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September 1, 2023

VIA ELECTRONIC SUBMISSION

Minnesota Pollution Control Agency
520 Lafayette Road North
Saint Paul, MN 55155-4194

Re: Comments of U. S. Steel on the Framework for Developing and Evaluating Site-Specific Sulfate Standards for the Protection of Wild Rice

Dear Sir or Madam,

United States Steel Corporation ("U. S. Steel") appreciates the opportunity to provide the following comments regarding Minnesota Pollution Control Agency's (MPCA) Proposed Framework for Developing and Evaluating Site-Specific Sulfate Standards for the Protection of Wild Rice (Proposed Framework), wq-s6-66 (June 20, 2023). The comment period runs through September 4, 2023.

U. S. Steel owns and operates two facilities in Minnesota which are directly affected by the regulatory decisions made by and frameworks proposed by MPCA: Minntac in Mt. Iron; and Keetac in Keewatin. U. S. Steel's Minnesota facilities discharge water into various water bodies, including some waters that may potentially be included in those encompassed by MPCA's Waters Used for Production of Wild Rice (WUFPOWR). In the past, U. S. Steel has also submitted multiple site-specific standard proposals for its facilities that have not yet been acted upon by MPCA. Thus, U. S. Steel has a direct interest in and provides the following comments on the Proposed Framework. U. S. Steel also supports the Minnesota Chamber of Commerce and Iron Mining Association of Minnesota's comments regarding the Proposed Framework and incorporates those comments herein by reference.

As an initial matter, U. S. Steel asserts that the Proposed Framework is overbroad, goes far beyond MPCA's authority under the Clean Water Act, state statutes, and the agency's own rules, and includes requirements that exceed the scope of what is necessary to protect the designated use of wild rice via a site-specific water quality standard. This Proposed Framework drastically

expands the requirements for submitting a site-specific standard application to require a decade of data, and includes new criteria by which MPCA will evaluate such applications.

The Proposed Framework is also arbitrary in the requirements it does choose to implement and does so without supporting citations. Due to the overly broad scope of these requirements, compliance with the Proposed Framework will result in extreme, unnecessary costs, that are not proven to provide any additional protection to wild rice, to U. S. Steel and other regulated parties, which is directly in contradiction with state law. The specific deficiencies in the Proposed Framework are more particularly outlined below.

A. Unpromulgated Rulemaking

MPCA's Proposed Framework provides such sweeping revisions and new requirements for site-specific applications that it must be treated as a proposed rule, and thus move through the requisite processes of such a document.

Under the Minnesota Administrative Procedure Act (APA), a rule is defined as:

> every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, *adopted to implement or make specific the law enforced or administered by it* or to govern its organization or procedure.

Minn. Stat. § 14.02, subd. 4 (emphasis added). Further, "[u]nder the APA, if an agency believes a policy needs to be formulated, it must express that policy in the form of a proposed rule accompanied by a detailed statement of need and reasonableness." *In re Hibbing Taconite Co.*, 431 N.W.2d 885, 894 (Minn. Ct. App. 1988) (citing Minn. Stat. § 14.131 (1986)). That process, including public notice and comment, "is intended to insure that the rule, and the policy expressed, is within the scope of the enabling statute and is otherwise reasonable and constitutional before it is implemented." *Id.* (citing Minn. Stat. §§ 14.05-47 (1986)). "[N]otice and comment procedures exist for good reason: to ensure that unelected administrators, who are not directly accountable to the populace, are forced to justify their quasi-legislative rulemaking before an informed and skeptical public." *Swenson v. Emerson Elec. Co.*, 374 N.W.2d 690, 702 (Minn. 1985) (quotation omitted).

