

September 8, 2025

Stephanie Handeland

Minnesota Pollution Control Agency

520 Lafayette Road North

St. Paul, MN 55155

RE: Public Comments on Draft NPDES/SDS Permit Reissuance and Preliminary Variance Denial for U.S. Steel Keetac Facility (Permit Nos. MN0031879 & MN0055948)

Dear Ms. Handeland:

I am writing to provide formal comments in strong opposition to the draft reissuance of the NPDES/SDS permits for the U.S. Steel Keetac facility. While I strongly support the MPCA's preliminary decision to deny the sulfate variance request, the draft permits as currently written fail to uphold the Clean Water Act, Minnesota's water quality standards, and the state's duty to protect its waters for all Minnesotans. The following provisions are unacceptable and must be corrected.

My specific concerns and recommendations are as follows:

1. The Five-Year Compliance Schedule for Sulfate is Unlawful.

The draft permit allows U.S. Steel until April 2030 to meet the final sulfate limits. This timeline represents an egregious delay in implementing a standard critical for protecting wild rice (manoomin). Hay Lake (AUID 31-0037-00), the receiving water for Keetac's discharges, is officially listed as impaired for sulfate.

Allowing five more years of pollution into an already-impaired waterbody directly violates the anti-degradation requirements of the Clean Water Act and Minn. R. 7050.0150, which mandates that existing uses be maintained and protected. Crucially, the MPCA's preliminary variance denial states the agency "does not find sufficient evidence for substantial economic impacts on the Permittee," confirming the company has the capacity to cover pollution control costs. Since the sole argument for delay (economic hardship) has been invalidated by the MPCA's own review under Minn. R. 7000.7000, there is no legal or factual justification for a five-year compliance schedule. The final permit must require immediate adherence to the final sulfate limits. Attached is APPENDIX to this comment with a detailed critique on Sections 5.24.62-5.24.83 of the draft permits conditions.

2. The Exclusion of Functional Equivalent Discharges is a Dangerous and Unlawful Loophole.

Page 5 of the draft permit (MN0055948) explicitly states: "This permit does not authorize a functionally equivalent discharge from tailings basin seepage to surface water." However, the permit then fails to regulate this known pathway, constituting a direct abdication of the MPCA's permitting authority.

The U.S. Supreme Court's decision in *County of Maui v. Hawaii Wildlife Fund* (2020) established that discharges to groundwater that are the "functional equivalent" of a direct discharge to surface water require an NPDES permit. The MPCA has a nondiscretionary duty to regulate these discharges. The permit must be rewritten to eliminate this exclusion and instead immediately establish monitoring wells, define compliance points, and set effluent limits for all pollutants of concern in groundwater with a hydrological connection to surface waters. A study should inform the design of the control system, not delay its implementation as required by law.

Please see attached APPENDIX to this comment on Section 5.27.131 - 5.27.135 of the draft permit.

3. Biological Monitoring is Woefully Inadequate.

Requiring biological monitoring only once every five years is insufficient to detect harm to aquatic life. This infrequency violates the core intent of the Clean Water Act (33 U.S.C. § 1251 *et seq.*) to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

A five-year interval cannot capture seasonal variations or cumulative impacts, providing no meaningful data for adaptive management or timely enforcement. Biological monitoring must be conducted annually at all key receiving water locations. All data must be made public and should trigger a mandatory permit review if degradation is detected.

Please see critique of Section Section 5.22.43 - 5.22.48 of the draft permit in the attached APPENDIX of this comment.

Conclusion

The draft permits represent a failure to uphold Minnesota’s environmental laws and protect its precious water resources. The MPCA’s own preliminary determination on the variance has removed the primary justification for delay. Therefore, the agency must use this permitting opportunity to compel U.S. Steel to comply with the law immediately. Attached is a detailed critique (see APPENDIX) of the draft permit conditions to help bring U.S. Steel into compliance.

Thank you for considering these comments. I urge you to deny the permits as drafted and issue a final permit that truly protects Minnesota’s waters.

Sincerely,

Taylor Anderson

APPENDIX: Critique of Draft Permit Conditions & Recommended Revisions

This appendix provides a detailed, section-by-section critique of the draft NPDES/SDS permit conditions for the U.S. Steel Keetac Facility (Permit Nos. MN0031879 & MN0055948). The recommended changes are necessary to ensure the permit complies with the Clean Water Act (CWA), Minnesota Rules, and the MPCA's duty to protect state waters. Each recommendation is supported by authority and justification.

1. Compliance Schedule for Sulfate (Section 5.24.62 - 5.24.83)

Condition Critique: The permit allows until April 30, 2030, for compliance with the final sulfate limits (14 mg/L monthly average, 24 mg/L maximum) at outfalls SD 001, SD 005, and SD 009. This five-year schedule is premised on the facility not being "currently designed to treat effluent." However, this justification is invalidated by the MPCA's own preliminary variance denial, which found the Permittee lacks evidence of "substantial economic impacts."

Legal Authority: The CWA and its implementing regulations favor immediate compliance. Delays are only permissible under specific circumstances, such as for the construction of necessary treatment facilities (40 CFR § 122.47). A compliance schedule cannot be used to avoid a technology-based effluent limitation or a water quality-based effluent limitation where no construction is needed, or where the sole justification (economic hardship) has been disproven. Furthermore, Minn. R. 7050.0150 (anti-degradation) requires that existing uses be maintained and protected. Allowing five more years of excessive sulfate loading into Hay Lake, a waterbody already impaired for sulfate, constitutes degradation and is unlawful.

