



**US Army Corps
of Engineers**
St Paul District

APPLICANT: PolyMet Mining, Inc

Public Notice

ISSUED: 31 March 2022

EXPIRES: 6 May 2022

REFER TO: MVP-1999-05528-TJH

**SECTION: 404 - Clean Water Act
401(a)(2) - Clean Water Act**

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the United States Army Corps of Engineers St Paul District will conduct a hybrid in-person and virtual public hearing from May 3-5, 2022. We are conducting this public hearing in response to an objection from the Fond du Lac Band of Lake Superior Chippewa (the Band) under Section 401(a)(2) of the Clean Water Act (CWA) to the Corps' Section 404 permit for the PolyMet NorthMet Project (Project) and in response to a request from the Band that we conduct a public hearing.

The Band is a federally-recognized tribe and Sovereign Nation and their reservation is downstream of the Project. The Band is also recognized as a "state" for purposes of Section 401(a)(2) of the CWA. The Band has determined that discharges into waters of the United States associated with the Project will affect the quality of the Band's waters so as to violate its water quality requirements in its reservation. The Band subsequently notified the Corps and the United States Environmental Protection Agency (EPA) of its objection to the Corps' issuance of a Section 404 CWA permit and requested a public hearing.

We are following procedures for this public hearing as specified in 33 CFR 325.2(b)(1) and 33 CFR Part 327. Please see Attachment 1 for an agenda of the public hearing. We are conducting this public hearing for the purpose of collecting information or evidence that we will consider related to the Project's effects on quality of the Band's waters. We have decided in coordination with the Band to conduct this public hearing primarily virtually, with some exception. We will conduct days one and two in-person with representatives of the Band, EPA, PolyMet and the Corps. During these days, the EPA will provide an overview of its evaluation and recommendations with respect to the Band's objections, and the Band and PolyMet, Inc. will provide their views on our permit action. We will also provide both the Band and PolyMet an opportunity for rebuttal. Consistent with 33 CFR Part 327, cross-examination of any witness will not be permitted. Considering the roles and responsibilities of the EPA, the Band and PolyMet in this process, we have decided it is important to hear from representatives of these entities in person on days one and two.

We will provide content from days one and two of the hearing to the public. We will post the proceedings as soon as available at: <https://www.youtube.com/user/usacemvppao>

On day three, we will provide opportunity for the public to provide verbal comments from 4 p.m. CST until 9 p.m. CST. We will post the proceedings as soon as available at: <https://www.youtube.com/user/usacemvppao>

If you do not provide verbal comment on day three but want to provide comment for the Corps to consider, please submit your comments in writing. Please see instructions below

for submitting written comments. We will give all written comments the same consideration as verbal comments.

PURPOSE: The purpose of the public hearing is to acquire information to inform our decision on this action. We will consider all information, including views and opinions from the EPA, the Band, PolyMet and the public. Consistent with 33 CFR 325.2(b), this public hearing is specific to the purpose of evaluating the Band's objections to the currently suspended Section 404 CWA permit under CWA Section 401(a)(2).

Accordingly, we are seeking information on how the current suspended Section 404 CWA permit including its conditions, if reinstated, would violate applicable water quality requirements within the Band's downstream waters. Further, we are seeking information on whether new conditions could be added to a modified Section 404 CWA permit that would ensure compliance with applicable water quality requirements of the Band.

We will consider all relevant information presented at the public hearing to inform our final permit decision to either revoke the Section 404 permit, reinstate the permit, or modify the permit with new conditions.

GROUND RULES: The Corps' District Engineer will serve as the presiding officer and will offer opening and closing remarks each day, to include an overview of the expectation that participants will follow the agenda as set forth in Attachment 1, with no cross-examination of witnesses (reference 33 CFR 327.8(d)).

We encourage all speakers to focus their comments on how the suspended Section 404 CWA permit including its conditions, if reinstated, would violate water quality requirements of the Band. Further, we are seeking information on whether new conditions could be added to a modified Section 404 CWA permit that would ensure compliance with water quality requirements of the Band. Comments expressing either support for or opposition to the Project will not be informative to our decision on this matter. Rather, we must base our permit decision on substantive evidence related to applicable water quality impacts under CWA Section 401(a)(2).

PUBLIC INVOLVEMENT: We invite interested parties including elected tribal, federal and state officials, non-governmental and other organizations, and private citizens to listen to content from days one and two, to provide verbal comment on day three, and to submit written comments until June 6, 2022.

Specific to day three of the hearing, we will provide speaking opportunity via a call-in telephone line from 4:00 p.m. CST to 9:00 p.m. CST on May 5, 2022. We will post the call-in number on our PolyMet Project webpage as soon as it is available at this link:

<https://www.mvp.usace.army.mil/Missions/Regulatory/PolyMet/>

We will afford the opportunity for interested parties to present their views, opinions and information on the proposed action, specifically our evaluation of the Band's objections to the currently suspended Section 404 CWA permit under CWA Section 401(a)(2). Those who wish to speak will be asked to provide their name to the AT&T Event Host and will be

placed in a numbered queue. Phone lines will be unmuted for speakers by the host one at time.

Each individual wishing to make verbal comments shall be given three minutes. If you are part of a group with common interests and views related to this action, please consider consolidating your comments for presentation by a representative spokesperson. We encourage consolidation of similar views to afford the greatest opportunity for presentation of substantive facts and to increase the likelihood for reducing the presentation of duplicative views or views that express only statements of support or opposition without presentation of facts related to water quality impacts of the Project to the Band's downstream waters.

All proceedings from the public hearing will be recorded and transcribed by a third-party court reporter for the official record.