With the Proposed Framework, MPCA has created multiple new, burdensome requirements with general applicability and future effect for site-specific standard applications that fall squarely under the APA as a "rule" – the Proposed Framework was drafted to be generally applicable, to be effective in the future, and to implement or make specific applicable laws concerning site-specific standards. *See, e.g.*, Minn. R. 7050.0220, subp. 7. In short, the Proposed Framework is an interpretative rule that, according to longstanding Minnesota case law, is valid only if promulgated in accordance with the APA. *See, e.g.*, *Mapleton Community Home, Inc. v. Minnesota Dep't of Human Services*, 391 N.W.2d 798, 801 (Minn. 1986) (quoting *Minnesota-Dakotas Retail Hardware Ass'n v. State*, 279 N.W.2d 360, 364 (Minn. 1979).[1] It is of little

[1] Notably, the Proposed Framework does not meet either of the established exceptions to the rulemaking requirement for interpretative rules, i.e., it is not a long-standing policy position of MPCA's (it is being proposed for the first time) nor does it fall within the "plain meaning" of the underlying rule, Minn. R. 7050.0220, subp. 7, which

importance as to what an agency calls or labels its policies; rather, if the policies meet the definition of "rule" they must be promulgated pursuant to the rulemaking procedures in MAPA to be valid. *McKee v. Likins*, 261 N.W.2d 566, 577-78 (Minn. 1977) (finding a "policy bulletin" to fit the definition of a "rule"). Ultimately, the widespread impacts of the Proposed Framework highlight and sharpen the need for the proper public notice and comment process here. MPCA cannot proceed with finalizing this document without running contrary to the Minnesota APA and the established administrative process for a Minnesota agency adopting what is in effect a "rule." This is highlighted and made even more obvious throughout the remainder of the comments below.

B. Application of Beneficial Use

MPCA states in the Proposed Framework that the comprehensive list of WUFPOWR will be public-noticed in the agency's Guidance Manual for Assessing the Quality of Minnesota Surface Waters for Determination of Impairment: 305(b) Report and 303(d) List. However, the agency goes on to provide detail as to how MPCA has determined where the beneficial use for Class 4A wild rice exists. The Proposed Framework purportedly seeks to apply the WUFPOWR designation regardless of any specific population-size wild rice threshold. That designation will in turn trigger Minnesota's Class 4A subclass designation for water used for production of wild rice, with a 10 mg/L sulfate standard. MPCA specifically states that "stand-level documentation of wild rice presence" is sufficient to consider a waterbody WUFPOWR and, thus, beneficial use protections should apply. MPCA goes so far as to say that "[m]inimal stands or sparse rice still constitutes a "production of wild rice." Thus, as MPCA reasons, "[t]he 10 mg/L sulfate standard to protect wild rice is applicable to these waters." However, this is far too sweeping of an approach, and will inevitably result in classification of most of the state's waterbodies as WUFPOWR. Not only is this infeasible, but it is not supported technically, and is unduly burdensome on regulated dischargers in the state. Every upstream discharger will have to scramble to draft some form of site-specific standard or variance application if most of the state's waterbodies are classified as WUFPOWR. Further, it is almost impossible to come up with ten years of data and/or two boom-bust cycles of wild rice to determine a site-specific standard when the waters only contain "minimal" or "sparse" rice stands.

The Class 4A beneficial use category applies to waterbodies for which water quality must be sufficient "to permit their use for irrigation without significant damage or adverse effects upon any crops or vegetation usually grown in the waters or area." Minn. R. 7050.0224, subp. 2. The wild rice subclass is "applicable to water used for production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels." *Id.* Nowhere do these beneficial use classes mention that minimal, even single stands of wild rice trigger an entire protective classification. One can easily imagine absurd scenarios where a single stray rice stalk or stand is noted in a waterbody that was perhaps never traditionally supportive of wild rice stands, but

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states simply that MPCA, in reviewing site-specific standard requests, must "evaluate all relevant data in support of a modified standard and determine whether a change in the standard for a specific water body or reach is justified." With the Proposed Framework, MPCA is attempting to add specificity to help implement this language, i.e., it is engaged in rulemaking and must follow the APA.

which nonetheless triggers an entire classification that is unnecessary for the aquatic wildlife that grows there. Put simply, there must be a technically and legally defensible threshold for application of the subclass 4A wild rice standard, and MPCA has not provided one. Instead, it purports to seek classification of every waterbody where even a single stand of rice is present. Production must be for a purpose such as a food source. Even a few sparse stands would not be sufficient as a food source for waterfowl. Additionally, there is no requirement that the rice be naturally occurring which means that individuals could artificially seed a given lake or water body and the resulting stands would result in a WUFPOWR under the current proposal.