Recommended Change: The final permit must require immediate compliance with the final sulfate limits upon permit issuance. The compliance schedule (Sections 5.24.62-83) should be struck in its entirety. If any time is absolutely necessary for implementation of non-structural measures, it must be drastically shortened to the minimum period technically required (not to exceed 12 months), with interim milestones requiring progressive load reductions to demonstrate continuous progress toward attaining the standard.

2. Functional Equivalent Discharge Exclusion (Section 5.27.131 - 5.27.135)

Condition Critique: Section 5.27.132 explicitly states, "This permit does not authorize a discharge to groundwater that would be considered the functional equivalent to a NPDES direct discharge from tailings basin seepage." This creates a dangerous and unlawful loophole. The permit then fails to regulate this pathway, instead only requiring a multi-year study (Section 5.27.134) to be submitted 180 days before permit expiration.

Legal Authority: The U.S. Supreme Court in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), held that a permit is required when a discharge to groundwater is the "functional equivalent" of a direct discharge to navigable waters. The MPCA has a non-discretionary duty to regulate such discharges. Simply studying the problem for the entire permit term while exempting it from regulation is a direct abdication of this duty and violates the CWA's mandate to control pollutant discharges from point sources.

Recommended Changes:

- Eliminate the exclusion in Section 5.27.132.
- Rewrite Section 5.27.134 to require immediate regulation. The permit must establish compliance points (monitoring wells) at the point of discharge from the tailings basin and/or at the point of hydrologic connection to surface waters (e.g., the unnamed wetland SW 006, Hay Creek).

- Impose effluent limits for all pollutants of concern (including sulfate, chloride, and other metals) in the seepage, based on applicable groundwater standards (Minn. R. ch. 7060) and surface water standards to which the groundwater is connected.
- Require immediate quarterly monitoring at these compliance points, with the data used for enforcement and adaptive management, not just a future study.
- The "functional equivalent evaluation" should be an ongoing compliance demonstration, not a deferred study.

3. Inadequate Biological Monitoring (Section 5.22.43 - 5.22.48)

Condition Critique: The permit requires biological monitoring (fish and macroinvertebrates) only once every five years at three sites in the Hay Creek watershed. This infrequency is grossly inadequate to assess the health of aquatic communities and detect harm caused by the facility's discharges. A five-year interval cannot capture seasonal variations, annual population fluctuations, or cumulative impacts, providing no meaningful data for timely enforcement or adaptive management.

Legal Authority: The objective of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. § 1251(a)) (emphasis added). A monitoring program that cannot detect biological degradation in a timely manner is inconsistent with this core intent and fails to provide the data needed to protect designated aquatic life uses.

Recommended Change: Biological monitoring must be conducted annually at all designated sites (SW 002, SW 003, SW 008, and others as determined by MPCA). The data must be made publicly available and must trigger a mandatory permit review and corrective action if degradation of the biological community is detected. Annual monitoring is a minimum standard for responsible oversight of a major industrial discharger into an impaired watershed.

4. Whole Effluent Toxicity (WET) Testing Commencement (Sections 5.2.11, 5.4.11, 5.6.11)

Condition Critique: For all three major outfalls (SD 001, SD 005, SD 009), chronic toxicity testing does not begin until the third year of the permit, after which it is only required annually. This delay is unreasonable and leaves receiving waters unprotected from toxic effects for a significant portion of the permit term.

Legal Authority: WET testing is a critical tool for assessing the aggregate toxic effect of a complex effluent, beyond what chemical-specific limits can detect. Delaying this monitoring for years undermines the permit's ability to protect aquatic life. The precautionary principle and the CWA's mandate to restore biological integrity necessitate earlier and more frequent testing to establish a baseline and detect problems promptly.

Recommended Change: Quarterly chronic WET testing must begin immediately upon permit issuance at all applicable outfalls (SD 001, SD 005, SD 009). The data from the first year should be used to establish a baseline. If no toxicity is detected, the MPCA may consider reducing the frequency to annual testing in subsequent years. Starting in year three is unacceptable.

5. Stormwater Management and PFAS (Section 5.27.146 - 5.27.147)

Condition Critique: The PFAS inventory requirement (due 18 months after issuance) is a positive step. However, the permit condition only requires the inventory to be submitted and states the MPCA "reserves the right to modify the permit to include monitoring." This passive approach is insufficient given the known risks of PFAS, their persistence, and their potential use in industrial settings like mining.

Legal Authority: The CWA and Minn. R. 7050.0210 prohibit discharges that cause nuisance conditions or degrade aquatic habitat. PFAS are known to cause adverse ecological and human health effects. The MPCA has an affirmative duty to proactively identify and control pollutants of emerging concern, not merely "reserve the right" to act after potential contamination has occurred and been documented by the Permittee.

Recommended Change: The permit must be modified to require proactive PFAS monitoring.

Upon submission of the inventory, if any PFAS are identified as used or potentially present at the facility, the MPCA must immediately modify the permit to require quarterly sampling for a full suite of PFAS compounds in all effluent and surface water monitoring stations. The inventory should inform immediate action, not just sit on a shelf.