

Appendix G

Potential Permitting Requirements

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POTENTIAL FEDERAL REQUIREMENTS

Clean Water Act – Section 401 Water Quality Certification and 404 Permit; Rivers and Harbors Act – Section 10 Permit

The Clean Water Act (CWA) is the principal law governing pollution control and water quality of the nation's waterways. Under Section 401 of the CWA, any Federal action that includes discharge to wetlands or waters within Federal jurisdiction must obtain State certification of compliance with State water quality standards. Under Section 401, states can review and approve, condition, or deny all Federal permits or licenses that have the potential to result in a discharge to state waters, including wetlands. Section 404 of the CWA establishes permit programs administered by USACE to regulate discharge or placement of dredged or fill material into Waters of the United States, including wetlands. Projects that will move dredged or fill material into Waters of the U.S., including wetlands will require a Section 404 permit.

The Rivers and Harbors Act regulates all activities within navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters and invests USACE with the authority to regulate discharges of fill and other materials into such waters.

Clean Water Act – National Pollutant Discharge Elimination System Construction and Operation Permits

Under the CWA, the National Pollutant Discharge Elimination System (NPDES) program regulates the discharge of pollutants from any point source into Waters of the United States. Pollutants are defined as any type of industrial, municipal, and agricultural waste discharged into surface waters and are grouped into three categories: (1) conventional, (2) toxic, and (3) non-conventional. In order to comply with this component of the CWA, any remediation project that has the potential to discharge pollutants into surface waters must apply for either an individual or general permit for both construction activities and operation of the completed facility. Authority for issuing NPDES permits has been delegated to the MPCA, and discussion of this permit is included with the State Permitting Requirements.

Coastal Zone Management Act – Federal Consistency Determination

The Coastal Zone Management Act establishes a national policy to preserve, protect, develop, and, where possible, restore and enhance the nation's coastal resources. The Federal government provides matching grants to states for the realization of these goals through the development and implementation of state coastal zone management programs. The term "coastal zone" means the coastal waters and the adjacent shorelands, strongly influenced by each other and in proximity to the shorelines of the several coastal states, including the Great Lake States. The Act requires federal actions in the coastal zone to be consistent with approved state programs. No federal licenses or permits will be granted without giving a state the opportunity to concur that the Project is consistent with the state's coastal policies. The Coastal Zone Management Act also provides for the development of special area management plans for areas of particular importance such as ecological, cultural, historic, and aesthetic areas; and it requires states with

federally approved coastal zone management programs to develop programs for the control of coastal non-point pollution control. Project activities to remove or contain sediments from the Estuary Site may disturb the coastal zone of Lake Superior and will be subject to a federal consistency determination.

Endangered Species Act – Section 7 Coordination

The Endangered Species Act (ESA) requires the federal government to establish a list of threatened or endangered animal and plant species and their critical habitats. The ESA further requires that federal agencies conserve those endangered and threatened species and their habitats, and use their authorities to further these purposes. Section 7 of the ESA requires federal agencies to aid in the conservation of listed species, and ensures that activities performed by federal agencies will not jeopardize the continued existence of listed species or adversely modify designated critical habitats. Section 7 of the ESA further requires federal agencies to consult with National Oceanic and Atmospheric Administration (NOAA) Fisheries Service, on behalf of the Department of Commerce, and/or U.S. Fish and Wildlife Service (USFWS), on behalf of the Department of Interior, to minimize the impacts of federal actions on endangered and threatened species and designated critical habitat. NOAA Fisheries Service and USFWS publish lists of endangered and threatened species and designated critical habitat under their jurisdictions. Section 7 coordination will be required in order to ensure that remediation activities will not adversely affect endangered or threatened species or their critical habitat.

Bald and Golden Eagle Protection Act Coordination

The Bald and Golden Eagle Protection Act provides protection for bald and golden eagles by prohibiting, except under certain conditions, the taking, possession, and commerce of such birds. Section 668a of the Bald and Golden Eagle Protection Act authorizes the Secretary of the Interior to permit the taking, possession, and transportation of eagles upon a determination that such taking, possession, or transportation is compatible with the preservation of the bald eagle or the golden eagle. Because both bald and golden eagles are known to live near Spirit Lake, coordination with USFWS and MDNR on the presence and potential effect on bald and golden eagles in the project area will be conducted before undertaking any Project activities.

