

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
Case No. 19-cv-1043 NEB/LIB

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UNITED STATES OF AMERICA )  
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 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED TACONITE LLC, )  
 )  
 Defendant. )

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**CONSENT DECREE**

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## I. INTRODUCTION

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant United Taconite LLC (“UTAC” or “Defendant”) violated regulations that EPA has approved under Sections 110 and 112 of the Clean Air Act (“Act”), 42 U.S.C. §§ 7410 and 7412.

B. The Complaint alleges, *inter alia*, that since 2009 Defendant’s iron ore processing plant, located in Forbes, St. Louis County, Minnesota (the “UTAC Plant”), has exceeded certain emission limits and/or failed to operate, maintain and monitor certain processes at the UTAC Plant in violation of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for the Taconite and Iron Ore Processing Industry, 40 C.F.R. Part 63, Subpart RRRRR.

C. On February 21, 2014, EPA issued a notice to Defendant alleging violations of the UTAC Plant’s state implementation plan and federal laws related to certain air emissions from the UTAC Plant (“February 21, 2014 Notice of Violation”).

D. Defendant does not admit any liability arising out of the transactions, occurrences, or omissions alleged in the Complaint or in the February 21, 2014 Notice of Violation.

E. This Consent Decree is intended to represent a comprehensive resolution of the claims alleged in the Complaint and resolved through Section XIV (Effect of Settlement/Reservation of Rights) and to ensure that when the measures required by this Decree have been fully implemented, the UTAC Plant will be operated and maintained to prevent future occurrences similar to those alleged in the Complaint and resolved through Section XIV (Effect of Settlement/Reservation of Rights).

F. EPA and Defendant (the “Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and Section

113(b) of the Act, 42 U.S.C. § 7413(b), because Defendant resides and is found in this District and because certain of the acts or omissions alleged in the Complaint are alleged to have occurred within this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree, over any such action, and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant does not contest that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

### III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the UTAC Plant shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented unless and until:

a. the transferee agrees in writing to undertake the applicable obligations required by this Consent Decree, and to intervene as a defendant in this action for the purpose of being bound by the applicable terms of this Consent Decree;

b. the United States, after receiving information sufficient to demonstrate that the transferee has the technical and financial means to comply with the applicable obligations of this Consent Decree, consents in writing to substitute the transferee for the transferring Defendant with respect to such obligations; and

c. the Court approves such substitution.

5. At least 30 Days prior to such transfer of ownership or operation of the UTAC Plant, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the District of Minnesota, and the United States Department of Justice in accordance with Section XVI (Notices). Any attempt to transfer ownership or operation of the UTAC Plant without complying with this Paragraph constitutes a violation of this Decree.

6. Defendant shall provide a copy of all relevant portions of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such new contract, and any pending contract that can be modified, upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

#### IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Act” or “CAA” shall mean the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*

“Complaint” shall mean the complaint filed by the United States in this action.

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVI).

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

“Defendant” shall mean United Taconite LLC.

“EPA” shall mean the United States Environmental Protection Agency.

“Effective Date” shall have the definition provided in Section XVII (Effective Date).

“MPCA” shall mean the Minnesota Pollution Control Authority.

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

“Parties” shall mean the United States and Defendant, and “Party” shall mean any one of them.

“Section” shall mean a portion of this Decree identified by a roman numeral.

“Stack Cap Event Type” shall mean the type of Stack Cap Opening (e.g., Cold Startup, Shutdown after Cold Startup, Shutdown after Normal Operations).

“Stack Cap Opening(s)” shall mean any period(s) when the stack cap on an indurating furnace is opened while the furnace is combusting fuel.

“State” shall mean the State of Minnesota.

“UTAC Plant” shall mean Defendant’s taconite and iron ore processing plant located in Forbes, St. Louis County, Minnesota.

“United States” shall mean the United States of America, acting on behalf of EPA.

