

Exhibit 5

Excerpt from sworn testimony offered by DNR Mining Team Leader Lawrence Lynch
at the Master Hearing for the Flambeau Mine Permit, July 26, 1990

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In Re:	:	
The Application of	:	HEARING
Flambeau Mining Company	:	<u> </u>
for Permits to Build and	:	
Operate a Surface Mine in	:	
Rusk County.	:	

The above-entitled cause came
on for Hearing before Hearing Examiner
David Schwarz, State of Wisconsin
Division of Hearings and Appeals, at the
Ladysmith High School, Ladysmith, Wisconsin,
on the 26th day of July, 1990.

ORIGINAL

WITNESS: Lawrence J. Lynch

<p>VOLUME 24</p>

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1 A. I don't believe it's toxic, no.

Atty. Fincke → 2 Q. Okay. The compliance boundary issue with the
(Wis. GREENS) 3 dispute between the department and the public
4 intervenor positions -- you're familiar with
5 that?

Lynch → 6 A. Yes, I am.
(DNR)

7 Q. With respect to your answer on Page 10, you
8 state the compliance boundary as proposed in
9 the mining permit is most appropriate and
10 provides adequate protection to existing and
11 future users of groundwater as required by the
12 section of the code that applies. Is it your
13 position that the public intervenor's position
14 with respect to the compliance boundary
15 provides better protection to the existing and
16 future users of groundwater?

17 A. No, I think they provide equal protection.

18 Q. With respect to the variances that have been
19 requested under NR 132 and 182, we've talked
20 about the river pillar issue. What, in your
21 view, justifies the issuance of the variance to
22 reduce that boundary from three hundred feet to
23 a hundred and forty feet?

24 A. I believe the company has demonstrated that
25 there would be no increased environmental

1 can be made permit conditions; however, in this
2 case we didn't feel that that alternative was
3 necessary given the nature of that facility.

4 Q. I see. I only -- I only offered it because it
5 says in the end of paragraph four, monitoring
6 with lysimeters at these facilities would
7 lessen the need for an extensive groundwater
8 monitoring network and could be used -- my
9 impression of reading this -- could be used
10 under the facility?

11 A. Yes, they could be.

12 MS. VOLKMAN: Okay, thank you.

13 HEARING EXAMINER: Mr. Merrill.

14 CROSS-EXAMINATION

15 BY MR. MERRILL:

Merrill → (Citizen) 16 Q. Yes. Mr. Lynch, my name is Bill Merrill from
17 Rusk County Citizens Action Group. In regards
18 to your answer on Page 10 of your testimony
19 about the compliance boundary, that using the
20 hydraulic boundary of the river would not be
21 justified. That was your statement roughly,
22 correct?

Lynch → (DNR) 23 A. Yes.

24 Q. If the hydraulic boundary of the river was to
25 be used as a compliance boundary, could you

1 feasibly do that due to the nature of the
2 river, it's flow and the aquifer beneath it?

3 A. I guess I'm not sure what you mean by the
4 hydraulic boundary created by the river. Are
5 you talking about somehow setting the boundary
6 within the river itself, in the middle of the
7 river?

8 Q. It was stated in your testimony there in
9 regards to the public intervenor's proposal,
10 that they would use the hydraulic boundary of
11 the river. Now, my understanding would be of
12 the hydraulic boundary, would literally be
13 where the water flow of the river stops.
14 Would that not be yours?

15 A. The problem with the proposal by the public
16 intervenor is that they did not define what
17 that boundary was.

18 Q. Uh-huh.

19 A. And in subsequent conversations she indicated
20 that she really had no idea what the boundary
21 was that she was proposing. So it's hard --
22 but anyway, to get to your question, it would
23 be very difficult, nearly impossible to monitor
24 at such a boundary to determine whether or not
25 the groundwater is in compliance.

1 Q. So then I am to understand that if, in the
2 hydrological sense, okay, that if we did put --
3 or you, your agency did put the compliance
4 boundary at the hydraulic boundary of the
5 river, that it would be almost impossible
6 physically to accomplish that, wouldn't it?

7 A. It would be almost physically impossible to
8 monitor it. I mean, you can't accomplish it
9 simply by saying that is the compliance
10 boundary. But it would be very difficult to
11 monitor.

