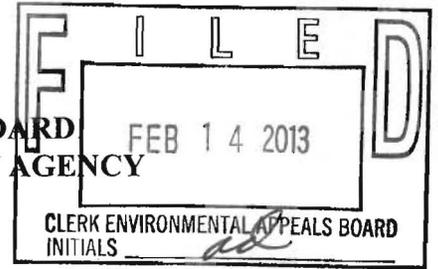


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



)
)
In re: Mesabi Nugget Delaware, LLC) NPDES Appeal Nos. 13-01, 13-02, and 13-03
)
NPDES Permit No. MN0067687)
)
_____)

**ORDER REGARDING BRIEFING SCHEDULE AND
GRANTING PERMITTEE LEAVE TO PARTICIPATE**

On January 23, 2013, WaterLegacy filed a petition (NPDES Appeal No. 13-01) with the Environmental Appeals Board (the “Board”) seeking review of the approval of a water quality standard variance for discharge by Mesabi Nugget Delaware, LLC (“Mesabi Nugget”). On January 28, 2013, the Minnesota Center for Environmental Advocacy filed a petition for review of the same variance (NPDES Appeal No. 13-02), as did the Fond Du Lac Band of Lake Superior Chippewa and Grand Portage Band of Lake Superior Cheppewa (NPDES Appeal No. 13-03).

On January 31, 2013, the Board issued a letter informing the Region of these three petitions and providing a deadline of March 18, 2013, for any response filed to the petitions. *See* Letter from Eurika Durr, Clerk of the Board, to Robert Kaplan, Regional Counsel, U.S. EPA Region 5, *Mesabi Nugget Delaware, LLC* (Jan. 31, 2013). In that same letter, the Board also notified the Permittee, Mesabi Nugget, of the petitions and explained that any response filed by Mesabi Nugget must also be filed by March 18, 2013. *Id.*

Following receipt of the Board's letter, on February 6, 2013, Mesabi Nugget filed with the Board a Motion for Leave to Intervene in the proceedings of this case.¹ The Board has often recognized that permittees have a significant interest in defending challenged permits, and has consistently allowed permittees to participate in appeal proceedings and to file timely responses to petitions for review. In accordance with the Board's practice and the Board's letter requesting a response to the petitions for review in this matter, the Board **GRANTS** Mesabi Nugget leave to participate in the above-captioned appeals.

On February 13, the Board received a "Motion to Deny Review for Lack of Jurisdiction" from the Region, together with a request from the Region to extend the date for a substantive response to the petitions until 45 days after the Board rules on its jurisdictional motion. Although the regulations governing appeals under Part 124.19 do not specifically provide for motions practice in the context of a permit appeal, the Board's current practice manual provides that a response to any written motion should be filed within 10 days after service of the motion. Practice Manual at 45.² Accordingly, any response that Petitioners or the Permittee wish to file in response to the Region's February 13, 2013 motions must be filed with the Board no later than

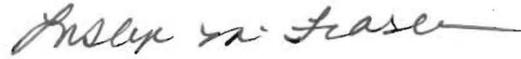
¹ The regulation governing permit appeals before the Board, 40 C.F.R. § 124.19 was recently revised. *See Revisions to Procedural Rules to Clarify Practices and Procedures Applicable to Permit Appeals Pending Before the EAB*, 78 Fed. Reg. 5,281 (Jan. 25, 2013). The revised regulation, which will take effect March 26, 2013, will eliminate the need for permittees in part 124 appeals to file a motion to participate because the deadlines for responding to a petition are explicitly set forth in the revised rule. *Id.* at 5,286 (setting forth revised section 124.19(b)(2013)). Because the Board's letter inviting the Permittee to respond to the petition, and the Board's current practice manual may not be clear as to whether a permitted must seek leave to respond to a petition, the Board addresses the Permittee's motion explicitly in this order.

² The revised 124.19 rule includes a provision allowing responses to written motions within 10 days of service of the motion. *See* 78 Fed. Reg. at 5,286 (setting forth revised section 124.19(f)(3)(2013)).

Monday, February 25, 2013.³ The Board will stay the March 18, 2013, deadline for filing a substantive response to the Petitions, pending a decision on the Region's jurisdictional motion.

So ordered.

ENVIRONMENTAL APPEALS BOARD



Leslye M. Fraser
Environmental Appeals Judge

Date: *February 14, 2013*

³ A document is considered filed on the date that it is received by the Board. Any documents filed with the Board on or after March 26, 2013, will be subject to the revised provisions of 40 C.F.R. § 124.19. *See Revisions to Procedural Rules to Clarify Practices and Procedures Applicable to Permit Appeals Pending Before the EAB*, 78 Fed. Reg. 5,281 (Jan. 25, 2013).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Permittee Leave to Participate in the matter of Mesabi Nugget Delaware, LLC, PSD Appeal Nos. 13-01 through 13-03, were sent to the following persons in the manner indicated:

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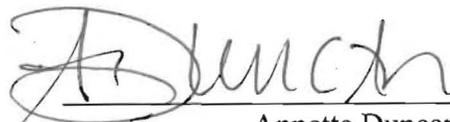
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Dated: FEB 14 2013



Annette Duncan
Secretary