

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: 14. Other Civil (Mandamus)

Northern Metals, LLC,

Petitioner,

Court File No. 62-CV-15-3827
The Honorable John H. Guthmann

v.

CONSENT DECREE

John Linc Stine, in his official capacity as the
Commissioner of the Minnesota Pollution
Control Agency, and the Minnesota Pollution
Control Agency,

Respondents,

and

State of Minnesota, acting by and through its
Minnesota Pollution Control Agency, and

The City of Minneapolis,

Counterclaimant-Intervenors.

Based on the information available to the parties on the effective date of this Consent Decree, without trial or adjudication of any issues of fact or law, and upon consent of the parties hereto, it is ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION.

The Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. chs. 115 and 116 (2016) and has jurisdiction over the parties herein.

II.

PARTIES.

This Consent Decree applies to and is binding upon the following parties:

- A. Minnesota Pollution Control Agency and John Linc Stine, in his official capacity as the Commissioner of the Minnesota Pollution Control Agency (“MPCA”);
- B. Northern Metals, LLC (“Northern Metals”), a Delaware limited liability company that currently operates a metal recovery facility at 2800 Pacific Street North, Minneapolis, Minnesota (“Facility”); and
- C. City of Minneapolis (“City of Minneapolis”).

III.

SCOPE OF CONSENT DECREE.

This Consent Decree constitutes full settlement and resolution of the Counterclaims filed by the MPCA in the action captioned above (“Ramsey County district court case”), additional alleged violations set forth in the attached Notice of Violation (“NOV”) (Attachment 1), and any and all other claims arising out of the facts and events that occurred or may have occurred before the Effective Date that could have been brought by the MPCA under the following statutory and regulatory programs:

- A. Minnesota Pollution Control Agency Procedural Rule 7000.0300;
- B. Air Quality Permitting Program, Minn. R. ch. 7007;
- C. Ambient Air Quality Standards, Minn. R. ch. 7009;
- D. Standards for Stationary Sources, Minn. R. ch. 7011;
- E. Monitoring and Testing Requirements, Minn. R. ch. 7017;
- F. Emission Inventory Requirements, Minn. R. ch. 7019;

- G. State Waters Discharge Restrictions, Minn. R. ch. 7053;
- H. NPDES requirements, Minn. R. 7001.1000-1040;
- I. Minnesota Stormwater Regulatory Program, Minn. R. ch. 7090; and
- J. Minn. Stat. § 115.075, Information and Monitoring.

This Consent Decree also resolves the MPCA's action to revoke Northern Metals' operating permit (Air Emission Permit No. 05300480-003 ("Permit")), and the asserted bases therefore, which was the subject of a contested case hearing pending at the Office of Administrative Hearings, OAH No. 60-2200-33647.

This Consent Decree also constitutes full settlement and resolution of any and all claims that could have been brought by the stipulated Intervenor City of Minneapolis arising out of the facts and events that occurred or may have occurred before the Effective Date.

This Consent Decree also resolves all claims made by Northern Metals against the MPCA or that could have been made against the MPCA arising out of facts and events alleged in Northern Metals' mandamus petition in the Ramsey County district court case or under Minn. Stat. § 15.471 et seq.

By entering into this Consent Decree, Northern Metals is settling a disputed matter between itself and the MPCA and the City of Minneapolis. Neither the entry of this Consent Decree nor its attachments nor the terms thereof constitute an admission of any fact or conclusion of law, including the violations alleged in the Counterclaims or the Notice of Violation or any and all claims that may have been asserted by the MPCA and City of Minneapolis. Nothing in this Agreement constitutes an admission by any Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement. Northern Metals acknowledges

that the MPCA or a court may seek to consider this Consent Decree, including the alleged violations, in a future enforcement proceeding.

IV.

CONSENT DECREE OBJECTIVES

In addition to settling the claims of the Parties, the objective of this Consent Decree is to establish conditions under which Northern Metals may: (1) operate its shredder and scrap yard in Minneapolis until it implements its decision to move its shredding operation to an alternative location and to permanently terminate shredding at its Facility in accordance with the schedule and requirements established in this Consent Decree; and (2) construct and operate a metal recovery plant (“MRP”) of similar capacity at an alternative location(s) in Minnesota in accordance with the schedule and requirements of this Consent Decree; and (3) establish a process and schedule for Northern Metals to apply for the necessary MPCA permit(s) to operate a new shredder and associated MRP at an alternative operating location.

