

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

_____	)	
UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 2:19-cv-095
	)	
TILDEN MINING COMPANY L.C.,	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

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## I. INTRODUCTION

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

B. The Complaint alleges, *inter alia*, that since 2009 the Defendant’s iron ore processing plant, located in Ishpeming, Marquette County, Michigan, has emitted pollutants into the air from various emission sources in amounts that exceed limits established by the Michigan State Implementation Plan (“Michigan SIP”). In addition, the Complaint alleges that Defendant exceeded certain emission limits and/or failed to operate, maintain and monitor certain processes at its plant in violation of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for the Taconite and Iron Ore Processing Industry, 40 C.F.R. Part 63, Subpart RRRRR.

C. On February 21, 2014, EPA issued a notice to the Defendant alleging violations of the Michigan State Implementation Plan and federal laws related to certain air emissions from its plant (“February 21, 2014 Notice of Violation”).

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

E. This Consent Decree is intended to represent a comprehensive resolution of the claims alleged in the Complaint and the claims resolved through Section XIII (Effect of Settlement/Reservation of Rights) and to ensure that when the compliance measures required by this Decree have been fully implemented, Defendant’s plant will be operated and maintained to prevent a recurrence of the violations alleged in the Complaint and the violations resolved through Section XIII (Effect of Settlement/Reservation of Rights).

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

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

## II. JURISDICTION AND VENUE

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

the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and Section 113(b) of the Act, 42 U.S.C. § 7413(b), because the Defendant resides and is found in this District and because the violations alleged in the Complaint are alleged to have occurred within this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

### III. APPLICABILITY

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

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

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

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

c. the Court approves such substitution.

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

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

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

#### IV. DEFINITIONS

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

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

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

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

“Continuous Opacity Monitor” or “COM” shall mean the automated monitor of opacity readings from an ESP stack designed to control emissions from an indurating furnace at the Tilden Mine.

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

“Defendant” or “Tilden” shall mean Tilden Mining Company, L.C.

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

“Effective Date” shall have the definition provided in Section XVI.

“Electrostatic Precipitator” or “ESP” shall mean the primary particulate emissions control equipment for the indurating furnaces at the Tilden Mine.

“MDEQ” shall mean the Michigan Department of Environmental Quality.

“O&M Plan” shall mean the Operations & Maintenance Plan, attached hereto as Appendix A, that sets forth operating parameters and maintenance procedures for key and auxiliary pollution control equipment at the Tilden Mine.

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

“Parties” shall mean the United States and the Defendant.

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

“Tilden Mine” shall mean Tilden’s taconite mine and processing plant located in Ishpeming, Marquette County, Michigan.

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

## V. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendant Tilden shall pay the sum of \$125,000, as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

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

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

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices). At the time of payment, Defendant shall send notice that payment has been made to: (i) EPA via email at [acctsreceivable@epa.gov](mailto:acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) the United States via email or regular mail in accordance with Section XV. Such notice shall state that the payment is for the civil penalty owed pursuant to this Consent Decree and shall reference the civil action number, the CDCS Number, and the DOJ case number 90-5-2-1-11172.

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

## VI. COMPLIANCE REQUIREMENTS

### A. Operation & Maintenance

12. Commencing no later than 30 Days after the Effective Date of this Consent Decree, Defendant shall comply with the requirements set forth in the Operations & Maintenance Plan (“O&M Plan”), attached hereto as Appendix A.

13. At least once per calendar year, but as frequently as necessary, Defendant shall review its O&M Plan to determine if any updates are necessary to maintain the effectiveness of all key and auxiliary equipment associated with the ESPs and wet scrubbers. Defendant shall submit any updates to its O&M Plan to EPA. If EPA disagrees with any such updates, then EPA will send Defendant a written notification describing the disagreement within 60 Days of receipt of Defendant’s updates. Defendant may implement any O&M Plan updates, but shall discontinue any such updates in the event of EPA disagreement, unless the issue is submitted to dispute resolution.

14. Once per calendar year, Defendant shall provide refresher training on the requirements of the O&M Plan to relevant personnel.

