



United States Department of the Interior



OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Custom House, Room 244
200 Chestnut Street
Philadelphia, Pennsylvania 19106-2904

IN REPLY REFER TO:

January 26, 2010

9043.1
ER 09/1146

Mr. Jon K. Ahlness
Regulatory Branch, St. Paul District
U.S. Army Corps of Engineers
190 Fifth Street East, Suite 401
St. Paul, Minnesota 55101-1638

Subject: NorthMet Project

Dear Mr. Ahlness:

The Department of the Interior (Department) has reviewed the October 2009 Draft Environmental Impact Statement (DEIS) for the NorthMet Project, PolyMet Mining, Inc., Open Pit Mine and Processing Facility, Hoyt Lakes-Babbitt Area, St. Louis County, Minnesota. Please give careful consideration to the following comments.

General Comments

The anticipated environmental impacts of the proposed action are not fully and fairly addressed in the DEIS. In particular, the DEIS does not fully address anticipated project effects from or to: an interconnected action, federally listed species, the bald eagle, wetlands and mine run-off. In addition, the DEIS does not appear to fully satisfy U.S. Fish and Wildlife Service (FWS) or Corps wetland mitigation requirements, leaving part of necessary compensation to be determined subsequent to the NEPA analysis. Since each issue falls with the Department's jurisdiction or special expertise, we urge the Corps to adequately describe anticipated environmental impacts, as further identified below, in the final environmental statement.

The DEIS states that it was the position of the United States that the mineral rights leased by PolyMet do not include the right to open pit mine the National Forest System land. PolyMet disagrees with this interpretation. However, the DEIS also states that the U.S. Forest Service (USFS) and PolyMet are exploring the feasibility of a land exchange, which would consolidate surface ownership and mineral rights and that the USFS will be initiating its own environmental impact statement to evaluate this land exchange. The DEIS states unequivocally throughout the document that it assumes a land exchange would occur. A land exchange is a connected action under the National Environmental Policy Act (see CEQ's regulations for implementing NEPA, Section 1508.25) and, therefore, should be discussed in the same impact statement. Other than continuing to assume a land exchange, the DEIS offers no analysis of a land exchange between the USFS and PolyMet of a proposed 6,700 acres in the DEIS. Because of the

interconnectedness, it appears that the scope of the DEIS should be expanded to include a discussion of the anticipated environmental impacts resulting from the land exchange.

The Corps of Engineers, as the lead federal action agency, needs to prepare a Biological Assessment to assess impacts to the Canada lynx and the gray wolf, both of which are federally listed under the Endangered Species Act (ESA) in Minnesota. Critical habitat has been designated under the ESA for both the Canada lynx and the gray wolf. The federally-threatened Canada lynx (*Lynx canadensis*) and federally-threatened gray wolf (*Canis lupus*) are found within the proposed project area. In accordance with Section 7(c) of the Endangered Species Act of 1973, as amended, it is the responsibility of the Corps to determine if its actions "may affect" listed species or critical habitat. The Corps is required to prepare a Biological Assessment (BA) for Federal actions that are "major construction activities" [50CFR 402.12 (b)]. The BA should evaluate the potential effects of the proposed action on the Canada lynx and gray wolf and designated critical habitat and determine whether any such species or critical habitat is likely to be adversely affected by the action [50CFR 402.12 (a)]. If the proposed action is likely to adversely affect Canada lynx or gray wolves, or adversely modify their critical habitat, the FWS will prepare a Biological Opinion, which will use the Corps' BA and other scientific data to determine if the proposed project jeopardizes lynx or wolves or adversely modifies lynx critical habitat or jeopardizes gray wolf. Additionally, the BO will determine the amount of any incidental take for the proposed action and will then develop measures to reduce incidental take of Canada lynx and gray wolf.

Detailed Comments

The FWS has the following significant issues relating to federally threatened and endangered species, fish and wildlife resources, physical impacts on water resources, impacts on wetland impacts, water appropriations, surface water runoff and erosion/sedimentation, wastewater, and solid waste.

1.4.3 Applicable Regulations – Under Table 1.1-1, the DEIS states that only an ESA consultation is needed from the FWS. On September 11, 2009, the FWS issued its Final Rule regarding permits for taking bald eagles.

(<http://www.fws.gov/migratorybirds/CurrentBirdIssues/BaldEagle/Final%20Disturbance%20Rule%209%20Sept%202009.pdf>)

Before any bald eagles or nests may be disturbed, project proponents must acquire a permit from the FWS. A permit may be needed if there are bald eagles nesting or using areas close to or within the project site. The last eagle nest survey within the project area was completed in 2005. The Partridge River, which flows around the east edge of the proposed Mine Site does provide nesting habitat for bald eagles based on the availability of nest trees and nearby water features including stream and lake habitats. Therefore, we recommend that an updated bald eagle survey be completed in advance of construction activities during the estimated 9 to 12 months of pre-production mine development. Results from this survey should be provided to the Minnesota Department of Natural Resources and to the Twin Cities Field Office of the FWS.