V.

INJUNCTIVE RELIEF

Northern Metals is hereby ORDERED to do the following.

A. Emissions Testing.

i. Northern Metals shall complete testing ordered by this Court on August 29, 2016 to determine whether the particulate matter generated by the shredder and related operations within the shredder building at the Facility is captured at the “total enclosure” level and whether emissions from the operation of the shredder and appurtenant equipment at the Facility are in compliance with limits in its Permit for particulate matter.

THE PARTIES AGREE THAT THIS REQUIREMENT HAS BEEN COMPLETED. THE MPCA HAS DETERMINED THAT NORTHERN METALS HAS DEMONSTRATED

COMPLIANCE WITH PERMITTED LIMITS FOR PARTICULATE MATTER AT THE
REQUIRED LEVEL OF CAPTURE EFFICIENCY.

ii. In addition to the emissions performance testing ordered by this Court, Northern Metals shall test the shredder at the Facility for the pollutants listed in the Permit at Table A SV001 p. A-6:

Arsenic
Beryllium
Cadmium
Lead
Manganese
Nickel
Aluminum
Antimony
Cobalt
Copper
Iron
Selenium
Vanadium
Zinc

THIS REQUIREMENT HAS BEEN COMPLETED.

iii. By August 1, 2017, Northern Metals agrees that it shall complete emissions performance testing on the shredder at the Facility. Specifically, Northern Metals shall submit a test plan to MPCA, conduct testing per EPA Reference Methods after MPCA test plan approval, and submit a report to the MPCA as specified in Minn. R. ch. 7017 for the following additional pollutants:

Hexavalent chromium
Asbestos
PCBs
Dioxins/Furans
VOC
Mercury

iv. The MPCA shall review Northern Metals' certified test reports and issue a written notice as provided in Minn. R. ch. 7017 regarding compliance or noncompliance as soon as reasonably possible.

B. Operating Conditions.

i. On the basis of performance testing under Part V.A. and the MPCA's January 24, 2017 Notice of Compliance, Northern Metals may continue to operate the shredder in Minneapolis under its Permit and this Consent Decree while a new permit application for operation in a different location is pending, subject to the deadlines in Part D below, provided that Northern Metals maintains the same operating conditions that were present during total enclosure and performance testing, as described and depicted in Attachment 2, Operating Conditions, which is attached hereto and complies with the conditions listed in Part V.B.ii below.

ii. In addition, Northern Metals shall comply with the following additional requirements, until the point at which the existing shredder operation at the Facility is permanently closed as provided in Part V.D.iii.:

1. Inspect all flaps that serve the purpose of closing off Shredder Building openings before, during, and after operating the shredder, and initiate repair of any and all flap(s) damaged beyond normal wear and tear within 24 hours of discovery of damage. Record inspection results.

2. Keep all openings to the Shredder Building necessary for maintaining the total enclosure (hereafter "Openings Tested Closed" or OTCs and as described and depicted in Attachment 2) closed during normal operating hours and for a minimum of 15 minutes after operation of the shredder ceases at the end of each operating day, unless there is an emergency condition that requires OTCs to be opened. For the OTCs, keep records of closure status at the beginning of each operating day. Record when shredder operation ceases each day and when the OTCs are re-opened to perform maintenance or for another purpose. If an OTC must be opened during operation to address an emergency condition, Northern Metals shall make a record of the duration of the event and its reason. The operation of the fans subsequent to the shredder shutdown does not constitute operation of the shredder and need not be limited to occurring during the shredder operating hours listed in the Permit.

3. Maintain interlock system that ensures the shredder cannot operate unless fans are operating normally. Record any instances where fan malfunction causes shredder shutdown.

4. On each operating day, perform visible emissions checks at the property line or at fugitive emissions sources located on the property, unless rain

or other weather conditions limit emission checks because of limited visibility. Record any impediment to visible emission checks, if such impediment precludes the daily visible emissions check.

5. Maintain all records of inspections, work performed, and visible emission checks under this paragraph at the Facility and provide them to MPCA staff during any on-site inspection and within 10 days of any written request for the records from the MPCA.