## V. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$50,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Defendant shall pay the civil penalty due under the preceding Paragraph at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Minnesota after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Douglas A. McWilliams  
Squire Patton Boggs (US) LLP  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114  
douglas.mcwilliams@squirepb.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVI (Notices). At the time of payment, Defendant shall send notice that payment has been made to: (i) EPA via email at [acctsreceivable@epa.gov](mailto:acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) the United States via email or regular mail in accordance with Section XVI. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. United Taconite LLC* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-11178.

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, state or local income tax.

VI. COMPLIANCE REQUIREMENTS

**A. Indurating Furnace Waste Gas  
Wet Scrubber Operation during Low Production**

12. Review of Pressure Drop Deviations during Low Production. In the first reporting period after establishing the lower differential pressure operating limit based on testing during normal low-production operation for wet scrubbers on indurating furnace Units 1 and 2 (to be submitted on July 30 and January 30), Defendant shall submit a report, as described below, that includes each instance in which the daily average differential pressure for wet scrubbers on indurating furnace Units 1 and 2 drops below the lower differential pressure operating limit during low-production operation. For purposes of this Section, an “instance” is defined as a drop in daily average differential pressure below the lower operating limit that is not corrected within three consecutive 10-Day periods pursuant to the procedures described in 40 C.F.R. § 63.9634(j). For each such instance, Defendant shall:

- a. Identify the root cause of each instance in which the differential pressure in an indurating furnace waste gas wet scrubber drops below the lower differential pressure operating limit during low-production operation;
- b. When the root cause is unknown, provide a description of efforts taken by Defendant to investigate the root cause of each instance when the differential pressure in an indurating furnace waste gas wet scrubber drops below the lower differential pressure operating limit during low-production operation, and include a copy of any related indurating furnace waste gas wet scrubber operating records;
- c. Describe corrective actions taken in response to the root cause of each instance when the differential pressure drops below the lower differential pressure operating limit during low-production operation, including descriptions of related documents that address the cause of the low reading, if any; and
- d. Describe preventative actions taken, if any, and actions to be taken, if any, by Defendant to eliminate such instances when the differential pressure drops below the lower differential pressure operating limit during low-production operation, along with a proposed schedule for taking such corrective action, or, alternatively, a justification for taking no additional action to address such instances.

13. After one year, if this Consent Decree has not been terminated in accordance with the provisions of Section XX (Termination), Defendant shall submit a report that reviews the root causes from each instance, if any, where the differential pressure drops below the lower differential pressure operating limit during low-production operation as identified in Paragraph 12, and identifies any trends or commonalities between root causes for the previous year. If a

trend or commonality exists between the root causes, Defendant shall propose corrective action(s) reasonably available to prevent or reduce the likelihood of recurrence of the root cause(s) and provide a proposed schedule for implementing such corrective action(s).

14. EPA's Review of Defendant's Future Corrective Action. If EPA disagrees with any portion of Defendant's conclusions concerning the action(s) planned or not planned to address instances reported in Paragraph 12 or proposed corrective actions in Paragraph 13, then EPA will send Defendant a written notification describing the disagreement within 60 Days of receipt of Defendant's conclusions. If Defendant objects to any modified or additional corrective action(s) required by EPA, it may dispute EPA's determination pursuant to Section XII (Dispute Resolution). If no dispute is initiated, Defendant shall carry out the corrective action sought by EPA.

## **B. Wet Scrubbers Other Than Indurating Furnace Wet Scrubbers**

15. Master List of Wet Scrubbers. Within 30 Days of the Effective Date, Defendant shall submit to EPA a list of all wet scrubbers other than the Indurating Furnace waste gas wet scrubbers at the UTAC Plant subject to the operating limits for pressure drop and scrubber water flow rate in 40 C.F.R. § 63.9590(b)(1). For each such wet scrubber on this list, Defendant shall list the make and model number, the year of installation at the UTAC Plant, and the emission source it is designed to control.

