



Wisconsin
Resources Protection
Council
Box 263, Tomahawk, WI 54487

December 2010

FACT SHEET:

CLEAN WATER ACT CITIZEN SUIT AGAINST FLAMBEAU MINING COMPANY

Factual Background

On November 16, 2010, the Wisconsin Resource Protection Council, Center for Biological Diversity, and Laura Gauger (collectively, "WRPC") sent to the Flambeau Mining Company (FMC) a Notice of Intent to file a federal Clean Water Act lawsuit to abate the ongoing, unpermitted discharge of pollutants to a tributary of the Flambeau River known as "Stream C." Stream C flows over the southeast corner of the Flambeau Mine site and has elevated levels of copper. It joins the Flambeau River about a quarter mile downstream from the mine.

The FMC ceased mining operations in 1997, and the mine site has been undergoing reclamation ever since. A partial Certificate of Completion for mine reclamation was issued by the Wisconsin Department of Natural Resources (WDNR) in 2007; however, an approximately 30-acre parcel known as the "Industrial Outlot" was not included in that process and remains subject to WDNR mining regulations. The Industrial Outlot includes several industrial buildings and facilities, a parking area, and a 0.9-acre, man-made stormwater treatment structure described by FMC as a "biofilter." This biofilter was created out of a former surge pond that was part of the wastewater treatment system used by FMC during the mine's operational years. At that time, the surge pond received and stored acid mine drainage from the high-sulfur waste rock pile, as well as other industrial waste streams and stormwater flows, before treatment at a wastewater treatment facility.

Per agreement with the WDNR and as a condition of its partial Certificate of Completion, FMC has been monitoring and analyzing the discharge from the biofilter to Stream C approximately twice a year. Discharges from the biofilter are largely induced by precipitation. Lab results since 1998 show that copper levels in the discharge range from 11 to 91 µg/l (Wisconsin's chronic toxicity water quality criterion for copper is 2.7 µg/l). Elevated zinc and iron have also been reported by FMC.

Legal Claim Asserted

The federal Clean Water Act makes it unlawful to discharge pollutants from a point source to waters of the United States without a permit issued under the National Pollutant Discharge Elimination System ("NPDES"). Both the U.S. EPA and the WDNR (which has been delegated the authority to issue NPDES permits in Wisconsin under its parallel program, the WPDES) commonly issue permits to point-source discharges of industrial stormwater such as the discharge from FMC's biofilter. The most important function of an NPDES permit is to ensure that all applicable water quality standards are maintained. FMC does not presently have, nor has it ever had, an NPDES permit authorizing the discharge of copper, zinc, iron, and other pollutants from the biofilter to Stream C, and therefore is violating the Clean Water Act.

The Clean Water Act authorizes citizens to file a federal lawsuit against polluters alleged to be (a) discharging pollution without an NPDES permit, or (b) violating the terms and limitations of an existing NPDES permit. If WRPC files suit, it will allege that FMC is violating, and since at least 1998 has been violating, the Clean Water Act's prohibition on the discharge of pollutants without a permit. WRPC will seek civil penalties and an order requiring FMC to comply with the CWA by ceasing its illegal discharge or obtaining the appropriate NPDES permit that protects the water quality of Stream C and the Flambeau River.

The Parties

The Wisconsin Resources Protection Council (www.wrpc.net) is a conservation organization that was founded in 1982 to address concerns over mining in northern Wisconsin.

The Center for Biological Diversity (www.biologicaldiversity.org) works to secure a future for all species, great and small, hovering on the brink of extinction. It does so through science, law and creative media, with a focus on protecting the lands, waters and climate that species need to survive.

Laura Gauger is a citizen activist and co-author of a book about the Flambeau Mine entitled "The Buzzards Have Landed! – The *Real* Story of the Flambeau Mine" (www.deertailpress.com).

Flambeau Mining Company (www.flambeaumine.com) is a subsidiary of Kennecott Minerals Company of Salt Lake City, Utah.

The Wisconsin Resource Protection Council, Center for Biological Diversity, and Laura Gauger are represented in this matter by:

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- Marc Fink, Senior Attorney, Center for Biological Diversity (Duluth, MN)
- Daniel Mensher, Staff Attorney, Pacific Environmental Advocacy Center (Portland, OR)

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