The same type of comments can be made regarding a threshold cut-off for discharges far removed from WUFPOWR impaired waters. There must be such a threshold, or once again there will be absurd scenarios where a discharger "upstream" of an impaired waterbody practically a state away could somehow be held to water quality standards tied to that waterbody despite minimal, if any, actual impacts to such waterbody. Dischargers should be able to show minimal impacts to waterbodies, and thresholds should apply to discharges that are far attenuated from the waterbody.

Lastly, MPCA should undergo rulemaking both to (a) establish the comprehensive list of WUFPOWR and (b) clarify the beneficial use. MPCA previously understood that rulemaking was required for these steps, which is why it undertook rulemaking for the 2017 proposed rule. Moreover, rulemaking was and still is mandated for clarifying the beneficial use and listing the waters in which the use is protected. It is improper for MPCA to suddenly decide it can shoehorn these critical matters of state policy into an agency guidance on site-specific standards.

C. Data Required

In its Proposed Framework, MPCA highlights new types of data and data requirements it will be looking for in site-specific standard applications. Most significantly, the Proposed Framework section titled "Expectations of detailed supporting data and analysis" states that "population data spanning ten years or two boom-bust cycles, whichever is shorter" must be submitted for a site-specific standard. This is an entirely new requirement for site-specific standard applications, one which is not contained in the state's statutes or regulations on site-specific standards. Not only did the agency fail to go through the appropriate rulemaking routes to establish such a firm, bright-line standard for a site-specific standard application, it also just inherently created a ten-year wait for any discharger to be able to apply for site-specific standards in the state of Minnesota without a stop-gap in the meantime. This is another example of the Proposed Framework attempting to make the site-specific standard rule more specific – which is, again, a clear indication that it must go through rulemaking. *See* Minn. R. 7050.0220, subp. 7.

Collecting this amount of data is also expensive and time-consuming for permittees. While U. S. Steel does not dismiss the importance of a boom-bust cycle for wild rice, an adequate data pool along with a healthy and robust wild rice population should be sufficient for the MPCA to continue protecting the wild rice beneficial use. As such, U. S. Steel requests that the MPCA reconsider the amount of data and the two boom-bust cycles that are necessary to support a site-specific standard request, shortening the amount of time and data necessary for the MPCA to make the determination for the permittee, while protecting wild rice.

In addition, in the Proposed Framework, MPCA makes multiple incredibly impactful and sweeping conclusions without providing any citations to supporting data, reports, or analysis. For example, the requirement to now submit ten years of population data, or two boom-bust cycles, with site-specific standard applications is unsupported by any citation to literature, studies, analyses, etc. Without such support, it is impossible to review the reasoning behind such a requirement and comment on it. Further, citations and underlying data supporting the "baseline" sulfate concentrations in Minnesota are not provided. Nor is any support provided for most of the statements in the examples, including the St. Louis River Estuary example. MPCA does not provide a citation for its percentage breakdown of "loading" of sulfate for the Estuary. It does not provide how it arrived at a baseline sulfate level for that watershed of 10 mg/L. It does not provide the underlying data for its "sulfate loading" figure provided in Figure 6. All of this information is absolutely critical for any regulated entity to be able to provide meaningful comment on a Framework as sweeping as this, and MPCA's failure to provide this information provides even more support for the conclusion that the Proposed Framework must be withdrawn and instead advanced through proper rulemaking.