### 16. Response to Pressure Drops.

a. On a semi-annual basis, Defendant shall report to EPA (on the dates specified in Paragraph 12) each uncorrected pressure drop and scrubber water flow rate that remained below the established operating limits for that wet scrubber and was not corrected within three consecutive 10-Day periods as described in 40 C.F.R. § 63.9634(j). The report shall detail and document compliance with the corrective action procedures required by 40 C.F.R. § 63.9634(j).

b. On a semi-annual basis, Defendant shall submit a report (on the dates specified in Paragraph 12) to EPA that lists all daily average pressure drop and scrubber water flow rate that remained below the established operating limits for that wet scrubber after three attempts at corrective action pursuant to 40 C.F.R. § 63.9634(j) and the corrective action taken. For each instance in which three attempts at corrective action are unsuccessful, Defendant shall submit the results of the performance test conducted to establish new operating limits and:

- (1) the root cause of nonconformance with the established operating limits; and
- (2) if the root cause is unknown, a description of efforts taken by Defendant to investigate the root cause of the nonconformance.

### **C. Stack Cap Emissions**

17. By no later than the Effective Date, Defendant shall automate the process by which all indurating furnaces are fueled when a stack cap is opened by programming each indurating furnace such that the indurating furnace shall be fueled exclusively by natural gas within five (5) minutes of the Stack Cap Opening.

18. As of the Effective Date, Defendant shall document and record the date and time the stack cap opened, and whether within five minutes of the stack cap opening time the indurating furnace was fueled exclusively by natural gas for all Stack Cap Openings for indurating furnace Units 1 and 2. If during a Stack Cap Opening the time it takes for the indurating furnace to be fueled exclusively by natural gas exceeds five minutes, Defendant shall quantify particulate matter (PM) emissions for that Stack Cap Opening according to the procedure in Appendix A, provide all data supporting Defendant's calculation of PM emissions, the Stack Cap Event Type, and a root cause analysis for the Stack Cap Opening.

19. On a semi-annual basis, Defendant shall submit a report to EPA (to be submitted on July 30 and January 30) of all Stack Cap Openings documented under Paragraph 18.

### **VII. PERMITS**

20. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

21. Prior to termination of this Consent Decree, Defendant shall submit complete applications to the appropriate state regulators to modify, amend, or revise the UTAC Plant's Title V permit to incorporate the Procedure for Quantifying Emissions from Stack Cap Openings set forth in Appendix A into the Title V permit. The Parties agree that the incorporation of these provisions into the Title V Permit shall be done in accordance with the State's Title V rules.

22. Requirements incorporated into operating permits pursuant to this Section shall survive termination of this Consent Decree. For any application for permit amendment required by this Section, Defendant shall submit to EPA in the manner set forth in Section XVI (Notices), a copy of each application, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

23. Defendant shall implement a Supplemental Environmental Project (“SEP”), the replacement of an existing wet scrubber control system with a more efficient dry fabric filter PM control system, in accordance with all provisions of Appendix B. The SEP shall be operated and maintained in a manner consistent with good air pollution control practices for minimizing emissions as required by 40 C.F.R. § 63.9600 of the NESHAP for Taconite Iron Ore Processing.

24. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. Defendant may use contractors or consultants in planning and implementing the SEP.

25. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is \$488,542;

b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person; and

f. that (i) Defendant is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Appendix B; and (ii) Defendant has inquired of the State whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the State that it is not a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

26. SEP Completion Report

a. Within 45 Days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to the United States in accordance with Section XVI (Notices). The SEP Completion Report shall contain the following information:

(1) a detailed description of the SEP as implemented, including documentation that the Project was installed consistent with the design specifications for the system to reduce filterable PM emissions to 0.13 lb/hour or less;

(2) a description of any problems encountered in completing the SEP and the solutions thereto;

(3) an itemized list of all eligible SEP costs expended;

(4) certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

(5) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

27. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

28. After receiving the SEP Completion Report, EPA shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X.

29. Disputes concerning the satisfactory performance or completion of the SEP and the amount of eligible SEP costs may be resolved under Section XII (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

30. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 34.

31. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. United Taconite LLC, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

32. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

## IX. REPORTING REQUIREMENTS

33. Whenever (1) any violation of this Consent Decree, or (2) any violation of any applicable permits required by this Consent Decree, or (3) any event affecting Defendant's performance under this Consent Decree, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth elsewhere in this Consent Decree.

34. Each report submitted by Defendant under this Decree shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

35. If no reportable event occurs during a reporting period, Defendant is not obligated to submit an empty report but may comply with its reporting obligation by submitting a cover letter stating that no reportable event occurred, together with the certification contained in Paragraph 34.

36. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## X. STIPULATED PENALTIES

38. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A "violation" includes failing to perform any obligation required by the terms of this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree, except that an isolated differential

pressure deviation, by itself, shall not be considered a violation of this Decree unless and until the deviation is not corrected within three consecutive 10-Day periods pursuant to 40 C.F.R. § 63.9634(j) and the reports required by this Decree are not submitted timely to EPA.

39. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

40. Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements set forth in Section VI, Paragraph 16:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.....	1st through 14th Day
\$500.....	15th through 30th Day
\$750.....	31st Day and beyond

b. The following stipulated penalties shall accrue per violation per Day for each violation of the recording and reporting requirements set forth in Section VI not listed in Paragraph 40.a:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$175.....	1st through 14th Day
\$375.....	15th through 30th Day
\$625.....	31st Day and beyond

41. SEP Completion.

If Defendant fails to satisfactorily complete the SEP by the deadline set forth in Paragraph 23 and Appendix B, Defendant shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

42. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section IX (Reporting Requirements).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.....	1st through 14th Day
\$150.....	15th through 30th Day
\$375.....	31st Day and beyond

43. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

44. The United States may seek stipulated penalties under this Section by sending a written demand to Defendant. The United States may waive stipulated penalties or reduce the amount of stipulated penalties it seeks, in the unreviewable exercise of its discretion and in accordance with this Paragraph.

45. Stipulated penalties shall continue to accrue as provided in Paragraphs 39 through 43, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA’s decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court’s decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court’s decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

46. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

47. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant’s failure to pay any stipulated penalties.

48. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any

other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

## XI. FORCE MAJEURE

49. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

50. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide written notice to EPA within 7 Days of when Defendant first knew that the event might cause a delay or interruption. The notice shall include an explanation and description of the reasons for the delay or interruption; the anticipated duration of the delay or interruption; all actions taken or to be taken to prevent or minimize the delay or interruption; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or interruption or the effect of the delay or interruption; Defendant's rationale for attributing such delay or interruption to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay or interruption was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

51. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

52. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

53. If Defendant elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 49 and 50. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

## XII. DISPUTE RESOLUTION

54. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

55. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

56. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

57. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

58. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall

contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

59. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

60. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 56, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Defendant reserves the right to oppose this position.

61. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### XIII. INFORMATION COLLECTION AND RETENTION

62. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

63. Upon request, Defendant shall provide EPA or its authorized representative(s) splits of any samples taken by Defendant to the extent technically feasible. Upon request, EPA shall provide Defendant or its authorized representative(s) splits of any samples taken by EPA to the extent technically feasible.

64. Defendant may also assert that information required to be provided under this Section, including documentary evidence obtained pursuant to Paragraph 62.d., is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

65. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

66. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

67. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 66. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 66. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant’s UTAC Plant, whether related to the violations addressed in this Consent Decree or otherwise.

68. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the UTAC Plant, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 66.

69. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant’s compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant’s compliance with any aspect of this Consent Decree will result in compliance with any provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

70. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

71. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XV. COSTS

72. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

#### XVI. NOTICES

73. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, sent by U.S. Mail (and also by electronic mail where provided), and addressed as follows:

As to the United States (by email): [eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov)  
Re: DJ # 90-5-2-1-11178

As to the United States (by mail): EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-2-1-11178