C. Metals Recovery Plant Operation.

i. Northern Metals agrees that it shall permanently terminate shredder residue metal recovery activities associated with the metal recovery plant (“MRP”) at the Facility upon the execution of this Consent Decree.

THE PARTIES AGREE THAT THIS REQUIREMENT HAS BEEN COMPLETED.

ii. Subject to MPCA issuance of a registration permit pursuant to Minn. R. 7007.1130 and subject to the conditions established in Minn. R. 7007.1130 and this Consent Decree, Northern Metals may construct and operate a MRP at another alternate location in Minnesota until it obtains a total facility permit at an alternative location that incorporates the MRP.

iii. The following conditions apply to the MRP operated under Minn. R. 7007.1130:

1. Except for loading and unloading operations, MRP operations shall be enclosed in a building or buildings;
2. Doors and other openings of MRP building(s) shall be closed at all times during operation of the MRP equipment, except to allow for material to enter and exit the building. Doors and other openings of the MRP building(s) shall be closed during cleaning;
3. Both inside and outside MRP building(s), Northern Metals shall minimize generation of particulate matter by minimizing drop heights and material handling (i.e., material should drop directly into shipping container where possible); and

4. By June 15, 2017, roads and the yard serving the MRP operation shall be paved and shall be swept on a regular basis.

iv. Nothing in this Consent Decree shall be deemed to relieve Northern Metals from any obligation to comply with applicable federal, state or local regulatory or permitting requirements that may apply at its new alternative MRP location.

D. Permanent Closure Of North Minneapolis Shredder.

i. Northern Metals shall submit all application materials necessary for issuance of a total facility air emissions permit at a new alternate location to the MPCA as soon as possible but no later than August 1, 2017. At the same time, Northern Metals shall submit complete applications for other state permits such as water or solid waste or an analysis of why no such permits are needed at the new location. If Northern Metals does not submit its application by the deadline in this Part, or if Northern Metals fails to provide additional information requested by the MPCA in the time requested, the MPCA shall be under no obligation to expedite processing of its application materials for the new location.

ii. Although not required to do so by Minnesota law, Northern Metals agrees that, to adequately address environmental concerns about its relocated operations, it shall prepare (1) the data and information necessary to development of an Environmental Assessment Worksheet (“EAW”), (2) completed air dispersion modeling, and (3) an air emission risk analysis (“AERA”). The information shall include emissions and discharges related to all material handling, including emissions related to recovery of metals from the shredder residue. After submitting its applications, Northern Metals shall respond to all MPCA requests for new information or revised information within the time frame requested by the MPCA, or request an extension as provided in Part IX.

iii. Within 18 months of issuance of a permit authorizing shredding at a new location or August 1, 2019, whichever comes sooner, Northern Metals shall terminate shredding at the Facility. After termination of shredding activities at the Facility pursuant to this Consent Decree, Northern Metals may operate the Facility to receive, sort, size and ship metal and other materials, but shall not conduct any metal shredding operations. Following termination of shredding at the Facility, Northern Metals shall apply to either void or modify its Permit to preclude emissions generated by shredding by submitting the appropriate “applicability determination request” and/or permit application information, if necessary, to the MPCA.

E. Permit Processing/Termination of Minneapolis Location Shredding. The MPCA agrees to use its best efforts to expedite processing of the Northern Metals permit application(s), including providing expedited review of all permit related submittals, if application(s) is/are submitted in complete and approvable form by August 1, 2017. Regardless of whether Northern Metals is successful in obtaining a permit to operate the shredder at an alternative location, Northern Metals agrees that it shall not apply for a new air emission permit for the operation of a metal shredder at the Facility after the August 1, 2019 shutdown deadline.

F. Shredder and MRP Design. Northern Metals agrees that any shredder and shredder-residue processing operation proposed for a new Minnesota location will be housed in a building(s) that is/are a total enclosure. All particulate matter emissions generated in the total enclosure(s) shall be routed through control equipment that collectively achieves overall control efficiencies greater than or equal to the higher of 1) the 99% for PM, 93% for PM10, and 93% for PM2.5 or 2) the manufacturer’s guaranteed control efficiencies for PM, PM10, and PM2.5. If the control equipment is not listed control equipment in Minn. R. 7011.0070, the equipment Northern Metals installs shall have a manufacturer’s guarantee that the equipment can achieve