D. "Baseline" Sulfate Concentrations

The Proposed Framework section titled "Document and examine ambient sulfate in the context of regional baseline levels" asserts that sulfate concentrations vary substantially across ecoregions, except for the Northern Lakes and Forest (northeastern) ecoregion where baseline sulfate concentrations are consistently below 10 mg/L, except for waters flowing from the Iron Range where the taconite mines and tailings basins contribute to anthropogenic loading of sulfate. These assertations are misguided for several reasons, including but not limited to:

1) The Northern Lakes and Forest ecoregion contains a variety of geologies and is particularly variable in the area of the "Iron Range" where the Biwabik Iron Formation and Duluth Complex meet and overlap; therefore, even without the taconite mines and tailings basins, one would anticipate more natural water quality variability in this small portion of the much larger Northern Lakes and Forest ecoregion.
2) The MPCA concedes that "this is not a rigorous natural background calculation", but then goes on to rely on these faulty maps and data to make sweeping, impactful conclusions about the Iron Range. MPCA uses this method to state that sulfate concentrations do not vary across the northeastern ecoregion, to try to establish that the primary sources of sulfate are anthropogenic in the north/northeastern portion of the state, and to state that the sulfate baseline concentrations in the St. Louis River Estuary are less than 10 mg/L. The data and methods supporting these sweeping conclusions must be scientifically defensible. But, as MPCA acknowledges, this is not a rigorous nor defensible manner to establish baseline or background sulfate concentrations in watersheds. This method ignores extremely important data that would go into a true "baseline" sulfate concentration for a given watershed. Moreover, MPCA does not provide the back-up calculations, data, methods, etc. that it used to support its conclusions. This is, again, indefensible and must be corrected before parties can move forward to discuss how to address site-specific standards.

Additionally, the Proposed Framework's discussion of ecoregion sulfate concentrations focuses on sulfate concentrations being either greater or less than the 10 mg/L wild rice sulfate standard. Although this remains an approved water quality standard in Minnesota, it continues to be problematic as it is a scientifically unsupported value. As the MPCA asserted during the 2017 proposed wild rice rulemaking process, the "correlation of wild rice with low sulfate does not indicate cause and effect between sulfate and wild rice, which is what the 10 mg/L standard was based on" and "there is no statistically significant relationship between sulfate concentration and wild rice occurrence"; rather "the MPCA-sponsored research clearly demonstrated, in peer-reviewed publications, that the true cause and effect is more complicated, and that the production of porewater sulfide is primarily responsible for the presence and absence of wild rice in Minnesota" (reference X). Furthermore, although an Administrative Law Judge rejected the MPCA's 2017 proposed rules, they found no fault with the science underlying MPCA's equation-based approach and rejected all science-based objections to the equation that was proposed by the MPCA to replace the 10 mg/L sulfate standard (reference Y).

E. St. Louis River Estuary

The Proposed Framework outlines certain "examples" of watersheds and apparent sulfate loading by sources. One such example is of the St. Louis River Estuary. Specifically, it states:

> *Example – St. Louis River Estuary*
>
> *The St. Louis River Estuary is an impaired WUFPOWR for excess sulfate located in the Northern Lakes and Forest ecoregion, where sulfate baseline concentrations are less than 10 mg/L. Sulfate in the St. Louis River Estuary is dominated by loading from taconite mines with upwards of 95% of sulfate loading to the estuary coming from the mines.*

In that example, MPCA concludes that 95% of sulfate loading to the estuary comes from the mines, and only 2% from municipal wastewater point source dischargers. The agency makes multiple other conclusory assertions, including that if all loading from point sources were eliminated, the estuary would have a sulfate level less than 10 mg/L "reflecting the regional baseline." However, MPCA has provided no information regarding the bases for these numbers and conclusions. Indeed, MPCA is unlikely to even have the data to support these conclusions as many upstream dischargers are not required to monitor the sulfate concentrations in their discharge.

