

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
Case No. 19-cv-

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
UNITED TACONITE LLC,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, the United States of America, at the request of and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b), against United Taconite LLC (“Defendant”) for civil penalties and injunctive relief as a result of violations of the following: (1) provisions of the National Emission Standards for Hazardous Air Pollutants for the Taconite and Iron Ore Processing Industry, 40 C.F.R. Part 63, Subpart RRRRR (“Taconite MACT”); and (2) the State Implementation Plan adopted by the State of Minnesota and approved by the EPA pursuant to CAA Section 110, 42 U.S.C. § 7410 (“Minnesota SIP”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and CAA Section 113(b), 42 U.S.C. § 7413(b).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and CAA Section 113(b), 42 U.S.C. § 7413(b), because the Defendant resides and is found in this District and because the alleged violations occurred within this District.

NOTICE

4. Pursuant to CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), EPA notified Defendant and the State of Minnesota of the violations of the Minnesota SIP alleged in this Complaint more than 30 days prior to its filing. EPA issued a Notice of Violation and Findings of Violation (“NOV/FOV”) to Defendant on February 21, 2014.

5. The 30-day period established in CAA Section 113(b), 42 U.S.C. § 7413(b), between the notice provided by the United States to Minnesota Pollution Control Agency (“MPCA”) and the commencement of this civil action has elapsed.

AUTHORITY

6. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the EPA under 28 U.S.C. §§ 516 and 519 and CAA Section 305(a), 42 U.S.C. § 7605(a).

DEFENDANT

7. Defendant United Taconite LLC is a limited liability company organized under the laws of the State of Delaware and having its principal place of business in Forbes, St. Louis County, Minnesota.

8. Defendant owns and operates a taconite mine in Eveleth, Minnesota, and an associated taconite processing plant approximately seven miles south in Forbes, Minnesota. Defendant’s processing plant includes the following emission sources relevant to this Complaint:

large wet scrubbers controlling emissions from two indurating furnaces; and various small wet scrubbers and fabric filter baghouses designed to control particulate emissions from material-handling operations.

9. Defendant is a “person” within the meaning of CAA Sections 113(b) and 302(e), 42 U.S.C. §§ 7413(b) and 7602(e).

#### STATUTORY AND REGULATORY BACKGROUND

10. One of the purposes of the CAA is to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

#### Minnesota SIP and Title V Operating Permits

11. Under CAA Section 110, 42 U.S.C. § 7410, each state is required to adopt and submit to EPA for approval a SIP that provides for the implementation, maintenance, and enforcement of National Ambient Air Quality Standards established under CAA Section 109. Upon EPA’s approval, SIP provisions become part of the “applicable implementation plan” for the State within the meaning of CAA Section 302(q), 42 U.S.C. § 7602(q).

12. Pursuant to CAA Section 110, 42 U.S.C. § 7410, the State of Minnesota adopted and submitted to EPA various regulations that were subsequently approved by EPA and which, taken together, constitute the SIP for the State of Minnesota. See 40 C.F.R. Part 52, Subpart Y (“Minnesota SIP Rules”).

13. CAA Sections 501 through 507 (“Title V”), 42 U.S.C. §§ 7661-7661f, establish an operating permit program for certain air pollution sources, including “major sources.” Title V

permits contain all applicable emission limitations and standards to ensure that all “applicable requirements” for compliance with the CAA are collected in one place.

14. CAA Section 502(a), 42 U.S.C. § 7661a(a), makes it unlawful for any person to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

15. A “major source” under Title V includes, *inter alia*, any stationary source that is a “major source” as defined in Section 302(j) of the CAA, 42 U.S.C. §§ 7602(j); 7661(2). *See also* 40 C.F.R. § 70.2. Among other things, “major sources” include sources that directly emit, or have the potential to emit, 100 tons per year or more of any criteria pollutant, 10 tons per year or more of any single hazardous air pollutant, or 25 tons per year or more of any combined hazardous air pollutants.

16. United Taconite’s processing plant is a “major source” under Title V and can only operate in compliance with a permit issued by MPCA.

