

## Summary of EPA participation in 3-4-11 interagency meeting with Cong. Cravaack re PolyMet mine pro

**Kenneth Westlake** to Linda Holst, Phillippa Cannon, Ronna Beckmann, Tinka Hyde, Alan Walts, Stephen Hoffman, S

EPA participated in the interagency meeting with Cong. Cravaack in Duluth on Friday, 3/4/11. EPA was represented by me, Ronna Beckmann of ORA and Phillippa Cannon of OPA. I was EPA's presenter and fielded questions directed to EPA. In addition to Cong. Chip Cravaack, who chaired the meeting, staff from US Senators Klobuchar and Franken attended, along with the following agencies (Corps of Engineers, US Forest Service, US Fish and Wildlife Service, MN Department of Natural Resources, MN Pollution Control Agency, the Iron Range Resources Recovery Board), approximately a dozen state legislators, representatives from the Bois Forte and Fond du Lac cooperating tribes (Grand Portage Tribe was invited but unable to attend), and officials from PolyMet Mining Company.

Each of the agencies and tribes was given time at the beginning of the session to offer its perspective on the project before the floor was opened to discussion.

On behalf of EPA, I summarized EPA's roles under NEPA, the Clean Air Act, and the Clean Water Act. I highlighted the main issues (water quality, wetlands, and financial assurance) that we focused on in our 2/18/10 NEPA comment letter, and our ongoing commitment to work constructively with the co-lead agencies to seek resolution of the issues we raised in our letter. I indicated that the co-leads have taken some of EPA's recommendations by deciding to develop a new alternative, by planning a supplemental draft EIS to evaluate that alternative, and by including the proposed Forest Service land exchange in the Supplemental DEIS. I stated that while we have been briefed on the key features currently under consideration for the new alternative, and that they conceptually move the project in a direction of more water capture and treatment, fewer air and water emissions, and a smaller footprint, no one will know how the new alternative will perform in detail until it is modeled and analyzed in the supplemental DEIS. No one yet knows whether this new alternative will comply with standards and be permissible by the various parties with permit authorities for this project. I concluded by emphasizing that our goal for this project or any project that we review is that it be environmentally protective and comply with relevant laws and regulations.

EPA did not participate in a post-meeting media session, per OPA's consultation with HQ OPA.

This attached story below, "EPA Could Trump State Law," came out of the discussions. What I had said in response to several questions by St. Rep. Rukavina was the following:

I acknowledged that MPCA is considering possible revisions to its sulfide water quality standard for wild rice waters, and that EPA would be working with MPCA in that process. State agencies derive their authorities from state law as enacted by the legislature and governor and from delegations of federal authority from EPA. If a state were to change a state water quality, EPA has an established process to review and concur on that state standard before it can be used in a federally enforceable state permit for a surface water discharge. EPA can either approve or disapprove water quality standards submitted by the state. EPA works closely with its state partner in reviewing standards that the state submits, and would seek to resolve any issues we had with the state before taking a final action. I said that I did not think that there was a national standard for sulfide related to wild rice, because wild rice is a localized

plant found in the upper Great Lakes. Nonetheless, for a state wild rice standard to be used in a federally enforceable permit, EPA must concur on that state standard. I would not speculate on the outcome of a future EPA review of unspecified possible revisions that have not yet occurred and have not yet been submitted for our review. Tamara Cameron of the Corps of Engineers noted that MPCA must certify under Section 401 of the Clean Water Act that a project will meet state water quality standards before the Corps will issue a CWA 404 permit.

St. Rep. Rukavina said that he plans to introduce a bill that would raise the state sulfide standard from 10 mg/L, which has been on the books in Minnesota since the 1970's, to 250 mg/L. He went on to conclude that the current 10 mg/L standard would not only kill the PolyMet project, but would kill existing and planned iron mines and copper mines throughout northern Minnesota, and be a compliance problem for municipal wastewater treatment plants in northern Minnesota. I would not speculate on his conclusions, but acknowledged that mining is important to the economy of the area, state, and nation, and that EPA believes that mining can be done with appropriate environmental safeguards.

During another portion of the discussion, I noted that EPA is in the early stages of national rulemaking on federal financial assurance for the hardrock mining and minerals processing industries. EPA is aware that Minnesota has state financial assurance provisions in its program, administered by MDNR, to regulate hardrock mines, and we continue to hold that the EIS should include a thorough discussion of how the state financial assurance requirements will work in the PolyMet case, since the closure and post-closure practices that the company has proposed for long-term environmental protectiveness rely on future financial resources to occur. Our notice at the beginning of the rulemaking process indicated that we intended to develop a rule that would apply to current and future facilities. The possible content of this yet-to-be-drafted rule is unknown. EPA is at least a year away from issuing a draft rule for public comment; completion of a final rule would take considerable time after that, probably into 2012. When St. Rep. Rukavina asked me if this federal financial assurance rulemaking would delay or kill the PolyMet project, I stated that this project or any proposed project must comply with all federal and state requirements in force at the time of the permitting actions. Regulations that might apply in the future would have to be complied with as they took effect, based on whatever compliance schedule might be included in these future regulations. When St. Rep. Rukavina asked the CEO of PolyMet, Joe Scipioni, whether federal financial assurance regulations would be a "project killer," Scipioni just replied that PolyMet was aware of the ongoing EPA rulemaking and that the company includes the environmental regulatory landscape in its business plan.

If you wish to discuss this meeting and EPA's participation in it, contact me, Ronna, or Phillipa.  
Ken

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