The Proposed Framework document discusses sulfate loading at the Scanlon station and includes a load duration curve, graphing sulfate concentration in the river at various flow rates. The Proposed Framework document states:

> *Sulfate concentrations increase at low flows and decrease at high flows which is an indicator that point sources dominate sulfate loading.*

However, research conducted by the MDNR and MPCA contradicts this conclusion. The research article, *A comparison of results from a hydrologic transport model (HSPF) with distributions of sulfate and mercury in a mine-impacted watershed in northeastern Minnesota,*

2016 Michael E. Berndt, Wes Rutelonis, and Charles P. Regan, studied contributions of sulfate and other constituents into the St Louis River watershed, using the HSPF model. The study measured contributions of sulfate in the St Louis River at the Scanlon station and identified the contributions by surface water runoff, interflow, groundwater, mining point sources, and non-mining point sources. The study concluded that groundwater was the predominant source of sulfate at the Scanlon station. While mining point sources could account for a greater portion of the sulfate load upstream, their contribution to the total sulfate load in the St. Louis River by the Scanlon station is negligible during the majority of the year and at most not more than 15% of the total sulfate load during dry weather flow conditions.

The limited analysis of sources contributing sulfate to the St Louis River presented in the Proposed Framework document appears to attribute all loading to surface water runoff and mining point sources. It does not appear to account for sulfate contributions from groundwater. The load duration curve presented in the Proposed Framework document is consistent with groundwater sources being the predominant source of sulfate loading at the Scanlon station. This is yet another reason to support moving this Framework into proper rulemaking process; doing so will allow stakeholders and other members of the public to properly review and comment upon the science supporting MPCA's Proposed Framework can be reviewed and commented on, and will ensure that the ultimate effect and requirements imposed by the Framework are consistent with applicable laws.

F. Basis for a New Numeric Standard

The Proposed Framework section titled "Approaches to developing a site-specific sulfate standard" begins with the discussion of the "Basis for a new numeric standard: the sulfate concentration value". The Proposed Framework document states:

Since an application for a SSS must demonstrate that the newly proposed site-specific sulfate standard will support a productive and self-sustaining wild rice population within the specific waterbody, the basis for deriving the sulfate SSS must be considered in that light.

This statement presumes that a sulfate concentration of 10 mg/L or less will support a healthy wild rice population and ignores multiple confounding factors that inhibit the health of wild rice. However, many waters identified as WUFPOWR have not had a productive and self-sustaining wild rice population for years, if ever.

The Proposed Framework identifies two categories of approaches for developing a numeric SSS:

First are standalone approaches that illustrate the association between the surface water sulfate concentration with metrics tracking wild rice abundance and health which can be used independently to justify the proposed site-specific sulfate standard.

The second grouping includes supporting information that can only be used in a weight-of-evidence approach to support a numeric standard constructed via a separate approach in the first grouping.

The standalone approach requires applying the current ambient sulfate concentration if wild rice is healthy. This approach requires long-term monitoring of both surface water sulfate

concentrations and wild rice abundance (multiple metrics). Given the definition of "healthy wild rice population" used above, it is not clear why "multiple metrics" are required. Spatial extent and stalk density should be sufficient to assess health over time.

The supporting evidence, or weight of evidence approach includes calculating a sulfate concentration value using the sediment-based equation proposed during the 2017 wild rice rulemaking process. The proposed equations established a statistical relationship between sediment iron, organic carbon, porewater sulfide, and surface water sulfate of wild rice waterbodies, and that relationship could be used to inform the development of a SSS. The MPCA's equations (2017 and 2018 protocols) were developed over several years weighing scientific evidence that refutes the relevance of the 10 mg/L sulfate standard as being supportive of healthy wild rice populations. The MPCA's equations were deemed to be scientifically sound by the Administrative Law Judge in the 2017/18 rulemaking process. Since their inception and prior to the publication of the Proposed Framework document, MPCA staff and management encouraged permittees to collect samples and apply the formula in wild rice waterbodies downstream of their discharges. The sulfate standard determined by the formulas should be the basis for the appropriate sulfate standard for these specific waters, rather than the 10 mg/L standard.

Another supporting evidence approach includes determining a likely sulfate effect threshold based on a review of all available literature pertaining to sulfate and sulfide effects on wild rice, with special attention to sulfate and wild rice health data collected in analogous settings. The burden of reviewing and interpreting the validity of the numerous studies and available literature should not fall on the permittee. Much of the available literature, including many of the studies cited by the Proposed Framework document, are based on mesocosm or bucket studies, of wild rice grown in stagnant water. Such studies are not analogous to wild rice grown in natural environments because, as noted in the *Wild Rice Monitoring Handbook* (Kjerland, 2015), "Stagnant waters do not support wild rice populations." This is a critical distinction as to how rice is performing in the field as compared to containers cut off from flowing water and natural conditions.