the above-listed efficiencies. In any permit issued by the MPCA authorizing operation of a new facility, Northern Metals shall be allowed to demonstrate that it has achieved the required control efficiencies for PM by surrogate parameters (i.e., pressure drop, meter readings) established by the permit, but shall not be precluded from demonstrating that any readings at variance with the required control efficiency parameters were the result of a “clean air flow.” MPCA agrees that, for any permit issued allowing construction and operation of a shredder and shredder-residue processing operation at a new Minnesota location, the MPCA will establish site-specific, unit-specific particulate matter emissions limits based on consideration of both the overall level of control efficiency predicted for the installed equipment and allowable levels of particulate matter based on ambient air modeling submitted by Northern Metals and approved by the MPCA through the environmental review and permitting process. Northern Metals must design the new facility to minimize generation of fugitive emissions from shredder residue and other products by ensuring that handling and processing take place inside the building(s) to the extent practicable. Northern Metals may not commence construction of the new facility until MPCA has issued a negative declaration on the EAW and issued a permit authorizing construction of the new facility.

G. Water Quality Corrective Actions. Northern Metals shall take the following actions to return the Facility to compliance with its NPDES/SDS permit No. MN0063380 (“NPDES/SDS permit”). All required corrective actions in Section G apply to the Facility only.

i. Northern Metals shall immediately:

1. Move and thereafter maintain the Automotive Shredder Residue (“ASR”), also known as shredder residue material, under permanent cover (such as the Rain and Snow Shed) or a temporary cover, such as a tarp and submit photographic documentation to the MPCA showing that the ASR is no longer exposed to stormwater.

THIS REQUIREMENT HAS BEEN COMPLETED.

2. Record all discharges from the stormwater treatment system for reporting on the Discharge Monitoring Report.

3. Sample all discharges as required by the NPDES/SDS permit, including collecting grab samples for Total Aluminum, Total Copper, Total Lead, pH, Total Silver, Total Zinc, and composite samples for Total Suspended Solids, and begin analyzing pH within 15 minutes after sample collection.

ii. Northern Metals shall within 30 days of the Effective Date:

1. Submit an updated Stormwater Pollution Prevention Plan (“SWPPP”) that accurately reflects the site and facility operations and conditions and that includes the “preventative maintenance program” required by the NPDES/SDS permit.

2. Submit a corrective action plan that ensures that Northern Metals:

a. Updates the SWPPP to reflect site conditions (including the SWPPP map) and ensures that the SWPPP identifies all potential sources of discharges from the facility property at least once per calendar year, and ensures changes documented in inspections are addressed and incorporated into the SWPPP;

b. addresses the recurring effluent exceedances;

c. accurately includes information to the MPCA in future stormwater annual reports and Discharge Monitoring Reports (“DMR”);

d. collects the correct number and type of samples in accordance with the NPDES/SDS permit, including (1) to the extent that an automatic sampler is used to comply with the NPDES/SDS permit, the steps will be taken to ensure deionized water is drawn through the automatic sampler prior to each sample taken, and sampling tubing is inspected, and replaced or properly cleaned, and that a distilled/deionized water blank sample is collected during each sampling event in accordance with the NPDES/SDS permit; (2) to the extent that grab sampling is used to comply with the NPDES/SDS permit, a sample protocol for collecting grab samples representative of the stormwater treatment system discharge will be proposed; and (3) steps that will be taken to flow is accurately estimated as required by NPDES/SDS permit part 5.1 and ensure automatic sampler calibrations are conducted in accordance with the NPDES/SDS permit and records of maintenance and sampler calibration data maintained on-site with the SWPPP;

e. if an exceedance occurs in the future, takes additional samples, investigates the cause of the violation, and acts to prevent future violations including developing and implementing additional structural and non-structural Best Management Practices and other measures to restore compliance with effluent limits; and

f. documents all required employee industrial stormwater training.

H. Water Quality Permit. On April 10, 2014 Northern Metals timely submitted an application for permit reissuance to the MPCA and is therefore entitled to continue to operate under the expired permit as provided in Minn. R. 7001.0160, provided it returns to compliance with the terms and conditions of the expired permit. The MPCA agrees that Northern Metals may continue to operate under the expired permit until it terminates shredding operations at the Facility if it completes the corrective actions under this Consent Decree. If Northern Metals completes the corrective actions and demonstrates compliance with the expired permit for a period of 6 consecutive months, Northern Metals may apply to renew, modify or terminate its individual NPDES/SDS permit. If Northern Metals terminates the individual NPDES/SDS permit, Northern Metals shall apply for coverage under the appropriate general stormwater permit for any continued scrapyards operations at the Facility.