WRITTEN COMMENTS AND CLOSE OF COMMENT PERIOD:

Please submit written comments electronically to the following email by 5 p.m. CST on June 6, 2022: USACE-PolyMet-401a2@usace.army.mil

If you are unable to submit comments via email, you may send your written comments by USPS, UPS or FedEx, with a postmarked date no later than June 4, 2022, to the following address:

U.S. Army Corps of Engineers
St Paul District
Regulatory Division
Suite 700
ATTN: Desiree Morningstar
180 East 5th Street
St Paul, MN 55101

We will include all written comments we receive in our administrative record on this action. Please note that names and addresses of those who submit comments, including verbal comments, in response to this Public Notice become part of our administrative record, and may be available to the public under provisions of the Freedom of Information Act.

ADDITIONAL BACKGROUND: PolyMet Mining, Inc. submitted a permit application to the Corps on July 16, 2004, requesting authorization to discharge dredged and fill material into waters of the United States under Section 404 of the Clean Water Act in association with the development of a copper-nickel-platinum group element mine and associated facilities. The Corps and the Minnesota Department of Natural Resources co-lead development of the Environmental Impact Statement, with the United States Forest Service serving as a co-lead agency later on in the process. The Minnesota Pollution Control Agency issued a CWA Section 401 Certification for the Project on December 20, 2018.

The Corps completed its Record of Decision and issued a standard individual permit to PolyMet Mining, Inc. on March 21, 2019, authorizing the discharge of dredged or fill material into 901 acres of wetlands and an indirect loss of approximately 27 acres of wetlands caused by the regulated activities. The permitted alternative avoided direct impacts to

approximately 500 acres of wetlands at the mine site. The permit included special conditions requiring compensatory mitigation to offset the loss of wetlands including the purchase of 1,278 wetland bank credits from an approved bank located in the bank service area of the impacts, actions to minimize impacts, and monitoring for adverse indirect effects to wetlands adjacent to the mining pit. Should monitoring demonstrate the indirect loss of wetlands in connection with the discharge of dredged or fill material authorized by the Corps permit, the Corps will require compensatory mitigation sufficient to offset this loss.

On September 10, 2019, the Band filed suit in the U.S. District Court for the District of Minnesota (court), alleging the 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 requirements. On February 16, 2021, the court ruled that EPA had a non-discretionary duty to make a "may affect" determination pursuant to CWA Section 401(a)(2). In response, EPA filed a motion on March 4, 2021, requesting a voluntary remand to allow EPA to make the "may affect" determination required by Section 401(a)(2). Further, on March 4, 2021, EPA requested the Corps consider suspending the Section 404 CWA permit if the court granted its motion for a voluntary remand. Subsequently, the court granted EPA's motion on March 8, 2021. On March 17, 2021, the Corps suspended the Section 404 CWA permit while the EPA reconsidered effects from the Project under Section 401(a)(2) to water quality downstream in the State of Wisconsin and in the Band's reservation. To date, no work in waters on site as authorized under the Section 404 CWA permit has begun.

On June 4, 2021, the EPA issued a "may affect" determination to the Band and the State of Wisconsin. Each party had 60 days to determine if the discharge associated with the CWA 404 permit and certification will affect the quality of its waters so as to violate any water quality requirements, to notify the EPA and Corps of its objection and to request a public hearing. On August 3, 2021, the Band submitted to the Corps an objection to the Section 404 CWA permit and requested a public hearing on the objection pursuant to CWA Section 401(a)(2). The State of Wisconsin did not object to the CWA Section 404 permit.

You may find further details about the project, including the terms and conditions of the suspended Section 404 CWA permit and our suspension letter here:

<https://www.mvp.usace.army.mil/Missions/Regulatory/PolyMet/>

If you have any questions concerning this Public Notice, please send an email to: USACE-PublicHearing-May2022@usace.army.mil or you may call (651) 290-5342.

ATTACHMENT 1
Corps of Engineers St Paul District Clean Water Act 401(a)(2) Public Hearing

Fond du Lac Band of Lake Superior Chippewa objection to Section 404 Clean Water Act permit for the PolyMet Mine and the Band's determination the Project "will affect" its downstream waters

May 3-5, 2022 (note all times are in CST)

Public may access via:

<https://www.youtube.com/user/usacemvppao>

Day One

08:00 - 08:30 Presiding officer Colonel Jansen opens

08:30 - 09:00 Fond du Lac opens, provides overview of their objection

09:00-10:00 EPA provides overview of its evaluation and recommendations

10:00-10:30 Recess

10:30-12:00 Fond du Lac views, opinions, and recommendations

12:00-1:00 Recess/Lunch

1:00-6:00 Fond du Lac views, opinions and recommendations continued

(Note: one recess (minimum) of 15 minutes between 1:00-6:00)

6:00-6:05 Presiding officer provides overview of day two schedule and adjourns day one

Day Two

8:00-8:05 Presiding officer opens

8:05 – 9:00 Fond du Lac views, opinions and recommendations continued

9:00 – 9:30 Recess

9:30-11:30 PolyMet views, opinions, and recommendations

11:30 -12:30 Recess/Lunch

12:30-2:30 Fond du Lac rebuttal opportunity

2:30-3:00 Recess

3:00-5:00 PolyMet rebuttal opportunity

5:00-5:05 Presiding officer provides overview of day three schedule and adjourns day two

Day Three

4:00 p.m. CST Presiding Officer opens

4:05 p.m. Public verbal comment opportunity

9:00-9:05 pm Presiding officer closing remarks and adjourns Public Hearing