An additional supporting evidence approach is determining ambient sulfate concentrations in regional waterbodies that contain healthy wild rice, with special attention given to nearby waterbodies (and waterbodies with analogous environmental characteristics) that are known to contain wild rice and that are unimpacted by sulfur-containing discharges to local surface water or groundwater. There should be an approach or provision to compare nearby unimpacted waterbodies with analogous environmental characteristics, that do not contain healthy populations of wild rice. Numerous studies (including the MPCA's) refute the relevance of the 10 mg/L sulfate standard as being supportive of healthy wild rice populations. Many other confounding factors also impact the productivity and health of wild rice water bodies.

G. Confounding Factors

The Proposed Framework reserves a single paragraph in the section titled "Expectations of detailed supporting data and analysis" to discuss confounding factors that may also damage productivity and recurrence of wild rice. This discussion should take the forefront of any final

framework on site-specific standards. The paragraph at issue discusses confounding factors, besides sulfate in the water column and sulfide in the porewater, that damage the productivity and recurrence of wild rice (see page 14). While the Proposed Framework document recognizes that controlling for each confounding factor would be an impossible task, it does not provide an alternative for permittees to obtain a site-specific standard when discharging to WUFPOWRs without healthy, productive wild rice due to confounding factors.

Many waters identified as WUFPOWR have not had a productive and self-sustaining wild rice population for years, if ever. The wild rice beneficial use could be lost due to natural or anthropogenic causes, exclusive of sulfate concentration. Where wild rice may have been historically present but is now no longer present, it should not be presumed that sulfate is the cause.

The U. S. Steel Minntac Twin Lakes Wild Rice Restoration Opportunities Plan (Plan) outlines efforts U. S. Steel undertook to study and evaluate the potential to restore wild rice in the Twin Lakes (Sandy Lake and Little Sandy Lake), located east of the Minntac tailings basin. The Plan outlines several confounding factors that prohibit the re-establishment of wild rice in Twin Lakes, including:

- Water depths have increased over time. Beaver dams constructed downstream of the lakes have contributed to lake depths exceeding the 2.0 to 3.0 feet depths that are optimal for wild rice to flourish.
- Competing aquatic vegetation proliferate in areas of the lakes with optimal water depths for wild rice. Cattails have reproductive advantages that allow them to tolerate water depth fluctuations and prohibit wild rice growth. Once competing aquatic vegetation is established, it can be difficult, if not impossible, for wild rice to proliferate.
- Sediment with a greater portion of sand or gravel is found in areas of the lakes, rather than the organic rich sediment preferred by wild rice.

Another factor that has recently been demonstrated to inhibit the proliferation of wild rice on the St. Louis River estuary is consumption of developing plants by geese. The 1854 Treaty Authority's monitoring report documents this problem. The report has photos depicting dense stands of wild rice in enclosures protected from geese, while adjacent water subject to consumption by geese have scant wild rice. The report also notes that impacts from geese "likely affect monitoring results and restoration success." In fact, the impact is so significant, authorities recently killed off some 300 geese to try and help wild rice grow in the St. Louis River: "Canada geese have posed a persistent challenge, feeding heavily on the grain and causing considerable mortality before poorly established young plants are able to withstand the onslaught of black-billed birds." Peter Passi, Duluth News Tribune, *First Duluth Goose 'Roundup' Kills 300 Birds*, July 26, 2023, available at First Duluth goose 'roundup' kills 300 birds - Duluth News Tribune | News, weather, and sports from Duluth, Minnesota. The Duluth area press has multiple additional articles reporting on the struggle to get wild rice to grow in areas with heavy geese populations.

The document, *MDNR 2008 Natural Wild Rice in Minnesota. A Wild Rice Study document submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources* – discusses many of these and other confounding factors that can impact wild rice, including impacts of global and regional climate change, impacts of water-based recreation and shoreland development, and genetic modification on the integrity of native wild rice.