12 Q. By placing the compliance boundary -- I believe
13 the line was twelve hundred feet, wasn't it?

14 A. Yes.

15 Q. By placing it at twelve hundred feet, then we
16 have extended over the river and over a
17 considerable part of the project, I think, at
18 least especially at the southwest end we would
19 be over the river itself, correct?

20 A. That's right.

21 Q. Let's see if I can make this into a question.
22 Due to the nature of the river, when you have
23 it flowing through a compliance boundary, in a
24 sense are you not moving some of what it is
25 you're attempting to keep within a compliance

1 boundary into the aquifer itself if it was
2 present?

3 A. (No audible response.)

4 Q. Do you understand what I'm getting at?

5 A. Well, the compliance boundary isn't designed to
6 keep anything, you know, from moving. It's
7 simply a point of application of standards.

8 Q. Correct. We've got an air pollution standard
9 inside of that boundary, we also have a maximum
10 contaminate level of groundwater standard
11 inside that boundary too, I believe?

12 A. The groundwater standards are, for the most
13 part, MCL's.

14 Q. Yeah, and that's within the boundary though,
15 correct?

16 A. Within the compliance boundary.

17 Q. Okay. Well, due to the fact that the river
18 flows, is it physically possible to keep that
19 standard, in regards to groundwater, inside
20 that boundary?

21 A. I don't follow what you're -- are you saying is
22 it impossible to have a violation at the
23 compliance boundary on the --

24 Q. No, what I'm saying is that since the river
25 does run through what you're considering a

1 compliance boundary for groundwater
2 contamination --

3 A. Right.

4 Q. -- if -- this is hypothetical. If there was a
5 groundwater problem that exceeded the MCL's,
6 would not it be logical to assume that the
7 river would allow that problem to migrate
8 outside of the compliance boundary due to its
9 very nature as a flowing body of water?

10 A. It would not be a groundwater problem then.

11 Q. Well, as an aquifer in association with the
12 river, correct?

13 A. The water that -- the hypothetical water that
14 you're talking about would discharge to the
15 river, as has been testified by the Flambeau
16 Mining Company witnesses. The determination
17 was that that water, even at worst case, would
18 not result in any significant or even
19 measurable impacts to the surface water.

20 Q. I understand that. I've been hearing it so
21 long this week that I'm beginning to believe
22 it. But I'm stating in a hypothetical sense.
23 Now we have a line, an imaginary line here
24 we're drawing. Okay?

25 A. Right.

1 Q. Around this project, and the things have to
2 stay withinside of that line. Due to the fact
3 of the --

4 MR. HAMMER: Objection, Mr. Examiner,
5 made for a point of clarification. The
6 compliance boundary applies only to groundwater
7 requirements. It doesn't apply to surface
8 water, it doesn't apply to air.

9 MR. MERRILL: Well, you did have
10 some air pollution withinside of it, didn't
11 you?

12 MR. HAMMER: That's -- the air
13 pollution requirement says no, and it's under
14 a separate permit, under a separate authority
15 at the boundary of the site. So it's
16 completely separate from this requirement.

17 MR. MERRILL: So this is strictly for
18 the MCL's?

19 MR. HAMMER: Strictly for the
20 groundwater --

21 MR. MERRILL: Groundwater MCL's.

22 MR. MERRILL:

23 Q. Well, now, again, I'm not a hydrogeologist, but
24 it would seem to me that whatever could get
25 into the surface water of the river, could also

1 get into the groundwater beneath the river and
2 move through that aquifer.

3 A. That's not the case. The river is a major
4 groundwater discharge zone, so the groundwater
5 is moving up into the river. The river --

6 Q. The opposite flow?

7 A. Pardon me?

8 Q. The flow is not going from the surface water
9 into the bed, it's coming from the bed up into
10 the surface water and moving?

11 A. That's right.

12 Q. Okay. Now, in regards to your answer on Page
13 12 concerning the baseline monitoring of
14 groundwater for NR 182 maximum contaminate
15 levels for organics, you had stated that
16 monitoring is not relevant. Now, I assume you
17 drew that conclusion due to the fact that the
18 organics listed in NR 182 are agricultural
19 pesticides?

