
From: Mayo.Kathleen@epamail.epa.gov [mailto:Mayo.Kathleen@epamail.epa.gov]
Sent: Thursday, December 06, 2012 5:32 PM
To: Seth Moore; watkins@boreal.org; Nancy Scholdt; Reginald DeFoe; Wayne Dupuis
Cc: Wagener.Christine@epamail.epa.gov; Pfeifer.David@epamail.epa.gov
Subject: Draft conference call notes - Mesabi Nugget variance/consultation

Hi All,

I'm attaching my draft notes of our consultation call on 12/3 regarding the variance request from MN. I still need to add in Christine's presentation, but in the interest of saving time I thought I'd share the summary of tribal concerns right now. Please review and let me know if I've accurately captured your comments/concerns. We're not looking for anything new to be added, but mostly a check to be sure we captured the appropriate info that was conveyed during the conference call. If you could get back to me by COB Friday 12/7 that'd be ideal. If you need additional time, please let me know.

Thank you for your participation in the call.
(See attached file: Consultation Call Notes_120612.docx)

Kathleen Mayo
Life Scientist
USEPA, Water Division
Mail Code WQ-16J
77 W. Jackson Blvd.
Chicago, IL 60604

312-353-5592 (office hrs. 9-6)
312-385-5536 (fax)

-----Forwarded by Christine Wagener/R5/USEPA/US on 12/05/2012 12:15PM -----
To: Christine Wagener/R5/USEPA/US@EPA
From: "Seth Moore" <samoores@boreal.org>
Date: 12/05/2012 10:08AM
Cc: "Margaret Watkins" <watkins@boreal.org>
Subject: (Untitled)

Hi Christine,

Thanks for taking the time to listen to our concerns regarding the Mesabi nugget variance request. Near the end of the call there was some discussion of documentation of the concerns of Grand Portage and Fond du lac Bands. I am not sure where that conversation ended up, but I think it would be useful if there was a bulleted list of those concerns summarizing our call. What do you think? Who should put together that list?

Thanks,

BANDS EX. 31

Seth

Seth Moore, PhD
Director of Biology and Environment Grand Portage Band of Chippewa
27 Store Rd., Grand Portage, MN 55605
PH. 218-475-2022 Cell: 218-370-9310 FAX:218-475-2615
samoore@boreal.org

WTIP radio series: <http://www.wtip.org/drupal/content/dr-seth-moore-grand-portage-wildlife-biologist>

From: Margaret Watkins [mailto:watkins@boreal.org]

Sent: Thursday, December 06, 2012 9:23 AM

To: Kevin Pierard; Dan Cozza; Stephen Jann

Cc: Nancy Schuldt

Subject: Additional Information regarding consultation for the proposed Mesabi Nugget NPDES permit

Please find below some excerpts from citations regarding Mesabi Nuggets' claims regarding financial and technical feasibility to provide wastewater treatment. PolyMets' pilot wastewater treatment plant is located "upstream" on the old LTV site adjacent to Mesabi Nugget.

SEC filing 10Q 3rd quarter

<http://www.steeldynamics.com/3q-2012-quarterly-report/>

pg. 18

Overview

Net income was \$12.8 million, or \$0.06 per diluted share, during the third quarter of 2012, compared with net income of \$43.3 million, or \$0.19 per diluted share, during the third quarter of 2011, and net income of \$44.5 million, or \$0.20 per diluted share, during the second quarter of 2012. Our net sales decreased \$350.1 million, or 17%, to \$1.7 billion in the third quarter of 2012 versus the third quarter of 2011, while net sales decreased \$216.4 million, or 11%, versus the second quarter of 2012. Our gross profit percentage was 9% during the third quarter of 2012 as compared to 10% for both the third quarter of 2011, and the second quarter of 2012.

<http://www.steeldynamics.com/third-quarter-2012-earnings-conference-call-podcast/>

Steel Dynamics, Inc. announced third quarter net income of \$12.8 million, or \$0.06 per diluted share, on net sales of \$1.7 billion.

<http://www.mesabinuggetmn.com/ourcompany.php>

The Mesabi Nugget project is a pioneering initiative to commercialize the production of high-purity pig iron nuggets using an innovative direct-reduction process. Production of nuggets at the Mesabi Nugget plant located near Hoyt Lakes, Minnesota, began in late 2009 with first shipments to Steel Dynamic's Flat Roll division in February 2010.

Mesabi Nugget, LLC

Mesabi Nugget is a joint venture between Steel Dynamics (81 percent) and Kobe Steel (19 percent). Kobe Steel has developed and licensed the technology for production of the nuggets. Mesabi Nugget produces iron nuggets principally as feedstock for EAF steelmaking

in mini mills.

