



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

June 4, 2021

Chairman Kevin DuPuis, Sr.
Fond du Lac Band of Lake Superior Chippewa
1720 Big Lake Road
Cloquet, Minnesota 55720
[kevindupuis@fdlrez.com]

Re: Notification under CWA Section 401(a)(2) Regarding PolyMet Mining, Inc. NorthMet Mine Project in St. Louis County, Minnesota

Dear Chairman DuPuis:

The U.S. Environmental Protection Agency Region 5 received notice of the water quality certification under Clean Water Act (CWA) Section 401(a)(1), 33 U.S.C. § 1341(a)(1), issued on December 20, 2018 by the State of Minnesota relating to a proposed U.S. Army Corps of Engineers CWA Section 404 individual permit application for the PolyMet Mining, Inc. NorthMet Mine Project in St. Louis County, Minnesota. In accordance with CWA Section 401(a)(2), EPA is notifying you that the discharge associated with this proposed permit may affect the quality of waters of the Fond du Lac Band of Lake Superior Chippewa (the Band), including the St. Louis River. EPA has made no determination that this project will affect the quality of the waters of the Band.

On March 8, 2021, the U.S. District Court for the District of Minnesota granted the U.S. Environmental Protection Agency's request for a voluntary remand in *Fond du Lac Band of Lake Superior Chippewa v. Cheryl L. Newton*, et al. (Case No. 0:19-cv-02489-PJS-LIB), ECF No. 89. EPA sought this remand to reconsider its lack of notice to the Band under Section 401(a)(2) of the Clean Water Act ("CWA"). 33 U.S.C. § 1341(a)(2).¹

To assist in your evaluation of the potential impacts of the proposed CWA Section 404 Permit and certification on the quality of your waters, I am attaching further information describing the analysis EPA used to make this determination. Pursuant to CWA Section 401(a)(2), if you

¹ In its Order of February 16, 2021, the District Court ruled that EPA had a non-discretionary duty to make a "may affect" determination pursuant to CWA Section 401(a)(2) in this matter. Due to the unique circumstances of this matter, EPA has chosen to invite stakeholders to submit relevant information and to explain the basis for its notification in the enclosed Decision Document. The CWA provides a limited (30 day) timeframe for EPA to make a "may affect" decision and provide appropriate notice. EPA is under no obligation to solicit such information or develop and publish a Decision Document. EPA reserves the right not to do either (or both) in the context of future CWA section 401(a)(2) reviews.

determine that the discharge associated with this permit application and certification “will affect the quality of your waters so as to violate any water quality requirements” of the Band, you may, within 60 days after receipt of this notification, notify Chad Konickson, Regulatory Branch Chief, St. Paul District U.S. Army Corps of Engineers at 651-290-5364 or chad.konickson@usace.army.mil, and EPA in writing that you object to the issuance of the permit, and request that the Corps hold a public hearing on your objection.

If you have questions, you may contact Melanie Burdick of my staff at 312-886-2255 or burdick.melanie@epa.gov.

Sincerely,

Tera Fong
Director, Water Division

Enclosure

cc: Minnesota Pollution Control Agency
Laura Bishop, Commissioner
520 Lafayette Road North
St. Paul, MN 55155-4194

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