Despite the fact that confounding factors may make obtaining the wild rice beneficial use impossible, the Proposed Framework document appears to assume that wild rice will proliferate if WUFPOWR have a water column sulfate level of 10 mg/L or less. The Proposed Framework does not lay out a clear path to obtaining a site-specific standard in WUFPOWRs without a productive and self-sustaining wild rice population. If the Framework is finalized, it should provide such a path.

H. Contradiction with Legislation

The Proposed Framework also ultimately contradicts the policy behind the state's legislation which prohibits MPCA from requiring permittees to expend money for design or implementation of sulfate treatment technologies or other forms of sulfate mitigation. The legislature has acted multiple times to limit MPCA enforcement of the sulfate water quality standard until it was updated. First, in 2011, the legislature passed a law that directed the MPCA to update the standard and limited enforcement until the standard was revised. Minn. Laws 2011, 1st Spec. Sess., Ch. 2, Art. 4, Sect. 32(a)-(e). Then, in 2015, a new law strengthened the limitations on MPCA implementation of the standard and set 2018 as the deadline to complete the rulemaking to update the standard. Minn. Laws 2015, 1st Spec. Sess., Ch. 4, Art. 4, Sect. 136(a)(1)(i); (c). Specifically, that law stated that, until the MPCA amended the wild rice water quality standard, "the agency shall not require permittees to expend money for design or implementation of sulfate treatment technologies or other forms of sulfate mitigation." *Id.* at 136(a)(1)(i).

By requiring permittees to expend significant resources and time to create the data to support a site-specific standard application, MPCA is requiring permittees to expend money for sulfate mitigation while, apparently, ignoring the statutory mandate to complete the required rulemaking prior to doing so. Further, in the interim decade while permittees are expending those resources on gathering such data, permittees are also faced with expending resources on sulfate compliance with applicable limits in their permit – limits which the permittees are trying to show should be revised based on the site-specific standard application they are trying to submit. This is contrary to the explicit legislative language and intent and makes MPCA's approach to implementing the sulfate standard vulnerable to legal challenge.

I. MPCA Should Contemplate Flexibility of Compliance in Permits to Account for the Complexity and Costs of Developing Site-Specific Standards for the First Time Under this New Framework

The Proposed Framework requires that regulated facilities submit new data and variables in their site-specific standard applications. Moreover, in the vast majority of situations, MPCA is requiring ten years of new data to support such applications. Given that new requirement, facilities seeking to apply for site-specific standards should not be required to comply with any

associated permit limits until MPCA has (1) proposed the Framework through proper rulemaking and responded to public comments on the underlying substantive requirements; and (2) established a compliance framework for facilities that cannot immediately comply with the 10 mg/L standard and must collect multiple additional years of data before being able to obtain a site-specific standard. Facilities will need to develop complex methods to assess site-specific standards under this Framework, which will be an extremely time-consuming and resource-intensive effort. Again, this is contrary to state legislation and extremely burdensome to regulated facilities; at the very least, it is incumbent upon MPCA to provide some amount of flexibility for the decade of time that it would take to create a valid site-specific standard application under the Proposed Framework.

J. Conclusion

The Proposed Framework's requirements are protracted, unsupported, arbitrary, overbroad, and contrary to state legislation. The Framework also introduces such sweeping new requirements for site-specific standard applications that the Framework must not be finalized without first moving through the proper rulemaking process. However, if MPCA decides to proceed with the Proposed Framework as it stands, then it should address the substantial policy, legal and scientific concerns raised in these comments, and should consider the specific revisions to the Proposed Framework that U. S. Steel is recommending in this letter.

U. S. Steel appreciates the opportunity to submit these comments concerning the Proposed Framework. If you have any questions or should you need additional information, please do not hesitate to contact me at 218-749-7364 or clbartovich@uss.com.

Sincerely,

Chrissy L. Bartovich
Director – Environmental, U. S. Steel Mining and Tubular Operations
United States Steel Corporation