Mining Resources, LLC

Mining Resources, LLC, located near Chisholm, Minnesota, is a new joint venture between Steel Dynamics, Inc. (80 percent) and Magnetation, Inc. (20 percent). Mining Resources will recover iron ore tailings from old natural ore mining operations and will be able to upgrade and process up to one million tons of iron ore product annually. The refined ore will be shipped to Mesabi Nugget near Hoyt Lakes where these iron ore units will serve as the main feedstock for making 97% pure iron nuggets. During construction, over 300 tradesmen and contractors will be used to construct the plant. When operational, 65-70 high-paying, permanent jobs will be created to operate the plant. A late summer 2012 plant start-up is anticipated.

www.mesabinuggetmn.com/pdf/mesabinuggets_tory.pdf

The plant, which consists of more than a dozen interconnected structures, has a capacity to produce 500,000 metric tons of nuggets per year—most of which will be supplied to Steel Dynamics. They will provide pure iron units for the production of such products as flat-rolled steel, engineered bar products, and rail. In turn, the new steel is employed in a variety of products, ranging from consumer products, like autos, appliances, and steel garage doors, to industrial and transportation products like mining and earthmoving equipment, trucks, and railcars.

Mesabi Nugget truly represents a New Age of Iron—driven by innovative technology and the same entrepreneurial spirit that catapulted its parent company, Steel Dynamics, in just 15 years to become the fifth-largest American-owned steel producer.

<http://www.businessnorth.com/briefing.asp?RID=4996>

Business North - The Daily Briefing - Business Newspaper Online PolyMet reaches key environmental goals

11/19/2012

Officials of PolyMet Mining Corp. (NYSE: PLM) on Monday said the company has reached key milestones in the environmental review of its copper-nickel-precious metals project in northeastern Minnesota.

"PolyMet has completed engineering control designs and the design of and inputs to groundwater, surface water and air dispersion models to assess potential environmental

impacts" for PolyMet's NorthMet Project, the company said in a news release. Quality controls and measures have been reviewed by Foth Infrastructure and Environment and Barr Engineering, PolyMet said, and the results were delivered to Minnesota regulatory agencies and the state's Environmental Impact Statement (EIS) contractor for review, which is expected to be completed early next year.

The results will be incorporated into the supplemental draft EIS which will then be reviewed by federal agencies including the Environmental Protection Agency prior to publication for public review.

PolyMet's also said its water treatment pilot plant has now processed more than 1.4 million gallons of water and continues to perform extremely well.

"The modular reverse osmosis water treatment plant will enable PolyMet to meet water quality standards, including (but not limited to) Minnesota's wild rice standard for sulfate. Technical teams from key regulatory agencies have visited the pilot plant. PolyMet's water treatment plans have been well received by community organizations," PolyMet said.

"I am very pleased by the considerable progress made by the permitting team in recent months," said President and CEO Jon Cherry. "Completion of engineering control design, numeric model design and model inputs enables PolyMet to demonstrate that the NorthMet Project meets state and federal air and water standards, which provides the foundation for completion of the environmental review leading to issuance of permits.

"The final steps to completing the supplemental draft EIS for public review are to incorporate the model results and receive comments from the EPA and other cooperating and government agencies," he said.

From: Margaret Watkins [mailto:watkins@boreal.org]
Sent: Tuesday, December 04, 2012 10:28 AM
To: Wagener.Christine@epamail.epa.gov; Nancy Schuldt; samoore@boreal.org; Wayne Dupuis; Reginald DeFoe
Cc: Wester.Barbara@epamail.epa.gov; Pfeifer.David@epamail.epa.gov; Mayo.Kathleen@epamail.epa.gov; Horak.David@epamail.epa.gov; Holst.Linda@epamail.epa.gov; Vasaturo.Gaylene@epamail.epa.gov; Olson.Erik@epamail.epa.gov
Subject: Re: Mesabi Nugget-Understanding of Concerns for Monday, 3 December

Good morning All:

Please find attached the 2010 US EPA Economic Guidelines. As you may recall on during yesterdays consultation that we were told that Mesabi Nugget was required ton fill out 1998 forms, rather than newer forms from 2006.

Sincerely,

Margaret Watkins

At 06:13 PM 11/27/2012, Wagener.Christine@epamail.epa.gov wrote:

Ladies and Gentlemen,

I have reviewed my files and compiled a summary list of the comments and documents that each tribe previously shared with EPA regarding your specific concerns over the Mesabi Nugget variance and permit. I am sending this to you and also to our EPA staff to prepare for our consultation on Monday.

Please contact me if you have additional information you would like us to review prior to the call on Monday, or any questions regarding our conference call.