Migratory Bird Treaty Act – Coordination

The Migratory Bird Treaty Act implements four international treaties involving protection of migratory birds, including all marine birds, and is one of the earliest statutes to provide avian protection by the federal government. The Migratory Bird Treaty Act prohibits actions to pursue, hunt, take, capture, kill, possess, offer for sale, sell, offer to purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird...or any part, nest, or egg of such bird (16 U.S. Code 703). Exceptions to these prohibitions are only allowed under regulations or by permits issued by USFWS. Because migratory birds are known to live within the vicinity of the Spirit Lake AOC, coordination with USFWS on the presence and potential effect on migratory birds in the project area will be conducted before undertaking remediation activities.

National Historic Preservation Act – State Historic Preservation Office/Tribal Historic Preservation Office Consultation

Section 106 of the National Historic Preservation Act requires federal agencies, or federally funded entities, to consider the impacts of their projects or undertakings on historic properties or religiously or culturally important tribal sites. An undertaking is defined as any project, activity, or program that can result in changes in the character or use of historic properties or religiously or culturally important tribal sites located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a federal agency, or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106. The regulations implementing the National Historic Preservation Act require that federal agencies take the lead in this process and outline procedures to allow the Advisory Council on Historic Preservation to comment on any proposed federal action. Excavation, dredging, and other Project activities could have an adverse effect on historic properties or religiously or culturally important tribal sites. Therefore, consultation with the State Historic Preservation Office and Tribal Historic Preservation Office will be conducted prior to initiating Project activities within the Estuary Site.

Resource Conservation and Recovery Act (40 Code of Federal Regulations 257-258, 260-270)

Resource Conservation and Recovery Act (RCRA) is the principal law governing the disposal of solid and hazardous wastes. Parts 257-258 set standards for land disposal facilities for nonhazardous waste. Parts 260 through 270 regulate the transport, storage, treatment, and disposal of hazardous wastes generated by remediation activities and regulate the construction, design, monitoring, operation, and closure of hazardous waste facilities. The transport, storage, treatment, and disposal of the potentially hazardous and non-hazardous waste removed from the Spirit Lake AOC or the U. S. Steel property will be subject to these requirements.

POTENTIAL STATE REQUIREMENTS

NPDES/SDS Permitting

The NPDES/State-Disposal System (SDS) Permit Program regulates wastewater discharges to land and surface waters. This will include permitting for the CDF to store, treat, dispose and/or reuse dredged materials on-land in Minnesota if the dredged material originates from navigational channels and associated bays, harbors, docks and marinas. The NPDES/SDS permit would also address the discharge of treated water from the site, and construction-related stormwater. Each of these items is described below.

NPDES/SDS Permitting for CDF

The MPCA has indicated that CDFs will be permitted under an SDS permit. The CDFs proposed to be constructed upland of the OHWL fall under the definition as a storage/ disposal facility for dredged sediments. Carriage water and hydrostatic water from hydraulic or mechanical dredging processes, as well as stormwater runoff from dredged material management, transfer and off-loading sites, has the potential to pollute surface water when discharged to waters of the state. The management of dredged material also has the potential to affect groundwater through on-land management methods. Whether managed on-site or off-site, a number of considerations will need to be evaluated for the proper

management of dredged material, mainly relating to mitigating the impact that the project and/or dredged material management area(s) may have on stormwater entering, passing through or leaving the Site. These considerations will be addressed through the requirements of a permit and implementation of Best Management Practices (BMPs).

NPDES/SDS Permitting for Wastewater Discharges

Because activities such as dewatering or water treatment could potentially discharge pollutants back into Spirit Lake and other surface waters near the Site, the Project will likely be required to obtain a NPDES/SDS discharge permit. The Industrial Dredged material Management Application applies to dredged material (material that is excavated at or below the OHWL of water basins, watercourses, public waters, or public waters wetlands) that requires a NPDES/SDS Permit.