3.1.7 Project Closure – The DEIS states that a closure plan would be finalized to provide details for the final closure of the actual as-built facilities during project operations. No additional details are provided about how to ensure that continuing runoff from the mine spoil is mitigated. The DEIS does not state who would be the responsible party should there be significant acid mine runoff event

into surrounding wetlands and uplands, which drain into the Partridge River.

3.1.7.3 Reclamation of Plant Site – Closure Cost Estimate - The DEIS estimates that it would cost \$44.6 million (in 2007 dollars) to complete a variety of closure tasks including reclamation, revegetation, remediation, removal of structures, monitoring and maintenance. It was stated these are very rough estimates. These figures need to be updated and refined based on actual surface mining reclamation data prior to the Final EIS in order for agencies to better understand the cost of reclaiming such a large area to a mix of forest land and wetland habitat.

3.2.1 No Action Alternative – The DEIS states that no social or economic benefits would result from the no action alternative and that local employment and economic revenue would not increase. No data or background information is provided to make this conclusion. The USFS is required to manage its lands, which does provide social and economic benefits to the local community. Timber production, hunting, fishing, camping, and other activities are all income producing benefits resulting from a healthy, undisturbed ecosystem. The proposed mine site is owned by the USFS and lies within 21 miles of the Boundary Waters Canoe Area Wilderness. Therefore, there are social and economic benefits from the no action alternative.

3.2.2 Mine Site Alternative – Only minor alternatives were presented in the alternatives provided in this section related to the surface and ground water. No alternatives were presented in the DEIS that looked outside the proposed Mine Site. Additionally, the DEIS states that underground mining would not be economically viable. No economic analysis is provided to support this statement. We disagree that the DEIS explains why the use of underground mining would not meet the project's purpose and need.

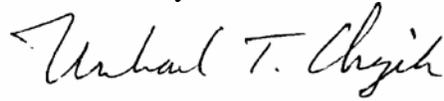
4.2.1.2 Wetland Delineation – The wetlands of the proposed Mine Site were delineated for PolyMet by Barr Engineering using the Corps' 1987 Wetland Delineation Manual. However, we found wetland delineation errors in Figure 4.2-1. For example, Wetland #20, which was delineated as a sedge meadow, can clearly be identified, using 2008 color infrared FSA photography, as an impounded marsh surrounded by forested wetland. Another unfortunate delineation error is the upland forest between Wetland #103 and Wetland #18 that omitted a long, linear hardwood swamp. The Corps should re-check and verify the wetland delineation mapping for the entire proposed Mine Site.

4.2.4.2 Wetland Mitigation, Off-Site Mitigation – The DEIS states that total direct and indirect wetland impacts from the proposed project total 1,522 acres. PolyMet has proposed wetland mitigation among three sites – on-site mitigation, the Aitkin site mitigation, and the Hinckley site mitigation. The total for these mitigation sites only add up to 1,287, mostly at a 1:1 wetland mitigation ratio. Using the Corps' usual requirement of a 1.5:1 ratio, a total of 2,283 wetlands would need to be restored or created to meet the Corps mitigation rule. A significant amount of wetland mitigation is not specified in the DEIS, which states that compensatory mitigation for any remaining acres would need to be addressed through permit conditions following the Record of Decision in this EIS. We maintain that all wetland mitigation requirements should be completely identified in the DEIS.

4.4.1.1 Endangered, Threatened, and Special Concern Wildlife Species - The following sentence needs to be corrected, “Since 2000, the USFWS and USFS documented five road-killed lynx in Minnesota.” There have been six lynx mortalities due to road kills since 2000, and an additional two lynx have been hit and killed by trains (USFWS, Twin Cities Field Office data).

We appreciate the opportunity to review the document and provide comments. For further coordination, please contact the Nick Rowse, Twin Cities ES Field Office, FWS 4101 American Blvd. East, Bloomington, Minnesota, 55425-1665; telephone: 612-725-3548.

Sincerely,

A handwritten signature in black ink that reads "Michael T. Chezik". The signature is written in a cursive style with a large initial 'M'.

Michael T. Chezik
Regional Environmental Officer

cc:

N. Rowse, FWS, Bloomington, MN
Anna Miller, USEPA, Chicago, IL
Stuart Arkley, MNDNR, St. Paul, MN