



December 16, 2013

Susan Hedman, Regional Administrator (hedman.susan@epa.gov)
US EPA Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

Dear Dr. Hedman:

We the undersigned, representing fifty-nine non-governmental conservation organizations, tribal, faith-based and civic groups, businesses, and recreation interests from Minnesota, Wisconsin and Michigan, request that the United States Environmental Protection Agency Region 5 (EPA) prepare a Cumulative Effects Assessment (CEA) of impacts of mining activities, including mining in sulfur-bearing rock, upon the Lake Superior Basin.

There are compelling legal, policy and factual grounds for EPA to undertake this CEA, and prior work by EPA Region 5 as well as by other parties demonstrates the feasibility of implementing this cumulative impacts analysis. Discrepancies in state level permitting requirements and agency implementation underscore the need for the EPA to undertake a regional assessment.

Legal and Policy Support for a Lake Superior Basin CEA

The Lake Superior Basin has a unique status in terms of the obligation of the United States government to protect rights assured in treaties with Indian tribes. The expansion of sulfide mining brings particular risks to territories ceded by tribes to the federal government, which encompass the entire United States portion of the Lake Superior Basin. Mining pollution and wetlands destruction threaten wild rice, subsistence fishing, habitats for plants and animals, and cultural resources. As citizens of the United States, we believe that the EPA, acting on our behalf, has a fiduciary responsibility to protect the treaty rights and resources of Indian tribes in territories ceded to our federal government.

In addition, provisions of the Great Lakes Water Quality Protocol of 2012, an international treaty with Canada that the EPA Administrator signed on September 7, 2012 on behalf of the United States, support the obligation of the EPA to assess cumulative environmental impacts of mining on the Lake Superior Basin. The 2012 Protocol states that the United States should apply an ecosystem approach to the management of water quality that addresses individually and cumulatively all sources of stress to Great Lakes Basin ecosystems and that the United States should address environmental stressors for water quality, native species and habitat on a lakewide basis. (Great Lakes Water Quality Protocol of 2012, Preamble p. 6, Annex 2, Parts A, B. 2, C. 1 and 2, Annex 7, Parts A, B.1 and B.2).

The Lake Superior Basin mining CEA requested by the undersigned would also serve to support EPA's responsibilities under the National Environmental Policy Act (NEPA). A basin-wide CEA would build upon the CEA done in September 2013 by tribal cooperating agencies for the PolyMet NorthMet sulfide mine proposal in Minnesota. In addition, a Lake Superior Basin CEA could assist the federal government in completing environmental review for future mining proposals where NEPA is applicable and bring much-needed natural resources contextual information to state regulatory agencies across the Basin.

Factual Basis for a Lake Superior Basin CEA

A CEA is needed to evaluate the effects of historic, existing, expanding and reasonably foreseeable mining activities throughout the Lake Superior Basin.

The water resources of the Lake Superior Basin are critical to the healthy functioning of their ecosystems, to the economies of the region, to human and wildlife health, to cultural values, to preservation of the rights and resources of tribes and to the many recreational uses enjoyed by people throughout the Lake Superior region. Historical, existing, expanding and reasonably foreseeable mining activities threaten the quality of drinking water, the productivity of recreational and commercial fishing, the survival of species that are threatened, endangered or of special concern, the natural resources vital to tribal culture and subsistence, and the health of infants, children and adults throughout the region.

The Lake Superior Basin has had extensive historic and existing mining activities. In addition, in recent years the lands surrounding Lake Superior in Minnesota, Wisconsin, Michigan and Ontario have experienced increasing mineral exploration and development, much of which has been conducted in sulfide-bearing rock. Mine projects include the proposed PolyMet NorthMet and Twin Metals mines in Minnesota, the recently permitted Eagle Mine and Copperwood mine in Michigan, the proposed Gogebic mine in Wisconsin, and the proposed Marathon mine and the operating Lac des Isles mine in Ontario. Widespread prospecting for non-ferrous metals is occurring across the region in Minnesota, Wisconsin, Michigan and Ontario.

Despite the risk to national and international waters posed by the expansion of mining and sulfide mining in particular, there has been no comprehensive assessment of the cumulative effects of mining on the singular water resources and ecological values of the Lake Superior Basin.

Practical Implementation of a Lake Superior Basin CEA

Implementation of a Lake Superior Basin CEA is feasible as well as necessary to fulfill EPA responsibilities and protect natural resources. A protocol to assess cumulative impacts has been developed by Booz Allen Hamilton for EPA Region 5. (May 31, 2007) (REPA3-5803-151v3) The CEA submitted by tribal cooperating agencies for the PolyMet proposal earlier this year demonstrates how this protocol may be effectively used to prepare an assessment.