NPDES/SDS Construction Permit

Minnesota's construction stormwater permit is an extension of the NPDES Stormwater Program, which is part of the Federal Clean Water Act. The NPDES Stormwater Program is a comprehensive national program for addressing polluted runoff. The U.S. EPA is ultimately responsible for the quality of the nation's water, but in Minnesota, the MPCA administers this Federal program as well as the related State Disposal System (SDS) permit program. The State's combined NPDES/SDS construction stormwater permit fulfills Federal and State requirements by requiring the permittee to control runoff.

The Federal government requires NPDES permit coverage of construction sites that disturb one or more acres. A NPDES/SDS construction stormwater permit is needed if the Project disturbs one acre or more of soil; less than one acre of soil if activity is part of a larger common plan of development that is greater than one acre; or less than one acre of soil, but MPCA determines that the activity poses a risk to water resources. Most construction activities are covered by the general NPDES stormwater permit for construction activities, but some construction sites need individual permit coverage. In addition to completion of a permit application, Minn. R. 7090.2040 requires owner(s) of a construction activity to complete a Stormwater Pollution Prevention Plan (SWPPP) prior to submitting an application and prior to conducting any construction activity. A SWPPP describes the scope of the planned construction project and describes measures to control runoff. The SWPPP must be developed in accordance with the stormwater discharge design requirements in Part III and Part IV of the permit. The SWPPP must meet all terms and conditions of Part III and IV in the permit including a description of all erosion prevention and sediment control BMPs to be utilized on the site to control sediment and other pollutant discharges from the site.

The Project activities that will disturb greater than one acre of land will require the NPDES/SDS construction permit and SWPPP.

Minnesota Statutes, Chapter 103G and Minnesota Rules 6115.0600-6115.0810 (Water Appropriation Permit)

Minnesota Statutes, Chapter 103G and Minnesota Rules 6115.0600-6115.0810 requires Minnesota Department of Natural Resources (MDNR) to manage water resources to ensure an adequate supply to meet long-range seasonal requirements for domestic, agricultural, fish and wildlife, recreational, power,

navigation, and quality control purposes. The Water Appropriation Permit Program exists to balance competing management objectives that include both development and protection of Minnesota's water resources. A water use permit from MDNR is required for all users withdrawing more than 10,000 gallons of water per day or 1 million gallons per year. To apply for a water appropriation permit, MDNR requests the use of the Permitting and Reporting System (MPARS). A Water Appropriation Permit will be required if Project activities include the diversion of water out of the basin at volumes subject to this regulation. While diversions of this magnitude are unlikely, the regulation is included for consideration.

A Temporary Projects General Permit 1997-0005, which authorizes water appropriations for temporary purposes undertaken for a variety of activities including dewatering, landscape watering, dust control, hydrostatic testing and other purposes, may be required for temporary water withdrawals that do not exceed 50 million gallons per year and are completed within 1-year of pumping. This temporary general permit may be required for land-based construction projects, such as construction of temporary staging areas and access roads to control dust.

Minnesota Statute 103G.245, Subdivision 1 (Public Water Works Permit)

The Water Permits Unit oversees the administration of the Public Waters Work Permit Program. This program regulates water development activities below the ordinary high water level (OHWL) in public waters and public waters wetlands. The OHWL is defined as an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial (M.S. 103G.005, Subd. 14.). Under Minnesota Statute 103G.245, Subdivision 1, the state, a political subdivision of the state, a public or private corporation, or a person must have a DNR Public Waters Work Permit to:

- Construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or
- Change or diminish the course, current, or cross-section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the bed of public waters.

A Public Water Works permit will be required for remediation activities that remove sediment from the Estuary Site, which affects public waters and wetlands below the OHWL.