As to EPA (by mail and email): James Morris  
Associate Regional Counsel  
Environmental Protection Agency, Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604-3590  
(312) 886-6632  
[morris.james@epa.gov](mailto:morris.james@epa.gov)

and

Patrick Miller  
Environmental Scientist  
Environmental Protection Agency, Region 5  
77 West Jackson Blvd. (AE-17J)  
Chicago, IL 60604-3590  
(312) 886-4044  
[miller.patrick@epa.gov](mailto:miller.patrick@epa.gov)

As to Defendant (by mail and email):

Chad Asgaard  
United Taconite LLC  
P.O. Box 180  
Eveleth, MN 55734  
[Chad.Asgaard@clevelandcliffs.com](mailto:Chad.Asgaard@clevelandcliffs.com)

and

Douglas A. McWilliams  
Squire Patton Boggs (US) LLP  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114  
[douglas.mcwilliams@squirepb.com](mailto:douglas.mcwilliams@squirepb.com)

74. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

75. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XVII. EFFECTIVE DATE

76. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### XVIII. RETENTION OF JURISDICTION

77. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

### XIX. MODIFICATION

78. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

79. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 60, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### XX. TERMINATION

80. After Defendant has submitted the master list of wet scrubbers required by Paragraph 15, submitted a complete permit application required by Paragraph 21, successfully completed the SEP as set forth in Section VIII, has shown four consecutive quarters with no exceedances of PM emissions from Stack Cap Openings after the Effective Date, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

81. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

82. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XII. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

### XXI. PUBLIC PARTICIPATION

83. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

## XXII. SIGNATORIES/SERVICE

84. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

85. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

## XXIII. INTEGRATION

86. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

## XXIV. FINAL JUDGMENT

87. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

## XXV. 26 U.S.C. Section 162(f)(2)(A)(ii) IDENTIFICATION

88. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. Section 162(f)(2)(A)(ii), performance of Section III (Applicability), Paragraph 6; Section VI (Compliance Requirements), Paragraphs 12-13, 14 (except with respect to dispute resolution), 15-19, and related Appendix A; Section VII (Permits), Paragraphs 20-22; Section IX (Reporting Requirements), Paragraphs 34-35; and Section XIII (Information Collection and Retention) Paragraphs 62-63, is restitution or required to come into compliance with the law.

## XXVI. APPENDICES

89. The following Appendices are attached to and made part of this Consent Decree:

“Appendix A” is the Procedure for Quantifying Emissions from Stack Cap Openings; and

“Appendix B” is the Supplemental Environmental Project.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2019

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UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

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

4/18/2019

*s/ Karen S. Dworkin*

\_\_\_\_\_  
Date

\_\_\_\_\_  
KAREN S. DWORKIN  
Deputy Chief, Environmental Enforcement Section  
Environment and Natural Resources Section  
U.S. Department of Justice

*s/ Michael J. Zoeller*

\_\_\_\_\_  
MICHAEL J. ZOELLER  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611  
Tel: (202) 305-1478  
Fax: (202) 616-6584  
Email: michael.zoeller@usdoj.gov

ERICA H. MacDONALD  
United States Attorney  
District of Minnesota

*s/ Friedrich A. P. Siekert*

Date: 4/18/2019

\_\_\_\_\_  
FRIEDRICH A. P. SIEKERT  
Assistant U.S. Attorney  
Attorney ID Number 142013  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
Telephone: (612) 664-5600  
Email: fred.siekert@usdoj.gov

FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:

*s/ T. Leverett Nelson*

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T. LEVERETT NELSON  
Regional Counsel  
U.S. Environmental Protection Agency, Region 5

*s/ James Morris*

---

JAMES MORRIS  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
Office of Regional Counsel  
77 West Jackson Blvd.  
Chicago, IL 60604-3590  
(312) 886-6632

FOR UNITED TACONITE LLC:

4/18/2019

*s/ Chad Asgaard*

\_\_\_\_\_  
Date

\_\_\_\_\_  
CHAD ASGAARD  
General Manager  
United Taconite LLC  
P.O. Box 180  
Eveleth, MN 55734  
Tel: (218) 744-7800

