

February 13, 2008

Mr. Robert J. Whiting  
Regulatory Branch, St. Paul District  
U.S. Army Corps of Engineers  
190 Fifth Street East  
St. Paul, Minnesota 55101-1638

Mr. James F. McCain  
Waupaca Northwoods, LLC  
P.O. Box 569  
Waupaca, Wisconsin 54981

RE: CEMVP-OP-R 2007-1073-TWP  
Waupaca Northwoods, LLC  
St. Louis County  
Denial of Section 401 Certification

Dear Mr. Whiting and Mr. McCain:

This letter is submitted by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act (33 USC 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. 7001.1400-.1470. The MPCA has examined the Corps of Engineers (Corps) application and other information furnished by the applicant, Waupaca Northwoods, LLC (Waupaca), and bases its certification decision upon an evaluation of this and other information that is relevant to water quality considerations. The referenced project involves a proposal to discharge fill material in wetlands in conjunction with the expansion of an existing 285 acre peat harvesting (mining) operation by 159 acres in the Toivola Bog. The bog drains into an unnamed tributary of Sand Creek and into Pirtala Creek, both of which are tributaries of the St. Louis River. The project site is located in Sections 19 and 30, Township 54 North, Range 19 West in St. Louis County.

As summarized in recent MPCA correspondence to Waupaca, dated October 23, 2007, and January 25, 2008 (copies of which are attached), additional information needs to be furnished to the MPCA regarding this proposed project's ability to comply with applicable water quality standards, most notably those governing mercury (e.g., 1.3 nanograms per liter for "end of pipe" discharges). The MPCA also needs to ensure that the project will not have the potential to exacerbate the St. Louis River mercury (Hg) impairment for which a Total Maximum Daily Load is currently being developed. It is therefore imperative that reliable data regarding the discharges of Hg at the existing Waupaca operation be collected and furnished to the MPCA, as explained in the aforementioned correspondence. Dependent upon the results of this data, Waupaca will then need to develop and propose adequate control measures for reducing Hg discharges before the MPCA could reasonably certify that the proposed mining expansion activity will be conducted in a manner that will not violate applicable water quality standards (as required by Minn. R. 7001.1470, Subp. 1C).

In view of the time it will take Waupaca to collect and furnish the additional information necessary for the Section 401 determination, the MPCA hereby denies without prejudice the certification of the referenced project. A denial "without prejudice" means that although the application for the Section 401 determination is currently being denied, the MPCA is not yet making a final determination on the proposed project's ability to comply with applicable water quality standards. This enables the MPCA to act within one-year, as required, on an application for a Section 401 certificate when additional information regarding that project's ability to comply with state water quality standards needs to be submitted. After the additional information

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is compiled, the project proposer can then resubmit a modified application for a Section 401 Certificate for the MPCA to evaluate and act upon accordingly.

The MPCA's decision to deny the 401 Certification is preliminary and a public comment period is established of 30 days following receipt of this letter. Comments submitted during the public comment period should include the information required by Minn. R. 7001.0110 and should be submitted to Kevin Molloy, Municipal Division, MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194.

Any person who has a question concerning this comment and public notice is encouraged to contact Kevin Molloy at 651-297-7572.

Sincerely,

Dave Richfield  
Municipal Division

DR/KM:jgo

Enclosures

cc: Tim Peterson, Corps of Engineers, St. Paul District  
Kevin M. Pierard, U.S. Environmental Protection Agency, Region 5, Chicago  
Thomas J. Krueger, U.S. Environmental Protection Agency, Region 5, Chicago  
Tony Sullins, Field Supervisor, U.S. Fish and Wildlife Service  
Kent Lokkesmoe, Director, DNR Waters  
Steve Colvin, Ecological Services, Environmental Review, MDNR  
Brian Schweiss, MPCA, St. Paul  
Gary Kimball, MPCA, St. Paul  
Tom Estabrooks, MPCA, Duluth