Until then, thank you for allowing us to hear your concerns.

Christine M. Wagener

*Specialist, Water Quality Standards
U.S. EPA, Region 5
77 W. Jackson Blvd., WQ-16J
Chicago, IL 60604
312-886-0887*

From: Margaret Watkins [mailto:watkins@boreal.org]
Sent: Tuesday, December 04, 2012 11:31 AM
To: Wagener.Christine@epamail.epa.gov; Nancy Schuldt; samoore@boreal.org; Wayne Dupuis; Reginald DeFoe
Cc: Wester.Barbara@epamail.epa.gov; Pfeifer.David@epamail.epa.gov; Mayo.Kathleen@epamail.epa.gov; Horak.David@epamail.epa.gov; Holst.Linda@epamail.epa.gov; Vasaturo.Gaylene@epamail.epa.gov; Olson.Erik@epamail.epa.gov
Subject: 40 CFR part 132, section VIII, appendix F limits variance to 5 years

Good morning:

Please find listed below sections of the final rule for Great Lakes Water Quality Standards. Mesabi Nugget discharges are subject to the Great Lakes Water Quality Standards rules and MN Rules 7052. Please find below the excerpts from the GLI that indicate that a variance is not supposed to exceed five years.

The link to the CFR is: www.epa.gov/owow/tmdl/glsprohibit.pdf

From: Margaret Watkins [mailto:watkins@boreal.org]
Sent: Wednesday, November 28, 2012 3:37 PM
To: Wagener.Christine@epamail.epa.gov; Nancy Schuldt; samoore@boreal.org; Wayne Dupuis; Reginald DeFoe
Cc: Wester.Barbara@epamail.epa.gov; Pfeifer.David@epamail.epa.gov; Mayo.Kathleen@epamail.epa.gov; Horak.David@epamail.epa.gov; Holst.Linda@epamail.epa.gov; Vasaturo.Gaylene@epamail.epa.gov; Olson.Erik@epamail.epa.gov
Subject: Re: Mesabi Nugget-Understanding of Concerns for Monday, 3 December

Good afternoon Chris,

Thank you for the opportunity to provide additional comments in advance of the consultation conference call regarding the proposed variance for Mesabi Nugget. Please find below three comments with supporting information provided.

1) We have asserted that Mesabi Nugget knew or should have known that there was clean-up liability when the property was purchased from Cliffs. Mesabi Nugget purchased the property for a very low price and used some of the existing infrastructure including Area Pit 1 to develop their plant site. Cliffs was enrolled in the VIC program for areas within the property purchased and the adjacent property. Therefore,

40 CFR Part

312

(101)(35) (B) REASON TO KNOW should apply.

(i) ALL APPROPRIATE INQUIRIES To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that

(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and
(II) the defendant took reasonable steps to

(aa) stop any continuing release;

(bb) prevent any threatened future release; and

(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(ii) STANDARDS AND PRACTICES Not later than 2 years after the date of enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

(iii) CRITERIA In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(VI) Visual inspections of the facility and of adjoining properties.

(VII) Specialized knowledge or experience on the part of the defendant.

(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

(IX) Commonly known or reasonably ascertainable information about the property.

(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

And, Mesabi Nugget has added to the load of pollutants being discharged in Area Pit 1 by using water from the pit for process water and discharging minimally treated process water back into the pit.

2) Mesabi Nugget asserts that Reverse Osmosis/Nano filtration (RO) is technically infeasible and pilot testing must wait until after their pellet making furnace is fine-tuned. PolyMet, on the adjoining property has pilot tested RO before even constructing their plant site. Please find below a copy of a recent briefing from PolyMet.

<http://www.businessnorth.com/briefing.asp?RID=4996>

Business North - The Daily Briefing - Business Newspaper Online
PolyMet reaches key environmental goals

11/19/2012

Officials of PolyMet Mining Corp. (NYSE: PLM) on Monday said the company has reached key milestones in the environmental review of its copper-nickel-precious metals project in northeastern Minnesota.

"PolyMet has completed engineering control designs and the design of and inputs to groundwater, surface water and air dispersion models to assess potential environmental impacts" for PolyMet's NorthMet Project, the company said in a news release. Quality controls and measures have been reviewed by Foth Infrastructure and Environment and Barr Engineering, PolyMet said, and the results were delivered to Minnesota regulatory agencies and the state's Environmental Impact Statement (EIS) contractor for review, which is expected to be completed early next year.

The results will be incorporated into the supplemental draft EIS which will then be reviewed by federal agencies including the Environmental Protection Agency prior to publication for public review.

PolyMet's also said its water treatment pilot plant has now processed more than 1.4 million gallons of water and continues to perform extremely well.