I. Community Communications. Until it ceases operation of its Facility, Northern Metals agrees that it shall, upon the request of the MPCA, meet with community members and representatives of the City of Minneapolis at least once a quarter and shall record concerns and complaints related to its operation and provide a written response detailing what it intends to do to mitigate or eliminate the issue identified. The MPCA agrees that it shall attend these community meetings if Northern Metals or the City of Minneapolis requests that it do so.

VI.

CIVIL PENALTY, COSTS AND ATTORNEY FEES

A. Civil Penalty. Northern Metals shall pay \$1,000,000 to the MPCA as a civil penalty, with interests at the judgment rate on all amounts unpaid after 6 months, in accordance with the following schedule of payments:

Installment Number	Payment Due Date	Payment Amount	Principal Amount	Interest Amount	Balance
Total Penalty Amount					\$1,000,000.00
1	Due within 30 days of entry by the Court	\$ 333,333.33	\$ 333,333.33		\$ 666,666.67
2	2/1/2018	\$ 346,666.66	\$ 333,333.33	\$ 13,333.33	\$ 333,333.34
3	2/1/2019	\$ 346,666.67	\$ 333,333.34	\$ 13,333.33	
Totals		\$ 1,026,666.67	\$ 1,000,000.00	\$ 26,666.67	

Note: Installment Number 2 Interest Amount is calculated at 0% APR for the first 6 months and 4% APR for the second 6 months.

Note: Installment Number 3 Interest Amount is calculated at 4% APR for 12 months.

Northern Metals may prepay this penalty in whole or in part. When Northern Metals elects to pay off the penalty in full, it shall give written notice to the MPCA and the MPCA shall then prepare and provide a payoff statement. The payoff statement shall include all principal and interest, if any, due and payable as of the payoff date to the MPCA.

B. Reimbursement of Costs Relating to MPCA-Installed Monitors. Northern Metals shall pay \$160,000 to compensate the MPCA for past monitoring costs that it incurred in relation to the operation of monitoring stations 909 and 910 within 30 days of the Effective Date.

C. Court Costs. Northern Metals shall pay \$10,000 to compensate the MPCA for court and hearing costs within 30 days of the Effective Date.

D. Attorney Fees. Northern Metals shall pay \$500,000 to compensate the MPCA for its attorney fees within 30 days of the Effective Date.

E. Ongoing Air Monitoring Costs. Northern Metals agrees that it shall pay \$100,000 to the MPCA each year to compensate the MPCA for staff and lab costs related to ongoing particulate matter and lead monitoring at monitoring stations 909 and 910 for three years, i.e., through calendar year 2020. Northern Metals shall pay this annual sum at the same time and in the same manner and subject to the same conditions as stated in Part VI.G.

F. City of Minneapolis Mitigation. Northern Metals has agreed to the intervention of the City of Minneapolis in the Ramsey County district court matter and has signed a stipulation of intervention to be filed concurrently with this Consent Decree. To settle potential claims from the City of Minneapolis relative to Northern Metals, Northern Metals agrees that it shall provide \$200,000 to the City of Minneapolis each year for three years, with the first payment within 30 days of the Effective Date. The City of Minneapolis agrees that this money shall be used solely for mitigation projects in North and Northeast Minneapolis. The mitigation projects shall include projects in the impacted neighborhoods to (1) identify and educate at-risk residents on asthma triggers; (2) enroll families with children suffering from poorly controlled asthma in a new asthma trigger mitigation program; and (3) implement community and block-by-block blood lead level screening events in cooperation with local clinics which will offer follow-up venous blood screening as needed; and (4) identify and connect affected individuals with resources to help reduce environmental exposure to lead. The City of Minneapolis agrees to submit an annual report to the MPCA describing how the money provided under this Consent Decree was spent and how many individuals, families and homes were served by the programs.

The City of Minneapolis shall submit this report on the anniversary of the Effective Date for the three years that payments are provided under this Consent Decree.