17. Pursuant to 40 C.F.R. Part 70, EPA granted approval to Minnesota’s Title V operating permit program. 60 Fed. Reg. 27,411 (May 24, 1995). The Minnesota regulations governing the Title V permit program are codified at Minnesota Rules Chapter 7007.

18. Minnesota Rule 7007.0800 sets out what must be included in air emission permits, but does not establish limits. Rather, it provides MPCA the authority to specify the operating and maintenance requirements for each piece of pollution control equipment.

19. MPCA issued a Title V air permit to Defendant’s predecessor owner and operator of the taconite processing plant in Forbes, Minnesota and it has subsequently operated under MPCA-issued Title V permits.

20. On June 22, 2010, MPCA issued a renewed operating permit to United Taconite's processing plant, designated as Permit No. 13700113-005. Defendant's air permit requires a performance test for each group of pollution control equipment and requires that each piece of pollution control equipment comply with parametric limits established by the performance tests. Minn. Rule 7007.0800, subparts 4(D) and 14; Permit No. 13700113-05 (Table A).

21. Defendant's permit also requires continuous operation of all pollution control equipment whenever the corresponding process equipment and emission units are being operated. Minn. Rule 7007.0800, subpart 16(J); Permit No. 13700113-05 (Table A).

#### National Emission Standards for Hazardous Air Pollutants

22. The CAA requires EPA to promulgate regulations that establish national emission standards for categories of major sources and area sources of listed hazardous air pollutants ("HAPs"). 42 U.S.C. § 7412(d). These standards are known as the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs").

23. A "major source" of HAPs is any stationary source that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year, or any combination of HAPs at a rate of 25 tons or more per year. 42 U.S.C. § 7412(a).

24. Defendant's taconite processing plant is a "major source" of HAPs as that term is defined at Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1).

25. Defendant's taconite processing plant is a "stationary source" as that term is defined at Section 111(a) of the CAA, 42 U.S.C. § 7411(a). *See* 42 U.S.C. § 7412(a)(3).

26. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated National Emissions Standards for Hazardous Air Pollutants for the Taconite Iron Ore Processing

Industry, 40 C.F.R. Part 63, Subpart RRRRR (“Taconite MACT”), which applies to the owners and operators of taconite iron ore processing plants that are a major source of HAPs.

27. The Taconite MACT applies to each new and existing affected source within a taconite iron ore processing plant, including material handling processes, indurating furnaces and their associated pollution control equipment. 40 C.F.R. § 63.9582.

#### Enforcement of the CAA

28. CAA Section 113(a)(1) and (a)(3), 42 U.S.C. § 7413(a)(1) and (a)(3), authorizes EPA to bring a civil action if the Administrator of the EPA finds that any person is in violation of, *inter alia*, any requirement or prohibition of an applicable SIP, any regulations promulgated under CAA Section 112, 42 U.S.C. § 7412, or any permit issued under Title V of the CAA, 42 U.S.C. §§ 7661-7661f.

29. In accordance with CAA Section 113(b), 42 U.S.C. § 7413(b), operating permits issued under an approved State program are federally enforceable.

30. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes the Court to enjoin a violation, to require compliance, to assess a civil penalty, and to award any other appropriate relief for each violation.

31. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes civil penalties of up to \$25,000 per day for each violation of the CAA. The Debt Collection Improvement Act, 31 U.S.C. §§ 3701 *et seq.*, requires EPA to periodically adjust its civil penalties for inflation. Pursuant to 40 C.F.R. Part 19, the United States may seek civil penalties of up to \$37,500 per day for each such violation occurring on or after January 13, 2009 through November 2, 2015, and up to \$95,284 per day for each such violation occurring on or after November 3, 2015.

**FIRST CLAIM FOR RELIEF**

(Taconite MACT Violations at Large Wet Scrubbers – Emission Exceedances)

32. Plaintiff realleges and incorporates by reference Paragraphs 1-31 as if fully set forth herein.

33. On at least thirteen occasions between January 2012 and June 2015, including at least some of the dates and times listed in the NOV/FOV issued by EPA on February 21, 2014, Defendant caused or allowed emissions of particulate matter from one or both of its indurating furnaces to exceed the emission limits contained in 40 C.F.R. § 63.6590(a), Table 1.

