



FOR IMMEDIATE RELEASE

Media Contact: Paula Maccabee, WaterLegacy Advocacy Director/Counsel
(office) 651-646-8890; (cell) 651-775-7128

U.S. EPA REVEALS LONG- SUPPRESSED COMMENTS ON MINNESOTA'S POLYMET MINE WATER POLLUTION PERMIT

EPA Comments Show PolyMet Water Pollution Permit Issued by MPCA is Deficient to Protect Lake Superior Waters or Comply with Clean Water Act

ST. PAUL, MINN., June 13, 2019 – Yesterday afternoon, on June 12, 2019, the U.S. Environmental Protection Agency (EPA) finally released EPA comments highly critical of the water pollution permit issued prepared by the Minnesota Pollution Control Agency (MPCA) for the controversial PolyMet project, which would be Minnesota's first copper-nickel mine. Minnesota environmental group WaterLegacy had sought these comments for more than a year, and had sued EPA under the Freedom of Information Act (FOIA) to secure these comments. These comments were released by EPA on the day that EPA briefs were due to respond to WaterLegacy's legal complaint.

WaterLegacy attorney Paula Maccabee explains, "Minnesotans concerned about preventing sulfide mining's toxic pollution had achieved a huge victory. EPA's devastating criticism of the PolyMet water pollution permit has finally seen the light of day, and EPA has now released comments on the PolyMet permit that had long been kept secret from the public. These comments reveal that EPA was highly critical of the draft PolyMet permit. In fact, EPA had concluded that the permit would violate the Clean Water Act since it had had no water quality-based limits on pollution. This major deficiency was never fixed by MPCA. The PolyMet water pollution permit was and still is weak and inadequate to protect Minnesota wetlands, rivers and lakes in the Lake Superior Basin."

The PolyMet water pollution permit is a regulatory milestone. PolyMet represents a major new discharger in Minnesota's Lake Superior watershed and Minnesota's first proposed copper-nickel sulfide mine.

Shortly after the public comment period for the permit closed on March 16, 2018, WaterLegacy learned second-hand that something irregular had happened during the process of EPA

regulatory oversight of the MPCA's PolyMet permit. WaterLegacy learned that EPA hadn't submitted its written comments, even though EPA professionals were very concerned that the PolyMet permit would fail to protect Minnesota waters.

Since March 2018, WaterLegacy submitted five Data Practices Act requests for these hidden comments and any notes taken by MPCA about these comments and also filed two Freedom of Information Act (FOIA) requests to the EPA.

WaterLegacy was not alone in efforts to protect the integrity of the regulatory process from EPA and MPCA irregularities. Jeffry Fowley, a retired lawyer with the EPA conducted an investigation and learned what had happened behind the scene. Both Mr. Fowley and the Fond du Lac Band of Lake Superior Chippewa asked for an EPA Office of Inspector General investigation of the irregular procedures in suppressing EPA's comments on the PolyMet permit. WaterLegacy and Fond du Lac asked for Congresswoman Betty McCollum's help securing the documents in January of this year. Finally, WaterLegacy engaged a non-profit law firm to file suit in the District of Columbia under the FOIA. WaterLegacy also filed a motion with the Minnesota Court of Appeals to find out what role MPCA had played in the cover-up of EPA criticism of the PolyMet permit.

During this process, EPA confidential sources disclosed that MPCA had taken notes when EPA comments about the PolyMet mine were read aloud, and that MPCA had asked EPA not to send its written comments to the agency. MPCA has admitted that staff took notes when the EPA comments were read aloud to them, but then destroyed their own notes.

After two extensions, yesterday, June 12th was the final deadline in WaterLegacy's FOIA lawsuit for the EPA and its lawyers in the U.S. Justice Department to submit briefs defending EPA's failure to release its criticism of the PolyMet permit. Instead, EPA caved and provided both EPA's comments and EPA's notes showing what EPA staff read verbatim to MPCA over the phone. Both WaterLegacy and Congresswoman McCollum received copies of EPA's suppressed comments.

Paula Maccabee, counsel for WaterLegacy explains, "From what we have learned, it is clear that both EPA and MPCA engaged in highly irregular procedures to keep EPA's criticism of a weak PolyMet permit hidden and benefit PolyMet at the expense of the Minnesota public. Only through the combined efforts of WaterLegacy, the Fond du Lac Band, Congresswoman McCollum, a retired EPA lawyer, and professional EPA staff who confidentially shared information, was EPA's devastating assessment of failure to control PolyMet pollution brought to light."

Maccabee continues, "Now that we can see how significant EPA's concerns were about MPCA's weak PolyMet permit, it is even more important to get to the bottom of this cover-up so that we can protect Minnesota waters and the integrity of Minnesota's permitting process."

A copy of EPA's comments describing the deficiencies in the PolyMet water pollution permit is attached, with EPA staff notes indicating what was read aloud to MPCA. Information on WaterLegacy and the PolyMet NorthMet mine is available at www.waterlegacy.org.