### B. Continuous Opacity Monitoring

15. Defendant’s Review of Continuous Opacity Monitoring (COM) data. Every six months after the Effective Date (to be submitted on September 15 and March 15) Defendant shall submit a report that includes each instance, or related group of instances, except for an isolated instance that is the only 6-minute block average exceeding 20% but not exceeding 27% occurring within an hour, in which the 6-minute block average reading of the COM data for each ESP exceeds 20% opacity. For each instance or related group of instances, Defendant shall:

a. Identify the root cause of each instance in which the 6-minute block average reading exceeds 20% opacity;

b. When the root cause is unknown, provide a description of efforts taken by Defendant to investigate the root cause of each 6-minute block average reading that exceeds 20% opacity, including a copy of any related ESP operating records;

c. Describe corrective actions taken in response to the root cause of each instance in which the 6-minute block average reading exceeds 20% opacity, and attach relevant documents produced to address the cause of the high reading(s), if any; and

d. Describe preventative actions taken, if any, and actions to be taken, if any, by Defendant to eliminate such instances of 6-minute block average readings that exceed 20% opacity in the future, along with a proposed schedule for taking such corrective action, or, alternatively, a justification for taking no additional action to address such instances.

16. EPA's Review of Defendant's Future Corrective Action. If EPA disagrees with any portion of Defendant's conclusions concerning the recommendations for actions planned or not planned to address exceedances reported in Paragraph 15.d, then EPA will send Defendant a written notification describing the disagreement within 60 Days of receipt of the Defendant's conclusions. If the Defendant objects to any modified or additional corrective action required by EPA, it may dispute EPA's determination pursuant to Section XI (Dispute Resolution). If no dispute is initiated, Defendant shall carry out the corrective action sought by EPA.

### C. Wet Scrubbers

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

18. Response to Pressure Drop and Water Flow Rate Deviations.

a. On a semi-annual basis, Defendant shall report to EPA (on the dates specified in Paragraph 15) each uncorrected pressure drop and scrubber water flow rate that remained below the established operating limits for that wet scrubber and was not corrected within three consecutive 10-Day periods as described in 40 C.F.R. § 63.9634(j). The report shall detail and document compliance with the corrective action procedures required by 40 C.F.R. § 63.9634(j).

b. On a semi-annual basis, Defendant shall submit a report (on the dates specified in Paragraph 15) to EPA that lists all daily average pressure drop and scrubber water flow rate that remained below the established operating limits for that wet scrubber after three attempts at corrective action pursuant to 40 C.F.R. § 63.9634(j) and the corrective action taken. For each instance in which three attempts at corrective action are unsuccessful, Defendant shall submit the results of the performance test conducted to establish new operating limits and:

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

## VII. PERMITS

19. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (Force Majeure) for any delay in



the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

20. Permits to Ensure Survival of Certain Consent Decree Terms. Prior to termination of this Consent Decree, Defendant shall submit a complete application to MDEQ to incorporate its O&M Plan set forth in Appendix A into a non-Title V, federally enforceable permit to install that will survive termination of this Consent Decree. All permits shall authorize Defendant to make updates and revisions to the O&M Plan and shall not require that permit amendments be obtained to authorize such updates and revisions. The Parties agree that the incorporation of these provisions into the Title V Permit shall be done in accordance with the State's Title V rules.

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

#### VIII. REPORTING REQUIREMENTS

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

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

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

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

24. If no reportable event occurs during a reporting period, Defendant is not obligated to submit an empty report but may comply with its reporting obligation by submitting a cover letter stating that no reportable event occurred, together with the certification contained in Paragraph 23.

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

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

#### IX. STIPULATED PENALTIES

27. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A “violation” includes failing to perform any obligation required by the terms of this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree, except that an isolated differential pressure deviation or scrubber water flow rate deviation, by itself, shall not be considered a violation of this Decree unless and until the deviation is not corrected within three consecutive 10-Day periods pursuant to 40 C.F.R. § 63.9634(j) and the reports required by this Decree are not submitted timely to EPA.

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

29. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements set forth in Section VI:

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

30. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII.

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

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

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

33. Stipulated penalties shall continue to accrue as provided in Paragraphs 28 through 32, during any Dispute Resolution, but need not be paid until the following:

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

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

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

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

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

36. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

## X. FORCE MAJEURE

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

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

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

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

41. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA’s notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a

force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 37 and 38. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

## XI. DISPUTE RESOLUTION

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

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

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

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

46. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the Plaintiff's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

48. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 44, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Defendant reserves the right to oppose this position.

49. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 33. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## XII. INFORMATION COLLECTION AND RETENTION

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

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

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

52. Defendant may also assert that information required to be provided under this Section, including documentary evidence obtained pursuant to Paragraph 50.d., is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

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

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

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

55. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 54. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 54. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's mine, whether related to the violations addressed in this Consent Decree or otherwise.

56. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Tilden Mine, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 54.

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

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

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

#### XIV. COSTS

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

#### XV. NOTICES

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

As to the United States (by email): [eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov)  
Re: DJ # 90-5-2-1-11172

As to the United States (by mail): EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-2-1-11172

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

and

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



As to Defendant (by mail and email): James M. Kochevar  
VP & General Manager  
Tilden Mining Company  
P.O. Box 2000  
Ishpeming, MI 49849-0901  
james.kochevar@clevelandcliffs.com

and

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

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

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

#### XVI. EFFECTIVE DATE

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

#### XVII. RETENTION OF JURISDICTION

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

#### XVIII. MODIFICATION

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

67. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 48, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### XIX. TERMINATION

68. After Defendant has implemented the O&M Plan and training required by Paragraphs 12 & 14, submitted at least two reports required by Paragraph 15, submitted the master list of wet scrubbers required by Paragraph 17, has submitted a complete permit application if required by Paragraph 19, has maintained satisfactory compliance with this Consent Decree for a period of one year from the Effective Date, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

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

#### XX. PUBLIC PARTICIPATION

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

## XXI. SIGNATORIES/SERVICE

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

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

## XXII. INTEGRATION

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

## XXIII. FINAL JUDGMENT

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

## XXIV. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

76. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section III (Applicability), Paragraph 6; Section VI (Compliance Requirements), Paragraphs 12, and related Appendix A, 13 (except with respect to dispute resolution), 14-15, 16 (except with respect to dispute resolution), 17-18; Section VII (Permits), Paragraphs 19-21; Section VIII (Reporting Requirements), Paragraphs 23-24; and Section XII (Information Collection and Retention) Paragraphs 50-51, is restitution or required to come into compliance with the law.

XXV. APPENDIX

77. The following Appendix is attached to and made part of this Consent Decree:  
“Appendix A” is the Operations & Maintenance Plan for Tilden.

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

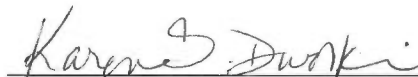
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UNITED STATES DISTRICT JUDGE

Signature Page for Consent Decree resolving:  
United States v. Tilden Mining Company L.C.

FOR THE UNITED STATES OF AMERICA:

May 9, 2019  
Date



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



MICHAEL J. ZOELLER  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
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ANDREW BYERLY BIRGE  
United States Attorney  
Western District of Michigan

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Email: adam.townshend@usdoj.gov

Signature Page for Consent Decree resolving:  
United States v. Tilden Mining Company L.C.

FOR THE UNITED STATES OF AMERICA:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
MICHAEL J. ZOELLER  
Senior Counsel  
Environmental Enforcement Section  
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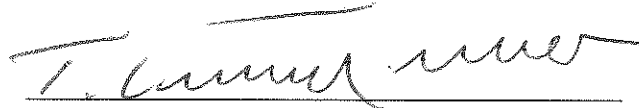
ANDREW BYERLY BIRGE  
United States Attorney  
Western District of Michigan



\_\_\_\_\_  
ADAM TOWNSHEND  
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United States v. Tilden Mining Company L.C.

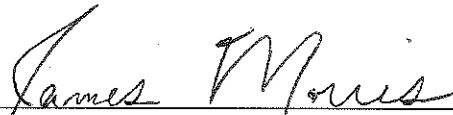
FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:



T. LEVERETT NELSON

Regional Counsel

U.S. Environmental Protection Agency, Region 5



JAMES MORRIS

Associate Regional Counsel

U.S. Environmental Protection Agency, Region 5

Office of Regional Counsel

77 West Jackson Blvd.

Chicago, IL 60604-3507

(312) 886-6632


Signature Page for Consent Decree resolving:  
United States v. Tilden Mining Company L.C.

FOR TILDEN MINING COMPANY L.C.:

3-8-19  
Date

  
\_\_\_\_\_  
JAMES M. KOHEVAR  
VP & General Manager  
Tilden Mining Company L.C.  
P.O. Box 2000  
Ishpeming, MI 49849-0901  
James.kochevar@clevelandcliffs.com

3-8-19  
Date

  
\_\_\_\_\_  
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