"The modular reverse osmosis water treatment plant will enable PolyMet to meet water quality standards, including (but not limited to) Minnesota's wild rice standard for sulfate. Technical teams from key regulatory agencies have visited the pilot plant. PolyMet's water treatment plans have been well received by community organizations," PolyMet said.

"I am very pleased by the considerable progress made by the permitting team in recent months," said President and CEO Jon Cherry. "Completion of engineering control design, numeric model design and model inputs enables PolyMet to demonstrate that the NorthMet Project meets state and federal air and water standards, which provides the foundation for completion of the environmental review leading to issuance of permits.

"The final steps to completing the supplemental draft EIS for public review are to incorporate the model results and receive comments from the EPA and other cooperating and government agencies," he said.

3) US EPA guidance must be used to confirm that the proposed Mesabi Nugget variance can be justified under federal regulations, or the variance must not be granted. Mesabi Nugget has also asserted that being required to install RO is financially risky and infeasible. Mesabi Nugget is a joint venture between Steel Dynamics (81 percent) and Kobe Steel (19 percent). US EPA Economic Guidance for granting a variance from water quality standards states that the structure, size and financial health of a parent firm must be considered to evaluate the likelihood of "substantial and widespread economic and social impact" pursuant to 40 C.F.R. §131.10(g)(6). This analysis is important because Steel Dynamics, Inc. is the majority owner and joint venturer in the Mesabi Nugget project, and directly involved with environmental

From: Wagener.Christine@epamail.epa.gov [mailto:Wagener.Christine@epamail.epa.gov]
Sent: Tuesday, November 27, 2012 6:14 PM
To: watkins@boreal.org; Nancy Schuldt; samoore@boreal.org; Wayne Dupuis; Reginald DeFoe
Cc: Wester.Barbara@epamail.epa.gov; Pfeifer.David@epamail.epa.gov;
Mayo.Kathleen@epamail.epa.gov; Horak.David@epamail.epa.gov; Holst.Linda@epamail.epa.gov;
Vasaturo.Gaylene@epamail.epa.gov; Olson.Erik@epamail.epa.gov
Subject: Mesabi Nugget-Understanding of Concerns for Monday, 3 December

Ladies and Gentlemen,

I have reviewed my files and compiled a summary list of the comments and documents that each tribe previously shared with EPA regarding your specific concerns over the Mesabi Nugget variance and permit. I am sending this to you and also to our EPA staff to prepare for our consultation on Monday.

Please contact me if you have additional information you would like us to review prior to the call on Monday, or any questions regarding our conference call.

Until then, thank you for allowing us to hear your concerns.

Christine M. Wagener

*Specialist, Water Quality Standards
U.S. EPA, Region 5
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compliance including the variance at issue here. Steel Dynamics' 10-Q Quarterly Report filed with the SEC on June 30, 2012 suggests that compliance with Minnesota Water Quality Standards would not have substantial and widespread adverse economic and social impact: "*Environmental and Other Contingencies*. We have incurred, and in the future will continue to incur, capital expenditures and operating expenses for matters relating to environmental control, remediation, monitoring, and compliance. We believe, apart from our dependence on environmental construction and operating permits for our existing and proposed manufacturing facilities, that *compliance with current environmental laws and regulations is not likely to have a materially adverse effect on our financial condition, results of operations or liquidity*; however, environmental laws and regulations have changed rapidly in recent years, and we may become subject to more stringent environmental laws and regulations in the future, such as the impact of United States government or various governmental agencies introducing regulatory changes in response to the potential of climate change." Mesabi Nuggets website indicates Steel Dynamics' net sales were \$6.3 billion in 2010, 6,000 employees worldwide.

At 06:13 PM 11/27/2012, Wagener.Christine@epamail.epa.gov wrote:

Ladies and Gentlemen,

I have reviewed my files and compiled a summary list of the comments and documents that each tribe previously shared with EPA regarding your specific concerns over the Mesabi Nugget variance and permit. I am sending this to you and also to our EPA staff to prepare for our consultation on Monday.

Please contact me if you have additional information you would like us to review prior to the call on Monday, or any questions regarding our conference call.

Until then, thank you for allowing us to hear your concerns.

Christine M. Wagener

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Chicago, IL 60604
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Documents and Comments received by EPA from the Fond du Lac and Grand Portage Tribes regarding Mesabi Nugget Delaware, LLC.

As of 11/27/2012

1. Documents Received from: Margaret Watkins, Grand Portage Tribe

Sent to: US EPA (Mayo, Poleck, Wagener) via email.