20 A. That's right.

21 Q. And they were not likely to occur on this mine
22 site?

23 A. That's right.

24 Q. Now, if there were some organics that may occur
25 on a mine site, could they not possibly include

1 as to groundwater quality. And you state that
2 the lab results achieved through the Division
3 of Hygiene were, quote "generally consistent"
4 end of quote, with those produced by Flambeau's
5 consultant. What do you mean by generally
6 consistent?

7 A. What I did to determine that was essentially a
8 side-by-side comparison of our results, as
9 obtained by the Lab of Hygiene, with the
10 results obtained by Foth & VanDyke's lab. And
11 I compared the results to see how close, you
12 know, how closely they compared. There were
13 variations, of course, but there was no trend
14 in any of the variations, which would then
15 indicate that there was a problem with the
16 lab's. The results were generally very close.

17 Q. So, in effect, the aberrations that you
18 ascertained were, in your opinion, minor. Is
19 that correct?

20 A. Yes.

Atty. Thiel → 21 Q. I just want to explore for a moment, without
(Local Governments) 22 retreading ground, the compliance boundary as
23 to groundwater quality. You have been asked
24 numerous questions on this, have you not? My
25 question of you is with respect to establishing

1 the compliance boundary to the west of the
2 Flambeau River, at that point in this property
3 where the Flambeau River is within the property
4 boundaries of the mining company. Is it not
5 correct to state, as I believe you have
6 testified, that the groundwater will not travel
7 under the Flambeau River and be found to the
8 west of the river within the property lines of
9 Flambeau. Is that correct?

Lynch (DNR) → 10 A. That's right.

11 Q. Taking into consideration your commentary that
12 it would be difficult to physically measure the
13 groundwater if the compliance boundary were set
14 at the river, would it not be correct to state
15 that you could, indeed, measure the groundwater
16 compliance immediately upon the banks of the
17 river as opposed to within its thread?

18 A. That would be a different compliance boundary.
19 If you're -- are you proposing a compliance
20 boundary on the east bank?

21 Q. Well, I'm just asking you whether that would
22 not be possible?

23 A. You could measure groundwater quality on the
24 east bank of the river.

25 Q. So that as opposed to public intervenor's

1 suggestion, which was the thread of the river,
2 and as opposed to comments by the State
3 geologist to the effect that you might measure
4 it on the west side of the river, would it be
5 your position that it is physically possible to
6 establish a compliance boundary for this site
7 on the east bank of the Flambeau River?

8 A. You could establish a compliance boundary on
9 the east bank of the river; however, that did
10 not appear to meet -- that did not meet the
11 criteria of NR 182.075 for establishing a
12 reduced compliance boundary.

13 Q. And in what respect, sir?

14 A. The department may establish a reduced
15 compliance boundary if it's necessary to
16 protect -- to protect users of groundwater,
17 basically. There's different terminology, but
18 that's essentially it.

19 MR. HAMMER: If it helps any, I may
20 read it into the record. The operative
21 provision of the law is 182.075(1)(B)(2).
22 And it reads, "The department may establish a
23 compliance boundary which is smaller than the
24 maximum compliance boundary if it determines at
25 the hearing conducted under Section 144.836

1 Stats. that the maximum compliance boundary is
2 not adequate to protect other existing and
3 designated potential groundwater users."
4 There's more beyond that.

5 MR. THIEL:

6 Q. With reference to the citation of the
7 administrative code that Mr. Hammer has just
8 pointed out, is it your position, Mr. Lynch,
9 that insofar as the groundwater that would be
10 flowing from the mine site is being captured by
11 the Flambeau River, that, indeed, other users
12 of groundwater will not adversely be affected
13 by this groundwater and thus there is no basis
14 under the administrative code to establish a
15 reduced compliance boundary?

16 A. That's right.

17 Q. I believe you indicated at Page 5 of your
18 testimony that, in your opinion, Flambeau's
19 baseline groundwater quality data reasonably
20 characterizes the existing groundwater quality.
21 Is that correct?

22 A. Yes.

23 Q. And if I might ask, for the record, who or what
24 determined the components of the baseline
25 groundwater quality testing procedures to have