



Wisconsin
Resources Protection
Council
Box 263, Tomahawk, WI 54487

January 18, 2011

FACT SHEET:

CLEAN WATER ACT CITIZEN SUIT AGAINST FLAMBEAU MINING COMPANY

Factual Background

On January 18, 2011, the Wisconsin Resource Protection Council, Center for Biological Diversity, and Laura Gauger (collectively, "WRPC") filed a civil lawsuit against the Flambeau Mining Company (FMC) in the U.S. District Court for the Western District of Wisconsin, alleging ongoing violations of the federal Clean Water Act.

WRPC filed suit 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.

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 (DNR) in 2007; however, an approximately 32-acre parcel known as the "Industrial Outlot" was not included in that process and remains subject to DNR mining regulations. The Industrial Outlot includes several industrial buildings and facilities, a parking area, and a 0.9-acre, man-made stormwater detention basin 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 an on-site wastewater treatment facility. The wastewater treatment facility was decommissioned in 1998.

Per agreement with the DNR 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 since 1998. Discharges from the biofilter are largely induced by precipitation, which causes the biofilter to overflow through a narrow outlet to Stream C. Lab results since 1998 show that copper levels in the discharge range from 5 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 DNR (which has been delegated 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 contains a "citizen suit" provision that authorizes citizens and organizations 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. In the suit WRPC 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 an NPDES permit. WRPC will seek civil penalties of up to \$37,500 per day of violation 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 is a statewide, non-profit membership organization concerned with the environmental impacts of metallic mining on the state's precious water supplies, on the tourism and dairy industries, and upon the many Native American communities that are located near potential mine sites. WRPC educates the public about the consequences of allowing international mining corporations to develop a new mining district in the Lake Superior region under the present legal and regulatory framework.

The Center for Biological Diversity is a national, non-profit membership organization with over 40,000 members including hundreds of members in Wisconsin. The Center has an office in Duluth, Minnesota. The Center works through science, law and creative media to secure a future for all species, great or small, hovering on the brink of extinction.

Ms. Laura Gauger is a member of WRPC and the Center for Biological Diversity. Ms. Gauger is formerly a resident of Spooner, Wisconsin, and currently resides in Duluth, Minnesota.

Flambeau Mining Company (FMC) is a Wisconsin corporation that operated the Flambeau Mine in the mid-1990s and to this day owns the site and existing Industrial Outlot. FMC is a wholly owned subsidiary of Kennecott Minerals Company, located in Salt Lake City, UT. Kennecott is a division of the multinational mining and machinery conglomerate Rio Tinto, with offices in London and Melbourne.

The citizen groups and Ms. Gauger are represented in this matter by:

- James N. Saul, Attorney at Law LLC (Madison, WI)
- Marc Fink, Senior Attorney, Center for Biological Diversity (Duluth, MN)
- Daniel Mensher, Staff Attorney, Pacific Environmental Advocacy Center (Portland, OR)

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