Date: 12/13/2011

a. E-mail included the transmittal of a pdf file entitled, "Nugget treatment options and costs 2009, and included Table 1 through Table 7 of the full document with the same name prepared by Barr Engineering for Mesabi Nugget LLC. There were no additional comments attached to the email transmittal.

b. Second e-mail included the transmittal of a copy of a 12 page Stipulation Agreement (entitled, MesabiNuggetStipFinal.pdf) prepared by MPCA (J.T. Connell, Compliance & Enforcement Section, Ind Div), "In the Matter of: Mesabi Nugget Delaware L.L.C., Steel Dynamics, Inc., Hoyt Lakes, Minnesota." The document appeared to be draft, since it was not signed, and outlined alleged violations of NPDES/SDS Permit No. MN0067687. It included Mesabi Nugget's comments regarding the violations, civil penalties imposed by MPCA resulting from the violations, and regulated party requirements. No additional comments were provided.

2. Documents Received from: Margaret Watkins, Grand Portage Tribe

Sent to: US EPA (Wagener) via email.

Date: 12/15/2011

This was an email transmittal with the title "Area 1 Pit Water Treatment Evaluation in Support of the Non-Degradation Analysis, Mesabi Nugget Phase II Project, prepared for Steel Dynamics, Inc, Mesabi Mining LLC, November 2009." The email included a 60 page document titled "Area 1 Pit Treatment Evaluation Draft NOV09.pdf. No accompanying comments were provided.

3. Documents Received from: Margaret Watkins, Grand Portage Tribe

Sent to: US EPA (Wagener) via email.

Date: 12/15/2011

This was an email transmittal with the title, "Fwd: DMR Data" and contained copies of two permit-related documents. Documents were titled, "MN0067687 SD001 DMR DATA.xls," and "MN0042536 SD003 DMR DATA.xls." No additional comments were provided.

- d. Comment to MPCA: [*Permit*] Reiterated the need to protect wild rice waters with effluent limits due to the existence of wild rice in Second Creek (the receiving water) and the downstream Partridge River.
- e. Comment to MPCA: [*Permit*] Stated that the existing permit had alleged violations.
- f. Comment to MPCA: Stated that the NPDES permit MN0067687 was modified after it had already expired, and that Mesabi violated reporting requirements and effluent limits of the permit for three years.
- g. Comment to MPCA: [*Permit*] Asserted rights to Tribal resources.
- h. Comment to MPCA: [*Permit*] Stated that there are no dates in the permit which specify the time at which the company must comply with final effluent limits.

4. Documents Received from: Margaret Watkins, Grand Portage Tribe
Sent to: US EPA (Mayo, Pfeifer, McKim, Kuefler; cc'd: Wagener, Poleck, Schuldt) via email.

Date: 12/19/2011

Email transmittal with title "RE:FW: Mesabi Nugget treatment costs estimation," included a document entitled, "Attachment 2 ZeeWeed Tertiary Membrane Technology and NF Post-Treatment Pilot Scale Demonstration Final Report.pdf."

Comment: [**Variance**] Ms. Watkins indicated she attached a copy of the US Steel Minntac study of Reverse Osmosis and Nano Filtration. . . . "has bearing on Mesabi Nuggets assertions that RO/NF is untested and risky."

5. Commenter: Margaret Watkins, Grand Portage Tribe

Sent to: MPCA (Udd, Foss; electronically copied EPA recipients, Pfeifer, Poleck, Wagener, McKim)

Date: 12/22/2011

(Note: Footnotes were included in the Grand Portage comments to MPCA, which are included <numbering modified from original> at the end of this comment summary).

a. Comment to MPCA: [**Variance**] Essence of comment maintained that MPCA not grant Mesabi a variance from WQS because reverse osmosis/nano filtration was successfully pilot-scale tested by another mining operation in close proximity to Mesabi Nugget, and was found to be the least expensive option by Mesabi Nugget to treat their effluent to meet MN WQS. [*Permit*] Additionally, Grand Portage expressed concerns about intermittent toxicity to aquatic life found in Area 1 Pit which had not been identified or resolved.

b. Comment: [*Permit*] The Area 1 Pit discharges into Second Creek. Second Creek and the Partridge River are waters used for the production of wild rice. The Partridge River is on the MPCA draft impaired waters list for 2012. Seasonal discharges from Area 1 Pit that exceed WQS will likely contribute to sediment loadings of sulfate and other pollutants that may result in toxic sediment in slow moving water where wild rice beds are located.

c. Comment: [*Other*] The Biwabik Iron Formation is considered the most important aquifer in the region for domestic consumption. The State of Minnesota protects all groundwater as a drinking water source¹ and applies Safe Drinking Water Act criteria to ensure its protection. The St. James pit, in the Biwabik Iron Formation, south of Area Pit 1 is the City of Aurora's community water supply. There are known subsurface hydrologic connections from Area Pit 1 to Area Pit 9, Area Pit 9 to Area Pit 9S, Area Pit 9S to the St. James Pit².