G. Payments to MPCA. The MPCA will provide an invoice for the payments due under Part VI.A-E to Northern Metals following the Effective Date. Northern Metals shall pay all amounts due under Part VI.A-E by certified check or money order payable to the “Minnesota Pollution Control Agency” and should not submit payment until an MPCA invoice is received. The certified check or money order must be mailed to MPCA, P.O. Box 64893, St. Paul, Minnesota, 55164-0893. In the alternative, Northern Metals may make an electronic payment by contacting MPCA Fiscal Services at 651-757-2834.

If Northern Metals fails to make the required payment within 30 days after receipt of the above-referenced invoice, Northern Metals agrees to pay a late payment charge in an amount equal to 1 percent of the unpaid payment. If the payment, including late charges, is not received by the MPCA within 60 days after receipt of the invoice, the MPCA may immediately exercise any and all administrative and judicial remedies available to it to collect the amount due. Northern Metals agrees to pay and shall also be indebted to the MPCA for its attorneys’ fees and cost incurred by the MPCA in connection with its collection of the amounts owed pursuant to this Consent Decree.

H. Payments to the City of Minneapolis. Payments to the City of Minneapolis under VI.F above shall be made by check or money order payable to the City of Minneapolis and directed to Erik E. Nilsson, Deputy Minneapolis City Attorney, Room 210, City Hall/Courthouse, 350 South 5th Street, Minneapolis, MN 55415.

VII.

ENFORCEMENT AND RESERVATION OF REMEDIES

A. The parties to this Consent Decree may request relief from this Court if issues arise concerning the interpretation of this Consent Decree that cannot be resolved through Dispute Resolution as provided in Part VIII below. This Court specifically retains continuing jurisdiction over both the subject matter hereof and the parties hereto for the purposes of interpreting, enforcing or modifying the terms of this Consent Decree, or for granting any other relief not inconsistent with the terms of this Consent Decree, until this Consent Decree is terminated. Northern Metals or the MPCA may apply to this Court for any orders or other relief necessary to construe or effectuate this Consent Decree or seek informal conferences for direction as may be appropriate.

B. If Northern Metals does not comply with the requirements of this Consent Decree, the Court may enforce this Consent Decree by any one or any combination of the remedies available under Minn. Stat. § 115.071, including civil penalties in an amount to be established by the Court, based on the gravity of the violations, the history of this matter, and the economic benefit, or injunctive relief, or other relief available through the contempt powers granted to the Court.

C. Nothing in this Consent Decree shall be deemed to preclude the MPCA from exercising its authority under Minn. R. 7009.0040 to require Northern Metals to further reduce particulate matter or other emissions at the Facility if the MPCA determines that the Facility is contributing to such ambient air violations and such reductions are necessary to ensure compliance with ambient air standards. The MPCA may apply to the Court for an order in

support of this authority under this Consent Decree if Northern Metals and the MPCA cannot agree on appropriate actions following Dispute Resolution under Part VIII.

D. MPCA specifically reserves the State's right, pursuant to Minn. Stat. § 115.072 (2016), to seek recovery of its litigation costs and expenses arising from any willful violations of this Consent Decree that require the MPCA to file a motion with this Court for enforcement of this Consent Decree.

E. MPCA specifically reserves the State's right to take actions to address violations arising out of statutes and rules not listed as within the scope of this Consent Decree and, unless otherwise provided herein, any violations arising after the Effective Date.

VIII.

DISPUTE RESOLUTION

i. Scope. Disputes over issues involving the permitting process, including the information necessary to determine whether a permit can be issued or the terms and conditions of such a permit, shall be resolved by the MPCA through its administrative process in Minn. R. ch. 7007 and shall not be presented to the Court for resolution. If Northern Metals is aggrieved by the MPCA's decision regarding issuance or denial of a permit or the terms of such a permit, it may seek review of that decision under Minn. Stat. § 115.05, subd. 11.

