kathleen Winters
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