¹ MN 7060 Rule

² Barr Engineering, Mine Pit Hydrogeology and Water Balances, Mesabai Nugget Phase II, October, 2009.

6. Commenter: Nancy Schuldt, Fond du Lac Tribe

Sent to: MPCA (electronically copied EPA recipients Holst, Pfeifer, Poleck, Wagener, McKim, Newport, on 1/23/12)

Date: 12/22/2011

Comment to MPCA (sent to EPA via email) [**Variance**]: The Fond du Lac Tribe expressed concerns about delaying treatment technology, [*Permit*] protection of wild rice, [**Variance**] and the anticipated, extended timeframe that the Mesabi facility will not be in compliance with Minnesota's WQS. Tribe asked that variance not be granted. [*Permit*] Additionally, Fond du Lac expressed concerns about aquatic life impairments in the watershed and suggested the company implement biological monitoring as a condition of the permit.

7. Documents Received from: Margaret Watkins, Grand Portage Tribe

Sent to: US EPA (McKim, Wagener) via email.

Date: 2/07/2012

This was an email transmittal with the title, "Mesabi Nugget baseline data" and contained one attachment entitled, "HistoricalandMNDBaselineMonitoring_May_Sep.xls" and included a short note indicating the Water Balance document was likely too large to forward and, thus, was not included.

8. Commenters: Nancy Schuldt and Margaret Watkins, Grand Portage and Fond du Lac Bands of Lake Superior Chippewa, respectively.

Sent to: MPCA (copied EPA recipients Pierard, Holst, Pfeifer, Poleck, Wagener, McKim, on 2/17/12)

Date: 2/17/2012

a. Comment to MPCA: [**Variance?**] Asserted sufficiency of Mesabi's provision of financial assurance to MPCA to clean up residual contamination from the previous site owner, and asserted that clean up must occur to comply with Minnesota law.

b. Comment to MPCA: [**Variance**] Reiterated (from previous, individual Tribal comments) that cleanup technology exists (specifically reverse osmosis and nanofiltration), that technologies have been pilot-scale tested, and that there is insufficient evidence that the project is economically and technically infeasible.

c. Comment to MPCA: [**Other**] Reiterated (from previous, individual Tribal comments) that groundwater must be protected due to the importance of the Biwabik Iron formation as the key aquifer in the region for domestic water supply; reiterated that all groundwater in Minnesota is protected as drinking water, and reiterated that the groundwater in the region is connected to the mine pits located on the Mesabi Nugget property.

Consultation Notes for 12/3/12 Teleconference on Mesabi Nugget Variance

Call Attendees

EPA	Fond du Lac Tribe	Grand Portage Tribe
Christine Wagener (WQB) Linda Holst (WQB) David Pfeifer (WQB) Kathy Mayo (WQB) Tom Poleck (WQB) Ed Fairbanks (IEO, MN Liaison) Barbara Wester (ORC) Eric Olson (ORC) Gaylene Vasaturo (ORC) David Horak (STPB)	Reginald Defoe, FDL DNR Nancy Schuldt, Water Resources	Seth Moore, Environmental Director Margaret Watkins, Water Resources

1. Consultation Info (Kathy)

- Background on EPA’s May 2011 Consultation Policy was provided.
- Mesabi variance is the federal action that potentially triggers consultation with tribes – if tribal interests may be affected.
- Cover 4 steps : (1) **Identify** whether consultation is needed (2) **Notify** Tribes of the activity appropriate for consultation (3) **Gather Input** from Tribes, and (4) **Follow up** with Tribes to explain how tribal input was considered in EPA’s final decision.
- Purpose of this call: Provide as much information on the variance to tribes as possible, and obtain any input on tribal interests that may be affected by the variance.
- EPA needs to establish whether this is an official consultation call, or whether it’s more of an informational call. For Fond du Lac, we’d been previously informed on the 11/20 Water Division call that Nancy Schuldt is authorized to speak for the Fond du Lac Tribe on this particular issue. Is that correct? (Nancy confirmed.) What about Grand Portage? (Seth indicated that Grand Portage considers this an official consultation call and that Margaret Watkins is authorized to speak for the Tribe on this particular issue.

2. Chris explains variance, provides deadlines, etc. (Christine, add your notes here)

3. Tribal concerns (Grand Portage - Margaret)

- Final limits at end of 5 yr permit term are still excessively high.
- As the company is getting their furnace running they are discharging more process water to Area Pit 1.
- Mesabi knew they had water quality problems when they purchased the property.
- At our first meeting in 2007 with Mesabi they stated their minimal wastewater treatment was all they were going to do, and all they planned to do.
- Haven’t done anything for a number of years and bought the property at a very low price.
- SEC filing from Steel Dynamics shows they are doing well and don’t think environmental expenses will impact them.

