

EPA-R5-2014-001593-117

Margaret Watkins
<watkins [REDACTED]>

11/28/2012 03:37 PM

To Christine Wagener, NancySchuldt, samoore, WayneDupuis, reginalddefoe

cc Barbara Wester, David Pfeifer, Kathleen Mayo, David Horak, Linda Holst, Gaylene Vasaturo, Erik Olson

bcc

Subject Re: Mesabi Nugget-Understanding of Concerns for Monday, 3 December

Good afternoon Chris,

Thank you for the opportunity to provide additional comments in advance of the consultation conference call regarding the proposed variance for Mesabi Nugget. Please find below three comments with supporting information provided.

1) We have asserted that Mesabi Nugget knew or should have known that there was clean-up liability when the property was purchased from Cliffs. Mesabi Nugget purchased the property for a very low price and used some of the existing infrastructure including Area Pit 1 to develop their plant site. Cliffs was enrolled in the VIC program for areas within the property purchased and the adjacent property. Therefore,

40 CFR **Part**

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(101)(35) (B) REASON TO KNOW - should apply.

(i) ALL APPROPRIATE INQUIRIES - To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that -

(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and
(II) the defendant took reasonable steps to -

(aa) stop any continuing release;

(bb) prevent any threatened future release; and

(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(ii) STANDARDS AND PRACTICES - Not later than 2 years after the date of enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

(iii) CRITERIA - In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(VI) Visual inspections of the facility and of adjoining properties.

(VII) Specialized knowledge or experience on the part of the defendant.

(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

(IX) Commonly known or reasonably ascertainable information about the property.

(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

And, Mesabi Nugget has added to the load of pollutants being discharged in Area Pit 1 by using water from the pit for process water and discharging minimally treated process water back into the pit.

2) Mesabi Nugget asserts that Reverse Osmosis/Nano filtration (RO) is technically infeasible and pilot testing must wait until after their pellet making furnace is fine-tuned. PolyMet, on the adjoining property has pilot tested RO before even constructing their plant site. Please find

below a copy of a recent briefing from PolyMet.

<http://www.businessnorth.com/briefing.asp?RID=4996>

**Business North - The Daily Briefing - Business Newspaper Online
PolyMet reaches key environmental goals**

11/19/2012

Officials of PolyMet Mining Corp. (NYSE: PLM) on Monday said the company has reached key milestones in the environmental review of its copper-nickel-precious metals project in northeastern Minnesota.

"PolyMet has completed engineering control designs and the design of and inputs to groundwater, surface water and air dispersion models to assess potential environmental impacts" for PolyMet's NorthMet Project, the company said in a news release. Quality controls and measures have been reviewed by Foth Infrastructure and Environment and Barr Engineering, PolyMet said, and the results were delivered to Minnesota regulatory agencies and the state's Environmental Impact Statement (EIS) contractor for review, which is expected to be completed early next year.

The results will be incorporated into the supplemental draft EIS which will then be reviewed by federal agencies including the Environmental Protection Agency prior to publication for public review.

PolyMet's also said its water treatment pilot plant has now processed more than 1.4 million gallons of water and continues to perform extremely well.

"The modular reverse osmosis water treatment plant will enable PolyMet to meet water quality standards, including (but not limited to) Minnesota's wild rice standard for sulfate. Technical teams from key regulatory agencies have visited the pilot plant. PolyMet's water treatment plans have been well received by community organizations," PolyMet said.

"I am very pleased by the considerable progress made by the permitting team in recent months," said President and CEO Jon Cherry. "Completion of engineering control design, numeric model design and model inputs enables PolyMet to demonstrate that the NorthMet Project meets state and federal air and water standards, which provides the foundation for completion of the environmental review leading to issuance of permits.

"The final steps to completing the supplemental draft EIS for public review are to incorporate the model results and receive comments from the EPA and other cooperating and government agencies," he said.

3) US EPA guidance must be used to confirm that the proposed Mesabi Nugget variance can be justified under federal regulations, or the variance must not be granted. Mesabi Nugget has also asserted that being required to install RO is financially risky and infeasible. Mesabi Nugget is a joint venture between Steel Dynamics (81 percent) and Kobe Steel (19 percent). US EPA Economic Guidance for granting a variance from water quality standards states that the structure, size and financial health of a parent firm must be considered to evaluate the likelihood of “substantial and widespread economic and social impact” pursuant to 40 C.F.R. §131.10(g)(6). This analysis is important because Steel Dynamics, Inc. is the majority owner and joint venturer in the Mesabi Nugget project, and directly involved with environmental compliance including the variance at issue here. Steel Dynamics’ 10-Q Quarterly Report filed with the SEC on June 30, 2012 suggests that compliance with Minnesota Water Quality Standards would not have substantial and widespread adverse economic and social impact: ***“Environmental and Other Contingencies*** . We have incurred, and in the future will continue to incur, capital expenditures and operating expenses for matters relating to environmental control, remediation, monitoring, and compliance. We believe, apart from our dependence on environmental construction and operating permits for our existing and proposed manufacturing facilities, that *compliance with current environmental laws and regulations is not likely to have a materially adverse effect on our financial condition, results of operations or liquidity* ; however, environmental laws and regulations have changed rapidly in recent years, and we may become subject to more stringent environmental laws and regulations in the future, such as the impact of United States government or various governmental agencies introducing regulatory changes in response to the potential of climate change.” Mesabi Nugget’s website indicates Steel Dynamics’ net sales were \$6.3 billion in 2010, 6,000 employees worldwide.

At 06:13 PM 11/27/2012, Wagener.Christine [REDACTED] wrote:

Ladies and Gentlemen,

I have reviewed my files and compiled a summary list of the comments and documents that each tribe previously shared with EPA regarding your specific concerns over the Mesabi Nugget variance and permit. I am sending this to you and also to our EPA staff to prepare for our consultation on Monday.

Please contact me if you have additional information you would like us to review prior to the call on Monday, or any questions regarding our conference call.

Until then, thank you for allowing us to hear your concerns.

Christine M. Wagener

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