34. Unless restrained by an order of this Court, Defendant's violations of the Taconite MACT and the CAA, as set forth in this Claim for Relief, are likely to continue.

35. Defendant's violations, as set forth in this Claim for Relief, make it subject to civil penalties of up to \$37,500 per day for each violation.

**SECOND CLAIM FOR RELIEF**

(Title V Permit and Minnesota SIP Violations – Operating Outside Parametric Limits)

36. Plaintiff realleges and incorporates by reference Paragraphs 1-31 as if fully set forth herein.

37. On approximately 300 days between January 1, 2010 and December 31, 2016, including some of the dates listed in the NOV/FOV, Defendant operated pollution control equipment outside its required daily pressure drop limits. These deviations occurred at pollution control equipment intended to limit emissions from such sources as the crude ore unloading building baghouses, the wet scrubbers on the fourth stage crushers and at several components of Lines 1 & 2.

38. On approximately 400 days between January 1, 2010 and December 31, 2016, including some of those dates listed in the NOV/FOV, Defendant operated pollution control equipment outside its required daily average water flow limits. These deviations occurred at pollution control equipment intended to limit emissions from such sources as ore crushers and at several components of Lines 1 & 2.

39. Defendant violated the Minnesota SIP and its Title V permit by exceeding its pressure drop and water flow limits in violation of Minn. Rule 7007.0800, subparts 4(D), 14 and 16(J), and Permit No. 13700113-05 (Table A).

40. Unless restrained by an order of this Court, Defendant's violations of the Minnesota SIP and its Title V permit, and the CAA, as set forth in this Claim for Relief, are likely to continue.

41. Defendant's violations, as set forth in this Claim for Relief, make it subject to civil penalties of up to \$37,500 per day for each violation occurring on or before November 2, 2015 and up to \$95,284 per day for each violation occurring on or after November 3, 2015.

### **THIRD CLAIM FOR RELIEF**

(Title V Permit and Minnesota SIP Violations – Operating Without Control Equipment)

42. Plaintiff realleges and incorporates by reference Paragraphs 1-31 as if fully set forth herein.

43. During approximately 1500 hours between January 1, 2010 and December 31, 2016, including but not limited to those dates and times listed in the NOV/FOV issued by EPA on February 21, 2014, Defendant operated process equipment while pollution control equipment

was not being operated in violation of Minn. Rule 7007.0800, subpart 16(J) and its Title V permit.

44. Unless restrained by an order of this Court, Defendant's violations of the Minnesota SIP, its Title V permit, and the CAA, as set forth in this Claim for Relief, are likely to continue.

45. Defendant's violations, as set forth in this Claim for Relief, make it subject to civil penalties of up to \$37,500 per day for each violation occurring on or before November 2, 2015 and up to \$95,284 per day for each violation occurring on or after November 3, 2015.

#### PRAYER FOR RELIEF

WHEREFORE, based upon all of the allegations set forth above, Plaintiff respectfully requests that this Court:

- A. Permanently enjoin Defendant from further violations of the Clean Air Act and applicable requirements established thereunder, including its Title V permit, the Minnesota SIP Rules described above, and the Taconite MACT;
- B. Require Defendant to comply with all necessary permits and to undertake and complete expeditiously all actions necessary to achieve and maintain compliance with the Clean Air Act and applicable requirements established thereunder, including its Title V permit, the Minnesota SIP Rules described above, and the Taconite MACT;
- C. Assess civil penalties against Defendant for violations of applicable provisions of the Clean Air Act, as well as the implementing regulations and permits issued thereunder, of up to \$37,500 per day for each such violation occurring on or after

January 13, 2009 through November 2, 2015; and up to \$95,284 per day for each such violation occurring on or after November 3, 2015.

- D. Enter judgment in favor of Plaintiff and against Defendant;
- E. Award the Plaintiff its costs and disbursements for this action; and
- F. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

FOR THE UNITED STATES OF AMERICA

BRUCE S. GELBER  
Deputy Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice

Dated: 4/17/2019

*s/ Michael J. Zoeller*

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**\*\*Additional Signature to Follow\*\***

ERICA H. MacDONALD  
United States Attorney  
District of Minnesota

Dated: 4/17/2019

*s/ Friedrich A.P. Siekert*

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