- Grand Portage has suggested since 2007 that Mesabi try other treatments, do pilot testing of new technology/treatments to ensure compliance with MN WQS.
- Reverse osmosis (RO) was best treatment to achieve compliance with MN WQS.
- Mesabi indicated they'd need to have the furnace up to full blast before they could pilot test new treatment/technology. Grand Portage disagrees.
- Mesabi pilot tested Area Pit 5 and found they could use RO to meet the 10 mg/L sulfate WQS.
- MPCA/Mesabi indicated there were no agricultural or industrial uses downstream. Grand Portage indicates there are aquatic life and wildlife uses and the company is operating contrary to antidegradation rules. Hardness and Total Dissolved Solids, with Sulfates being a factor in that, are major concerns of the Tribe.
- Dave Pfeifer asked for clarification about the VIC program. Grand Portage responded that it's a program that companies can enter into [instead of, or to avoid?] EPA Superfund. It's voluntary and Mesabi entered in with MPCA.

4. Tribal Concerns (Fond du Lac - Nancy)

- Fond du Lac added info about the VIC program and responded that they'd had extensive conversations with Jane Neumann in the R5 Brownsfield Program. There were schedules of compliance for the company to clean up. FDL has been concerned about the pace of clean-up. It should be completed before new projects can be permitted.
- Had conference calls with Jane Neumann so there's a documented history on this with MPCA. All parties should be aware of the water quality issues/requirements when these types of properties are transferred.
- Gaylene Vasturo asked Tribes to relate the VIC info to EPA's potential decision of granting the variance.....Fond du Lac indicated that for legacy pollutants at the site, there should be an understanding by all about what new ownership involves. It's troubling that Mesabi does not believe they need to clean up and reduce pollution discharged.
- Grand Portage has done a good job in laying out the issues of concern to both Tribes – Grand Portage and Fond du Lac.
- Toxicity testing and investigations have occurred but there's no effort to resolve them.
- Second Creek is a wild rice water and with this variance there's avoidance of protecting it.
- If MPCA fully assessed Second Creek it would be impaired for aquatic life use (fish and benthic invertebrates).
- Given what we know about these constituents in other areas of the country, aquatic life use is commonly impaired by these pollutants.
- There is an unresolved toxicity issue and should weigh in the EPA decision whether to approve the variance or not.
- Linda Holst asked if FDL talked to MPCA about assessment concerns. Nancy responded that she's familiar with the 2009 assessment that MN used in their 2011 impaired waters list.
- Linda Holst asked about Second Creek. Nancy indicated MPCA won't assess the St. Louis River Watershed (where Second Creek is located) until 2019 (? Not sure if I captured correct date)

5. Tribal Concerns (Grand Portage & Fond du Lac)

- Company is adding to the concentrations of pollutants and have no plan to reduce concentrations. They are violating the Clean Water Act (CWA) by adding pollution and making the current situation worse.
- Margaret asked if EPA had requested and received financial analysis to determine whether Mesabi Nugget can afford RO nano-filtration?

