Message

From: McKim, Krista [mckim.krista@epa.gov]
Sent: 8/11/2016 4:04:32 PM
To: Wester, Barbara [wester.barbara@epa.gov]; Pierard, Kevin [pierard.kevin@epa.gov]; Bauer, Candice [bauer.candice@epa.gov]
Subject: FW: Polymet NPDES Requirements

From: Pierard, Kevin
Sent: Thursday, April 09, 2015 4:44 PM
To: Foss, Ann (MPCA) <ann.foss@state.mn.us>
Cc: Flood, Rebecca (MPCA) <rebecca.flood@state.mn.us>; Hyde, Tinka <hyde.tinka@epa.gov>
Subject: RE: Polymet NPDES Requirements

Ann – as I stated in my original email our intent was to document what we believe were verbal agreements made concerning the likely approaches PCA would take to permitting and addressing primary concerns raised, which had not been otherwise documented. Some of these topics were addressed some time ago but to my knowledge there was never any written acknowledgment of agreement, positions or rationale which is important for informing permitting staff and managers rather than relying on recollections. Once the permit application is provided I am sure we will be evaluating these concepts again and make any needed adjustments but the basic principles will likely remain constant. The note was not intended to renew discussions on Northmet permitting as we did not believe that this action was likely in the near future but we look forward to discussing the correspondence with you and your staff to alleviate any concerns. I will ask Krista to work with Stephanie to get this set up.

From: Foss, Ann (MPCA) [mailto:ann.foss@state.mn.us]
Sent: Thursday, April 09, 2015 3:46 PM
To: Pierard, Kevin
Cc: Flood, Rebecca (MPCA); Hyde, Tinka
Subject: RE: Polymet NPDES Requirements

Kevin,

As we discussed when I called you today, it has been quite some time since we have had conversations related to permitting (6-12 months). If you felt it was time to renew discussions about potential permitting of the Northmet why wouldn't you first convey that to me. If you had conveyed the need for such discussions, I would have suggested a meeting/conference call to refresh everyone's memory on previous discussions and how topics have evolved. Some of the discussions mentioned in your email were several years ago.

It is important to note that the state has not started in depth permitting conversations with the company and does not yet have a timeframe for doing that.

I propose that we set up a conference call to discuss your email and attachments. Your email and attached memo have inaccuracies and outdated information. We can discuss this in detail during the call. MPCA participants will be Richard Clark, Stephanie Handeland and myself. Please have Krista work with Stephanie to set something up. We should plan on a minimum of 2 hours.

As we discussed, typically at the start of a permitting process, we have a conversation of what issues need to be worked through and develop a process and schedule for doing that. Typically there is some documentation of this process. Right now, it is too early to start the permitting process but we could start a list of issues that will need to be worked through during permitting. This would be documented and saved.

Once we start permitting, we would have a kick-off conversation to refresh memories again, dust off the list of issues and add, delete, edit as appropriate and move forward.

I understand your wish to document future discussions, summarizing both areas of agreement and also points where we may choose to agree to disagree. I assume that documentation would occur shortly after conversations to ensure accuracy and that each party would ensure the accuracy of any documentation..

In the future, if either of us has an issue, I would suggest the following process:

- Contact each other by phone to discuss
- Set up a future conference call with others, if needed
- At end of call, summarize discussion and discuss need to document
- If it is agreed that documentation of certain items is needed, agree who will draft and by when.
- Recognize that approaches and projects evolve, sometimes rapidly

As noted above, please have Krista work with Stephanie to set up a call.

Thanks, Ann

From: Pierard, Kevin [mailto:pierard.kevin@epa.gov]
Sent: Tuesday, April 07, 2015 11:33 AM
To: Foss, Ann (MPCA)
Subject: Polymet NPDES Requirements

Hi Ann,

During our review of the proposed Polymet - Northmet (Northmet) project related documents and Environmental Impact Statement (EIS) drafts we had several conversations concerning EPA's comments relative to the Clean Water Act (CWA) and specifically to future National Pollutant Discharge Elimination System (NPDES) permitting for the proposed Northmet project. The Minnesota Pollution Control Agency (MPCA) requested that specific responses to our comments on NPDES related issues be deferred to the permitting phase of the project rather than during the EIS development phase. EPA accommodated that request. Since many decisions concerning NPDES were not specifically summarized in writing I thought it would be helpful to do so to assure shared understanding of the issues and documentation of decisions and approaches we agreed upon. Accordingly, I am writing this note to document our understanding of MPCA's anticipated

approach to address proposed discharges of pollutants to waters of the United States through NPDES permitting, and to explain EPA's position regarding the applicability of NPDES permit requirements for point source discharges of pollutants to surface waters, including those that occur via subsurface flow. We note that because these issues were deferred to permitting during the process to develop the EIS, we do not anticipate that the information in the EIS will necessarily be sufficient to address the concerns we have enumerated, and we anticipate that MPCA will be working with Northmet to ensure the development of a sufficient record to support NPDES permit issuance.

Discharges are proposed for the Northmet site which require NPDES permit coverage in order to be in compliance with the CWA. The project proponent has a duty to submit an NPDES permit application to seek coverage for all proposed pollutant discharges, so that the permit can be in place when the proposed pollutant discharges occur. The MPCA is responsible for issuing an NPDES permit, where appropriate, that contains conditions and limits which assure compliance with all applicable requirements of the CWA and regulations, including limitations controlling all pollutants which are determined to cause or have reasonable potential to cause or contribute to an excursion from any state WQS. The enclosure highlights the more significant issues that we have identified to date for this facility and that must be addressed during the NPDES permitting process.

Although we have spoken many times regarding these concerns please let me know if you have any questions or would like to discuss further. In addition, we look forward to working with you to assure timely decisions on new and expired mining permits consistent with our joint priority.

Please see the attachment for some more information on the NPDES applicability to the Northmet project.