



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678

March 17, 2021

Regulatory File No. MVP-1999-05528-TJH

Ms. Christie Kearney
PolyMet Mining, Inc.
444 Cedar Street, Suite 2060
St. Paul, Minnesota 55110

Dear Ms. Kearney:

This notice is in reference to your Department of the Army (DA) Permit MVP-1999-05528-TJH issued by the U.S. Army Corps of Engineers, St Paul District (Corps) on March 19, 2019, authorizing discharges of dredged and fill material into 901.24 acres of wetlands and the indirect loss of an additional 26.93 acres of wetlands adjacent to the Partridge and Embarrass Rivers for the purpose of constructing the NorthMet Project. The project is located in Sections 5 and 6, Township 58 North, Range 14 West; Sections 1, 2, 3, 4, 9, 10, 11, 12, 15, 16, 17, and 18, Township 59 North, Range 13 West; Sections 3, 4, 5, 8, 9, 10, 13, 14, 15, 16, 17, 20, 23, 24, 29, and 32, Township 59 North, Range 14 West; and Sections 32, 33, and 34, Township 60 North, Range 14 West, St. Louis County, Minnesota.


The regulations on processing DA permits at 33 CFR 325.7 allow for the District Engineer, at their discretion, to reevaluate the circumstances and conditions of any permit and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest.

The Fond du Lac Band of Lake Superior Chippewa filed suit in the United States District Court for the District of Minnesota on September 10, 2019, alleging the United States Environmental Protection Agency (EPA) and the Corps violated CWA Section 401(a)(2) due to EPA's failure to issue notice to the Band and the Corps' failure to hold a hearing on the downstream impacts of the Project or take measures needed to ensure the Project meets the Band's water quality standards. The district court held that "EPA had a legal duty to make a 'may affect' decision" within 30 days of Minnesota Pollution Control Agency's 401 Certification. In response, EPA filed a motion with the federal court on March 4, 2021, requesting a voluntary remand to allow EPA to make the "may affect" determination required by Section 401(a)(2). By letter dated March 4, 2021, EPA requested that the Corps consider suspending the 404 Permit if its motion for a voluntary remand is granted. The motion was granted on March 8, 2021.

The outcome of EPA's "may affect" determination may require the Corps to reconsider the 404 permit. It is therefore necessary in consideration of the public interest to suspend the 404 permit while the EPA reconsiders effects on downstream water quality from the proposal under 401(a)(2). Accordingly, no activities authorized under Permit MVP-1999-05528-TJH may occur. Depending on the outcome of the EPA's review, the Corps will make a decision to either reinstate, modify, or revoke the permit.

Within 10 days of receipt of this notice of suspension, you may request a meeting to present information in this matter. If you have any questions or would like to schedule a meeting, please contact my Regulatory Division Chief, Chad Konickson, at 651-290-5364.

Sincerely,

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Karl D. Jansen
Colonel, Corps of Engineers
District Engineer

Enclosure(s)

cc:

U.S. EPA, Tera Fong

MPCA, Anna Hotz

MDNR, Colleen Sullivan