ii. Process. The parties to this Consent Decree shall resolve disputes over the meaning of requirements in this Consent Decree by following the process in this Part. If a dispute arises as to the meaning of any part of this Consent Decree, the parties shall first attempt to resolve the dispute through informal negotiations. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement between the parties. A dispute shall be considered to have arisen when one party sends the other

party a written Notice of Dispute. If the dispute cannot be resolved within the period for informal negotiations, the MPCA Commissioner shall issue a ruling on the disputed issue. Northern Metals shall have 30 days following receipt of the MPCA Commissioner's ruling to file and serve a motion with the Court seeking a Court order resolving the issue in dispute. If Northern Metals does not file and serve the motion within 30 days following receipt of the Commissioner's ruling, Northern Metals agrees to comply with the Commissioner's interpretation of the disputed portion of this Consent Decree. Throughout any dispute resolution, Northern Metals shall comply with all portions of this Consent Decree that are not in dispute. The service and filing of the motion shall include a notice of motion and motion, legal memorandum, and exhibits and affidavits as applicable. Nothing in this Part shall be construed to prevent the MPCA from seeking to enforce this Consent Decree as provided under Part VII if Northern Metals does not seek relief from the Court following dispute resolution.

IX.

EXTENSIONS/FORCE MAJEURE

Northern Metals may request an extension of any deadline included in this Consent Order by making application to the MPCA. The MPCA may authorize an extension without Court approval, and any such extensions shall be deemed to be approved under the terms of this Consent Decree. Northern Metals must request the extension in writing at least 10 days before the scheduled deadline, or as soon as possible before that date if the reason for the extension request arises less than 10 days before the deadline. Each deadline extension request shall separately specify the reason why the extension is needed. No requested extension shall be effective until approved in writing by the MPCA, acting through the Commissioner or delegated staff. The MPCA shall grant an extension only for the period of time the MPCA determines is

reasonable under the circumstances, provided that timely extension requests based on good cause as defined below shall not be unreasonably denied. The written approval or grant of an extension request shall be considered an enforceable part of this Consent Order. Northern Metals has the burden of demonstrating to the satisfaction of the MPCA that the request for the extension is timely, and that good cause exists for granting the extension. Good cause can include, but is not limited to, the following:

- a. circumstances beyond the control of Northern Metals; and
- b. delays caused by the MPCA in reviewing submittals required by this Agreement that Northern Metals submitted timely in complete and approvable form, if those delays make it not feasible for Northern Metals to meet the required schedules.

The MPCA shall find that “good cause” exists if the reason for delay arises from causes beyond the control of Northern Metals that could not be overcome with the exercise of due diligence. Good cause does not include unanticipated costs, increases in the cost of control equipment, or delays in MPCA review of submittals when the submittals are not in complete and approvable form.

X.

STIPULATED PENALTIES.

A. For any failure by Northern Metals to comply with the terms of this Consent Decree, and subject to the provisions of Sections VIII (Dispute Resolution) and IX (Extensions/Force Majeure) as determined by the MPCA, Northern Metals shall pay to the MPCA, within thirty (30) Days after receipt of written demand to Northern Metals by the MPCA, stipulated penalties as follows:

i. For failure to comply with any operating conditions established by the performance testing as shown on Attachment 2 or the requirements established in Part V.B.ii.1-5 for shredder operation: \$500 for each day of operation where operating requirements are not met.

ii. For failure to comply with requirements established in Part V.C.iii.1-4 for the MRP: \$500 for each day of operation where operating requirements are not met.

iii. For failure to comply with requirements established in Part V.G.i.2-3 for recording and sampling discharges: \$500 per discharge unrecorded or where samples are not taken or taken using incorrect method.

iv. For failure to submit an updated SWPPP in 30 days under Part V.G.ii.1 or corrective action plan under Part V.G.ii.2: \$100 per day late per plan.

B. All stipulated penalties shall begin to accrue on the day after the performance is due and shall continue to accrue until performance is satisfactorily completed. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

C. In any instance where the MPCA seeks to impose stipulated penalties of any kind under Part X, the MPCA shall provide Northern Metals with a detailed written statement together with appropriate supporting documentation that describes the facts and/or conduct that justifies the imposition of a stipulated civil penalty.

D. Northern Metals shall not be liable for stipulated penalties if it has submitted a request for an extension under Part IX and the request has been granted.

E. Northern Metals shall pay all stipulated penalties to the MPCA within 30 days following receipt of written demand from the MPCA following the procedure and subject to the conditions in Part VI.G.

F. Stipulated penalties shall continue to accrue as provided in accordance with Part X.A during any dispute, with interest on accrued stipulated penalties payable and calculated at the judgment rate, but need not be paid until the dispute is resolved by agreement of the Parties or by the Court.

G. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the MPCA under this Consent Decree by reason of Northern Metals' failure to comply with any requirement of this Consent Decree, as reserved in Part VII. The MPCA specifically reserves the right to apply to the Court for appropriate relief under Part VII in the event that Northern Metals fails to meet the August 1, 2019 deadline established in Part V.D.iii.

XII.

NOTIFICATION.

All notices under this Consent Decree shall be in writing. Unless otherwise specified, notices, progress reports and any other submittals made by Northern Metals pursuant to this Consent Decree shall be sent by mail, email, or hand delivered to the following individuals until notified by a Party that the person identified has changed:

Brent Rohne
Inspector, Air Compliance & Enforcement Unit
Minnesota Pollution Control Agency
520 Lafayette Road
Saint Paul, MN 55155
(651) 757-2674
Brent.rohne@state.mn.us

Notices and other documents sent to Northern Metals and the City of Minneapolis shall be addressed as follows unless Northern Metals or the City of Minneapolis specify otherwise:

Northern Metals Contact
Scott Helberg
Chief Operating Officer
Northern Metal Recycling
2800 Pacific St N, Minneapolis, MN 55411
(612) 529-9221
scott.helberg@emrgroup.com

Daniel Huff, MPA, REHS
Environment Health Director
City of Minneapolis
250 Fourth Street—Room 414
Minneapolis, MN 55414
(612) 673-5863
Daniel.huff@minneapolismn.gov

XIII.

SEVERABILITY.

The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Consent Decree shall remain in full force and effect.

XIV.

HOLD HARMLESS.

Northern Metals agrees to indemnify and save and hold the MPCA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Northern Metals, its officers, employees, agents or contractors in carrying out the activities pursuant to this Consent Decree; provided, however that Northern Metals shall not indemnify the MPCA nor save or hold its employees and agents harmless from any claims or causes of action arising out of the acts or omissions of the MPCA, or its employees and agents.

XV.

AMENDMENT OF DECREE, SUCCESSORS.

This Consent Decree may be amended by written agreement of the parties and amendments shall be entered with the Court. This Consent Decree shall be binding upon Northern Metals and its successors and assigns and upon the MPCA, its successors and assigns, and the City of Minneapolis, its successors and assigns. If Northern Metals sells or otherwise conveys or assigns any right, title or interest in the Facility, the conveyance shall not release Northern Metals from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or assignment.

XVI.

EFFECTIVE DATE.

This Consent Decree is effective upon the date it is entered by the Court (“Effective Date”). Northern Metals agrees to continue to initiate and implement all activities necessary to comply with the provisions of this Consent Decree pending entry by the Court.

XVII.

ENTIRE AGREEMENT.

This Consent Decree constitutes the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Consent Decree.

XVIII.

TERMINATION.

Prior to complete termination of the requirements of this Consent Decree, any party may, upon motion to the Court, seek to terminate specific provisions of this Consent Decree. This Consent Decree shall be subject to complete termination upon motion by any party after

Northern Metals satisfies all of the requirements of this Consent Decree. At such time, if Northern Metals believes that it is in compliance with the requirements of this Consent Decree, and has paid the civil penalty and all other payments and any stipulated penalties required by this Consent Decree, then Northern Metals shall so certify to the MPCA and unless the MPCA objects in writing with specific reasons within 60 days of receipt of the certification, the Court shall order that this Consent Decree be terminated on Northern Metals' motion. If the MPCA objects to Northern Metals' certification, then the matter shall be subject to Dispute Resolution in Part VIII.

THE PARTIES ENTER INTO AND APPROVE THIS CONSENT DECREE AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED, AND BY THEIR SIGNATURES, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT.

<p>NORTHERN METALS, LLC</p> <hr/> <p>Scott Helberg, Chief Operating Officer</p> <p>Dated: _____</p>	<p>MPCA</p> <hr/> <p>John Linc Stine, Commissioner</p> <p>Dated: _____</p>
<p>CITY OF MINNEAPOLIS</p> <hr/> <p>Dan Huff, Environmental Health Director</p> <p>Dated: _____</p>	

IT IS SO DECREED AND ORDERED. JUDGMENT SHALL BE ENTERED IN ACCORDANCE WITH THE FOREGOING CONSENT DECREE.

Date

Judge of District Court