The undersigned groups request that EPA Region 5 prepare a Lake Superior Basin CEA evaluating the impacts of historic, existing, expanding and reasonably foreseeable mining activities, consistent with the protocol and tribal CEA described above. Particular issues that our groups would highlight for your attention include:

1. Assessment of the resource value of various wetlands, headwaters, streams, lakes, floodplains, aquifers, estuaries and rivers of the Lake Superior Basin as aquatic resources of national and international importance.
2. The cumulative effects of dredge and fill activities, dewatering and inundation, air emissions and water discharges on water quality in the Lake Superior Basin, including compliance with the Great Lakes Water Quality Agreement and 2012 Protocol and effects on drinking water, aquatic life, mercury contamination of fish, wild rice, wildlife, recreation, tribal resources, and public health.
3. The cumulative effects of mining activities on water quantity in the Lake Superior Basin, including long-term effects on surface and groundwater resources, including resources governed by the Great Lakes St. Lawrence River Basin Water Resources Compact, and the degree to which waters have been appropriated or diverted from the Lake Superior Basin.
4. The cumulative effects of mining activities on aquatic and boreal ecosystems, including effects on flora and fauna that are threatened, endangered or of special concern or that are of significance to tribal communities.

Many of our groups have participated in a process of dialogue with EPA Region 5 over the past several months. We appreciate your concern and the active role of your staff and counsel in protecting surface and groundwater water quality, aquatic life, wildlife, human health and tribal rights and resources in the Lake Superior Basin.

In preparation of the Lake Superior Basin CEA described above, we would request that EPA Region 5 communicate with our non-governmental organizations as to EPA's progress in undertaking this assessment, in addition to consulting with Lake Superior Basin tribes. Our groups have designated Paula Maccabee, Counsel/Advocacy Director, WaterLegacy (pmaccabee@justchangelaw.com) as the Minnesota point of contact; Emily Whittaker, Policy Specialist, Freshwater Future (emily@freshwaterfuture.org) as the Michigan point of contact and Elizabeth Wheeler, Staff Attorney, Clean Wisconsin (ewheeler@cleanwisconsin.org) as the Wisconsin point of contact. We would request that any communications pertinent to our request for a CEA be sent to the contact persons for each of these states.

We look forward to your response to our request for a Lake Superior Basin CEA evaluating the impacts of mining activities, and trust that EPA will play a vital role in assessment and protection of vital resources in the Lake Superior Basin.

Sincerely yours (in alphabetical order),

Bad River Watershed Association

Baptism River Inn Bed & Breakfast

Big Bay Outfitters

Center for Biological Diversity

Clean Wisconsin

CR-Building Performance Specialists, Inc.

ElyMinnesota.com

Ely Outfitting Company

Environmental Law & Policy Center

Food and Water Watch

Friends of the Boundary Waters Wilderness

Friends of the Cloquet Valley State Forest

Friends of the Land of the Keweenaw

Freshwater Future

Front 40 Environmental Fight

Honor the Earth

Howard's Farmers Market

Huron Mountain Club

Idle No More Duluth

Indigenous Environmental Network

Institute for a Sustainable Future

Izaak Walton League of America - W. J. McCabe Chapter

League of Women Voters of Michigan

League of Women Voters of Minnesota

League of Women Voters of Wisconsin

Lutefisk Technologies

Michigan Environmental Council

Michigan League of Conservation Voters

Midwest Environmental Advocates, Inc.

Milwaukee Riverkeeper

Minnesota Center for Environmental Advocacy

Minnesota Public Interest Research Group

National Forest Lodge

National Parks Conservation Association

National Wildlife Federation

Natural Resources Defense Council

North Cape Fisheries

Northeastern Minnesotans for Wilderness

Northwoods Wolf Alliance

Organic Consumers Association

Peace United Church of Christ Food Energy and Environment Team

Piragis Northwoods Company

Protect Our Manoomin

River Point Resort & Outfitting Co.

Round River Farm

Round River Renewables, LLC

Save Our Sky Blue Waters

Save the Wild U. P.

Sierra Club - John Muir Chapter

Sierra Club- North Star Chapter

Sled Dogs to Saint Paul

Trout Unlimited

Upper Peninsula Environmental Coalition

Voyageurs National Park Association

WaterLegacy

Whole Foods Community Co-op Duluth

Wisconsin League of Conservation Voters

Wisconsin Resources Protection Council

Yellow Dog Watershed Preserve