4/18/2019

*s/ Douglas A. McWilliams*

\_\_\_\_\_  
Date

\_\_\_\_\_  
DOUGLAS A. McWILLIAMS  
Squire Patton Boggs (US) LLP  
4900 Key Tower  
127 Public Square  
Cleveland, Ohio 44114-1304  
Tel: (216) 479-8332

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

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UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED TACONITE LLC, )  
 )  
Defendant. )

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**APPENDIX A**

## Summary of Calculation Methodology for a Stack Cap Event

February 25, 2016

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### **Equation for Determining Compliance with Table 1 Limits when Stack Cap Events Occur:**

$$\begin{aligned}
 E_{Total} &= E_{stack\ cap} && + && E_{normal} \\
 E_{Total} &= E_c && + && E_{nc} && + && E_{normal} \\
 E_{Total} &= E_{coal} + E_{gas} && + && E_{non-combustion} && + && E_{normal} \\
 E_{Total} &= EF_{coal}Q_{coal} + EF_{gas}Q_{gas} && + && y_o/B(1-e^{-Bdt}) && + && EF_{normal}Q_{normal}
 \end{aligned}$$

### **Where:**

$E_{Total}$  = Total Emissions in Compliance Evaluation Period

$E_{stack\ cap}$  = Emissions from Stack Cap Event

$E_c$  = Emissions due to combustion processes during stack cap event

$E_{coal}$  = Emissions due to coal combustion during stack cap event

$E_{gas}$  = Emissions due to gas combustion during stack cap event

$E_{nc}$  = Emissions due to non-combustion (pellet) sources during stack cap event

$y_o$  = Initial non-combustion emissions rate

$B$  = time constant

$dt$  = time period over which emissions are calculated

$E_{normal}$  = Emissions from normal operations following stack cap event

$EF$  = Particulate Matter Emissions Factor

$Q$  = Throughput component

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

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UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED TACONITE LLC, )  
 )  
 Defendant. )

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**APPENDIX B**

## **Appendix B: United Taconite Supplemental Environmental Project**

U.S. EPA approved the following Supplemental Environmental Project (SEP) proposed by United Taconite to facilitate resolution of the Clean Air Act allegations resolved in the Consent Decree of which this is Appendix B.

United Taconite shall replace an existing wet scrubber control system for the 1F Crusher with a more efficient dry fabric filter PM control system (“the Project”). USEPA confirmed that the Project meets the criteria for an approvable SEP set forth in the USEPA Supplemental Environmental Projects Policy, 2015 Update (“2015 Guidance”) based on the certifications by United Taconite in paragraph 25 of the Consent Decree and the following representations regarding environmental benefit:

- The Project has an environmental benefit that has a direct nexus to the allegations settled by this Consent Decree because it reduces PM emissions.
- The Project also replaces the wet scrubber monitoring parameters (scrubber water flow and pressure differential) referenced in the allegations with fabric filter monitoring parameters that correlate better with control device performance.
- This Project also produces clean and dry exhaust that can be vented inside the building to recover heat from the stack for use to offset the need for fossil fuel-fired heating systems.
- The Project also eliminates the use of water previously used to operate the wet scrubber.

### The Project:

The 1F Crusher System consists of eight separate pick up points where PM emissions are collected and ducted to an emission control device. United Taconite shall install a more effective and efficient dry fabric filter control system to replace the existing wet scrubber system and duct each of these eight pick up points to the new control device. The dry control system shall be designed to reduce filterable particulate emissions from the 1F Crusher System to 0.13 lb/hour or less (which is a lower emission rate than the NESHAP for Taconite Iron Ore Processing).

### Installation Schedule:

United Taconite shall install the Project in accordance with the following schedule, or such other schedule mutually agreed to by United Taconite and U.S. EPA.

- Complete design engineering within 3 months after the Effective Date of the Consent Decree; and
- Complete installation within 12 months after completion of design engineering.

### Cost Estimate:

United Taconite shall incur all costs necessary to install the dry control system for the 1F Crusher System. The estimated cost for the Project is \$488,542.06. United Taconite must install the dry scrubber control system and record the actual cost of the installation.