- Dave Pfeifer responded that EPA asks for economic info based upon the EPA Economic Guidance.
- Margaret asked if it's the more recent 2010 EPA Economic Guidance? Dave said 'no' but that we're still in the process of reviewing what they've sent.
- Seth asked: By what means would Mesabi achieve the levels at the end of the permit period? Dave Pfeifer responded that they haven't specified now they'll achieve compliance at the end of the period. There are short-term and long-term approaches that they'll take. It's not uncommon for EPA to receive something like this where it's not clearly stated how compliance will be achieved (e.g. mercury).
- Margaret said mercury is different because technologies or approaches are evolving so not stating compliance approach would be appropriate. For the Mesabi variance constituents, these are all well known so the compliance approach should be clearly stated.
- Seth: The previous permit expired with Mesabi discharging twice the concentration of parameters. EPA needs to take this into consideration when granting the variance. This new request allows more discharge without specifying how they'll achieve compliance with MN WQS.
- Margaret: 2021 is not consistent with the 5 year variance limit in the regulations. EPA should not approve the new variance because this situation is not consistent with the Clean Water Act. It's a 9 year variance. Mesabi has had a variance since 2007. They are using the variance as a stalling tactic and it's not legal under the Clean Water Act.
- Dave Pfeifer responded that, in general, variances should be temporary. Great Lakes Water Quality Guidance is the only place where the variance timeline is specified. This timeline doesn't necessarily apply to the pollutants in Table 5 (which are part of this variance).
- Margaret: Don't agree. Great Lakes Initiative (GLI) antidegradation says no new or increased pollutants allowed if designated or existing uses cannot be protected. Aquatic Life, Wildlife uses, as well as existing uses such as fishable/swimmable need to be protected in the area of this discharge.
- Nancy: Do not agree that the CWA allows for an open-ended variance. This is a 14 year variance. How does EPA consider antidegradation in review of this request?
- Dave Pfeifer: Still coordinating with HQ and haven't yet nailed down our position.
- Seth: Following up on Nancy's concern - if EPA grants this variance, the Agency might be following the regulations for each variance request in sequence, but overall EPA is not being consistent with the CWA when all variances for this site are looked at in a cumulative manner. If done systematically and repeatedly, EPA is protecting these companies by continuing to approve the variances.
- Barbara: Want clarification about the significance of this action and the VIC program? Is it that the Tribes want all issues resolved through the VIC program before the variance is issued? Grand Portage indicated it was brought up to document that a Brownsfield site should be cleaned up before sale. Mesabi knew they were inheriting a contaminated site. They knew of the water quality issues. Fond du Lac indicated that Mesabi knew they were inheriting a polluted site, but also knew the requirement to comply with MN WQS was not being aggressively enforced by MPCA. EPA's decision on this single site is similar to what's going on all across MN. Industries have been able to discharge toxic metals with the expectation that no one will check. Also, they think that putting up walls or barriers is enough that they don't have to comply with WQS. 2012 is the time to comply with MN WQS.



GRAND PORTAGE BAND OF CHIPPEWA
ENVIRONMENTAL DEPARTMENT
PO Box 428, Grand Portage, MN 55605

December 23, 2009

J. David Thornton
Assistant Commissioner
MPCA
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: MPCA December 15, 2009, Request for Historical information on Wild Rice

Dear Mr. Thornton:

It is a pleasure to hear that one of MPCA goals is to protect wild rice waters. The Minnesota water quality standard (MN WQS) for the protection of wild rice is 10 mg/l sulfate. To ensure the protection of wild rice waters, MPCA has requested any current or historic information (for water bodies listed in the attachment to your request) regarding size and density of stands at specific locations, how stands have changed over time, culturally significant harvest areas, hydrology and water quality.

The wild rice waters around the sites that MPCA is soliciting Tribal input have all been impacted by mining activities. Waters surrounding all of these sites have elevated concentrations of sulfate. The MN DNR has historic information in fisheries documents regarding the concentration of sulfate and flows prior to mining activities commencing at any of the sites listed. Information regarding water quality and quantity is required for any National Pollutant Discharge Elimination System (NPDES) applicant, along with site specific hydrologic data where a discharge is proposed to occur. All of the sites listed in the attachment have NPDES permits issued by MPCA. And, all of the mining projects associated with those waters have a federal component. The US Army Corps of Engineers (USACE) is the federal lead agency for all of the projects listed in the attachment, so clearly section 106 of the Historic Preservation Act applies. For reasons of permitting, the results of the section 106 consultation will be provided to the state agencies by the USACE without disclosing information that tribes may consider confidential.

None of the projects can be permitted without completing the Final Environmental Impact Statements (FEIS). The projects FEIS cannot be issued for Public

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Comment, and a Record of Decision cannot be issued without finishing the consultation process between the Tribes and the USACE. Therefore, we would like MPCA to further discuss how obtaining Tribal historic information would alter the application of the wild rice criteria to wild rice waters that have already been identified?

MPCA does not require trout fisherman to discuss the exact location of their best fishing spots, and/or density of trout caught within a stream in order for a trout stream to be protected as such. Yet, MPCA still protects a trout stream for that specific designated use. In fact, when a trout stream is identified, it is protected under the Clean Water Act for the propagation of fish and shellfish. And, the MN WQS that apply specifically for the protection and propagation of trout are implemented. Therefore, implementation of the wild rice water quality standard should be based on protecting the production of wild rice in any water body where wild rice is currently known to be growing.

If your agency does not have adequate information to ensure the protection of wild rice resources for the projects listed in the attachment, please indicate exactly what is required in addition to what you already have, and why, so that we can assist you. This is such an important topic that it may require face-to-face meetings to discuss. There is an already scheduled State and Tribal mining meeting January 28th, at Fond du Lac that could possibly facilitate an opportunity to talk.

Sincerely,

Margaret Watkins
Grand Portage Environmental Department

Cc Ann Foss, MPCA
 Kathy Mayo, US EPA
 Anna Miller, US EPA
 John Colletti, US EPA