

Wisconsin Resources Protection Council Lawsuit Against the Wisconsin DNR and Flambeau Mining Company

A Summary of the Notice Letter filed by WRPC on June 18, 2009

Flambeau Mining Company (FMC), a subsidiary of Kennecott Minerals of Salt Lake City, Utah constructed an open pit copper sulfide mine on the banks of the Flambeau River near Ladysmith, Wisconsin in the mid 1990s. The river formed the western boundary of the project area, and the pit itself was constructed to within 150 feet of the river. The Flambeau Mine was operational for four years. It ceased production in 1997, at which time the unlined pit was backfilled with waste rock and sludge. The direction of groundwater flow is toward the river.

In 1991 (prior to ore production) FMC began submitting surface and groundwater quality data to the Wisconsin Department of Natural Resources (WDNR) on a regular basis. Data collection continued through the mining years (1993-1997) and continues to the present day.

FMC also carried out a series of studies between 1991 and 2008 at the Flambeau River. River sediment, crayfish and walleye were tested upstream and downstream of the mine site for metal content. In addition, surveys were done to track the kinds of insects, worms, leeches and clams (macroinvertebrates) living along the river bottom.

WRPC solicited the help of several experts to analyze FMC's Flambeau Mine monitoring data. Dr. David Chambers and Dr. Kendra Zamzow, who are with the Center for Science in Public Participation (Bozeman, MT) evaluated surface water and groundwater contamination at the mine site. Dr. Ken Parejko, an emeritus professor of Biology at the University of Wisconsin-Stout, evaluated the company's Flambeau River sediment and biological data.

Chambers and Zamzow determined that both surface water and groundwater at the Flambeau Mine site was registering levels of contaminants in violation of water quality standards. Parejko concluded that the company's river monitoring program showed statistically significant increases in copper concentrations in crayfish and walleye downstream from the mine site. The three scientists also discovered serious shortcomings in FMC's monitoring program. For example, the company has drilled only one monitoring well along the mine's entire 3.7-mile "compliance boundary", the line at which water must meet Wisconsin State standards. These findings and others form the basis of the WRPC lawsuit, filed on behalf of the organization by Attorney Glenn Stoddard of Eau Claire, WI.

For a copy of the complete Notice Letter filed by WRPC, please go to: www.wrpc.net

Parties to the Law Suit

Plaintiffs (see "Contact Information" to learn more about the Plaintiffs, their attorney and expert witnesses)

1. Wisconsin Resources Protection Council (Tomahawk, WI)
2. Al Gedicks, Executive Secretary, Wisconsin Resources Protection Council
3. Laura Furtman, citizen plaintiff

Defendants

1. Wisconsin Department of Natural Resources
2. Flambeau Mining Company

Claims Made by the Plaintiffs The WRPC law suit consists of seven different claims:

1. The DNR has failed to fulfill its duties under the *Wisconsin Statutes* and *Wisconsin Administrative Code* to properly monitor and regulate surface water pollution from the mine.
2. The DNR has failed to fulfill its duties under the *Wisconsin Statutes* and *Wisconsin Administrative Code* to properly monitor and regulate groundwater pollution from the mine.
3. The DNR has failed to fulfill its duties under the *Wisconsin Statutes* and *Wisconsin Administrative Code* to properly monitor the Flambeau River for potential adverse environmental impacts from the mine.

4. The DNR has failed to fulfill its duties under the *Federal Clean Water Act*, the *Wisconsin Statutes* and the *Wisconsin Administrative Code* to properly regulate water pollution from the mine.
5. FMC's pollution discharges of copper into Stream C and the Flambeau River are in violation of the 1991 permit, the *Wisconsin Statutes* and the *Federal Clean Water Act*.
6. Pollution discharges to groundwater at the mine site are in violation of the groundwater enforcement standards for the mine's intervention boundary set forth in the 1991 permit.
7. Pollution discharges to groundwater at the mine site have been in occasional violation of the groundwater enforcement standards for the mine's compliance boundary set forth in the 1991 permit and are not being appropriately monitored.

Requested Relief: If the DNR will not order the following on its own, the Plaintiffs intend to request the Dane County Circuit Court (Madison, WI) to order the following relief, among other things:

1. That the DNR fulfill its duties under the *Wisconsin Statutes* and *Wisconsin Administrative Code*, with respect to the Mine and FMC's reclamation and long term care plans for the Mine site, by requiring FMC to properly monitor surface waters from the partially reclaimed Mine site, as recommended by Plaintiffs' experts, and to properly manage and treat polluted waters, so as to meet applicable surface water quality standards;
2. That the DNR fulfill its duties under the *Wisconsin Statutes* and *Wisconsin Administrative Code*, with respect to the Mine and FMC's reclamation and long term care plans for the Mine site, by requiring FMC to properly monitor the groundwater at the partially reclaimed Mine site, as recommended by Plaintiffs' experts, and to properly manage and treat the polluted groundwater migrating outside the pit area and toward the Flambeau River, so as to meet applicable groundwater quality standards;
3. That the DNR fulfill its duties under the *Wisconsin Statutes* and *Wisconsin Administrative Code*, with respect to the Mine and FMC's reclamation and long term care plans for the Mine site, by requiring FMC to properly monitor the partially reclaimed Mine and the Flambeau River upstream and downstream of the Mine site for potential mine impacts, as recommended by Plaintiffs' experts;
4. That the DNR fulfill its duties under the *Federal Clean Water Act*, the *Wisconsin Statutes* and the *Wisconsin Administrative Code*, to require FMC to obtain a WPDES storm water discharge permit and properly manage and treat the surface water pollution entering into Stream C and the Flambeau River from the Mine, in order to bring the water quality into compliance with applicable surface water quality standards;
5. That the DNR withhold granting a Certificate of Completion for reclamation of the 32-acre section of the Mine known as the industrial outlot until all of the surface water and groundwater pollution problems at the Mine site have been fully eliminated;
6. That FMC be subject to a corrective Order requiring a fine, forfeiture or other penalty, together with corrective action through issuance of a restrictive WPDES Permit, for the surface water pollution it has caused, and is continuing to cause, to Stream C and the Flambeau River;
7. That FMC be subject to a corrective Order requiring a fine, forfeiture or other penalty, together with corrective action through issuance of a modification of the 1991 Permit or Reclamation Plan, to stop the pollution that has and is continuing to exceed the groundwater enforcement standards set in the 1991 Permit;

What's Next: WRPC filed its Notice Letter with the Wisconsin DNR and Flambeau Mining Company on June 18, 2009. The defendants have 30 days to respond. If WRPC deems the response unacceptable, a citizen suit will be filed in Dane County Circuit Court, Madison, Wisconsin. Stay tuned to the WRPC web page for updates (www.wrpc.net).