

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

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

**MOTION FOR LEAVE TO INTERVENE**

Pursuant to 40 C.F.R. Part 124 and Section III.D of the Environmental Appeals Board Practice Manual, Mesabi Nugget Delaware, LLC (“Mesabi”) moves for leave to intervene in this proceeding and to respond to the Petitions for Review (“Petitions”) filed by WaterLegacy, the Fond du Lac Band of Lake Superior Chippewa and the Grand Portage Band of Lake Superior Chippewa, and the Minnesota Center for Environmental Advocacy (collectively, “Petitioners”). Mesabi is the Permittee for Permit No. MN0067687 (“Permit”), which is the subject of the Petitions. The Permit is an NPDES Permit issued by the Minnesota Pollution Control Authority (“MPCA”) for Mesabi’s iron nugget production facility in St. Louis County, Minnesota. Mesabi has invested and will invest substantial resources in the Permit and in the operation of the corresponding facility. Mesabi will be substantially harmed by any delay in the Permit’s effectiveness or modification of the Permit terms. As the Permittee, Mesabi has a tangible interest in the subject matter of the Petitions and is a real party in interest. Finally, Mesabi respectfully believes that the Board lacks jurisdiction over the issues raised in the Petitions and plans to file a motion on that subject. Therefore, Mesabi requests that the Board grant it leave to intervene and to participate in all aspects of this proceeding.

Mesabi's intervention will not delay resolution of the Petition; rather, this intervention should expedite the Board's consideration of this matter. Mesabi as the permittee participated in the Permit review process below by providing extensive technical information and responses to both questions from EPA and MPC, as well as the public comments. As a party to these proceedings, Mesabi would aid the EAB by providing legal analysis and record support relevant to assessing aspects of the Permit's provisions and the issues raised by the Petitions. Mesabi plans to file one or more pleadings responsive to the Petitions within the March 18, 2013 time frame provided to U.S. EPA Region 5 or such longer time as the Board may allow.

The Board has recognized that Permittees have a significant interest in defending challenged permits, and has consistently held that it is appropriate to allow Permittees to participate in appeal proceedings and to file responses to petitions for review. "If the petition is filed by someone other than the permit applicant or permittee, the EAB will generally grant a request by the permit applicant or permittee to respond to the petition." EAB Practice Manual (June 2012) at 39; *see also In re Pio Pico Energy Center*, PSD Appeals 12-04, 12-05 and 12-06, slip op. at 2 (EAB Jan. 24, 2013); *In re Hess Newark Energy Center*, PSD Appeal No. 12-02, slip op. at 2 (EAB Nov. 2, 2012); *In re Peabody Western Coal Co.*, NPDES Appeals 10-15 and 10-16, slip op. at 2 (EAB Nov. 04, 2010). The Board should apply this principle in this proceeding.

For the reasons discussed above, Mesabi requests leave to intervene and for permission to file appropriate responses to the Petitions. Notice of the filing of this Motion for Leave to Intervene is being served on all parties identified in the accompanying certificate of service.

Respectfully submitted,

HATCHETT & HAUCK LLP

/s/ Thomas W. Baker

David L. Hatchett  
Thomas W. Baker  
111 Monument Circle, Suite 301  
Indianapolis, Indiana 46204-5124  
Main: (317) 464-2620  
Fax: (317) 464-2629  
Email: [david.hatchett@h2lawyers.com](mailto:david.hatchett@h2lawyers.com)  
[tom.baker@h2lawyers.com](mailto:tom.baker@h2lawyers.com)

Attorneys for Mesabi Nugget Delaware, LLC

### **CERTIFICATE OF SERVICE**

I certify that on February 6, 2013, a true and complete copy of the foregoing was filed electronically, and service was made upon the following counsel of record by first class United States mail, postage prepaid and/or electronic mail:

JUST CHANGE LAW OFFICES  
Paula Goodman Maccabee  
1961 Selby Avenue  
St. Paul, MN 55104  
Email: [pmaccabee@justchangelaw.com](mailto:pmaccabee@justchangelaw.com)

Robert Kaplan, Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3507

Kathryn M. Hoffman  
Minnesota Center for Environmental Advocacy  
26 East Exchange Street, Suite 206  
Saint Paul, MN 55105  
Email: [khoffman@mncenter.org](mailto:khoffman@mncenter.org)

Sara K. Van Norman  
Jacobson, Buffalo, Magnuson, Anderson &  
Hogen, P.C.  
335 Atrium Office Building  
1295 Bandana Blvd.  
Saint Paul, MN 55108  
Email: [svannorman@jacobsonbuffalo.com](mailto:svannorman@jacobsonbuffalo.com)

/s/ Thomas W. Baker

Thomas W. Baker