Aquatic Plant Management Permit

Under Minnesota law, aquatic plants growing in public waters may not be destroyed or transplanted unless authorized by the Commissioner of MDNR, as stipulated in the Aquatic Plant Management Rules. An Aquatic Plant Management permit is required for the following activities:

- Destruction of any emergent vegetation.
- Cutting or pulling by hand, or by mechanical means, submerged vegetation in an area larger than 2,500 square feet.
- Applying herbicides or algaecides.

- Moving or removing a bog of any size that is free-floating or lodged in any area other than its place of origin in public waters.
- Transplanting aquatic plants into public waters.
- Use of automated aquatic plant control devices (such as the Crary WeedRoller).
- Physical removal of floating-leaf vegetation from an area larger than a channel 15 feet wide extending to open water.

An aquatic plant management permit will be required if Project activities have the potential to negatively impact aquatic plants.

Prohibited/Regulated Invasive Species Permit

Minnesota has several state laws intended to minimize the introduction and spread of invasive plant and animal species. MDNR uses a four-tiered system to classify invasive species, including prohibited, regulated, unregulated non-native species, or unlisted non-native species. This classification system establishes the level of regulation and allowable uses for each species. In addition, MDNR works with citizens to monitor the distribution of invasive aquatic plants in the state, prevent further spread, and manage problems caused by these plants. Invasive aquatic plant management permits allow selective control of the target invasive plant. An invasive aquatic plant management permit may be required for treatment of invasive plant species located within the Estuary Site.

POTENTIAL LOCAL REQUIREMENTS

Wetland Conservation Act Permit

The Wetland Conservation Act (WCA) (M.S. 103G) is administered by local government units (LGU) with oversight by the Board of Water and Soil Resources (BWSR), under MN Rules 8520. LGUs that may implement the act locally include cities, counties, watershed management organizations, soil and water conservation districts, and townships. The BWSR administers the act statewide and MDNR enforces the law. The Wetland Conservation Act applies to all naturally occurring wetlands that are not regulated by the MDNR Public Waters Work Permit Program. MDNR has jurisdiction on public water basins and public waters wetlands that extends to the OHWL. Wetland areas (as determined by the 1987 Federal Manual) that occur landward of the OHWL of public waters fall under WCA jurisdiction. The federal/state joint permit application (JPA) is used for review from the LGUs. The Project components that may affect wetland areas above the OHWL will be required to obtain a Wetland Conservation Act Permit.

Special Use Permit and LOMR

The City of Duluth requires a Special Use Permit for work within floodplains, shorelands, and wetlands. The Project components that are located within these areas will require a permit. The City of Duluth will require a Letter of Map Revision (LOMR) for work within the floodplain.

Grading and Erosion Control Permits

The City of Duluth requires a permit to be submitted for fill, excavation, and grading activities. Land-based construction activities associated with the Project will be required to obtain a Grading Permit from the City of Duluth. A permit from MPCA is required if five acres or more are being disturbed.

An Erosion Control Permit will be required from the City of Duluth for land disturbances of 3,000 square feet or greater. A local permit is not required if the applicant is disturbing one acre or more and completing a MPCA stormwater permit for construction activities. This project will require an NPDES Construction Stormwater Permit and preparation of a Stormwater Pollution Prevention Plan (SWPPP).

Transportation Permit

The City of Duluth requires a permit to transport materials of weights exceeding maximum standards applicable through state law. If heavy project components require transportation of over-weight materials over City streets to the Site, then a transportation permit from the City of Duluth would be necessary.

Obstruction to Watercourses Permit

The City of Duluth requires an obstruction to watercourses permit for installation, construction, and maintenance of a culvert, drain, pipe, main or obstruction in a natural watercourse. The project includes installation of channels, culverts and other features within the Unnamed Creek (also known as U. S. Steel Creek) and Wire Mill Pond drainage basins and watercourses.

Other Potential City Permit Requirements

The City of Duluth issues a Building Permit for erecting, repairing, and/or altering any buildings within the city. A plot plan detailing the property and the proposed construction must also be submitted.

The City of Duluth issues an electrical permit for projects that will install or alter electrical networks existing on a premise. Electrical permits may be required from the City of Duluth in order to construct some types of temporary facilities for remediation activities within the project.