Message

From: Paula Maccabee [pmaccabee@justchangelaw.com]
Sent: 4/11/2016 9:48:25 PM
To: Holst, Linda [holst.linda@epa.gov]; Swenson, Peter [swenson.peter@epa.gov]; Marko, Katharine [Marko.Katharine@epa.gov]; Burdick, Melanie [Burdick.Melanie@epa.gov]; McKim, Krista [mckim.krista@epa.gov]; Amy.Mucha@epa.gov
CC: Wester, Barbara [wester.barbara@epa.gov]
Subject: Phone Conference on PolyMet Methylmercury Assessment
Attachments: Mingo Logan Coal Co. v. United States EPA_ 714 F.3d 608.DOCX; Mingo Logan Coal Co. v. United States EPA_ 70 F. Supp.DOCX

Hello Linda, Peter, Katy, Melanie, Krista, Amy, Barb,

Thank you very much for providing WaterLegacy with an opportunity to follow up on our March 1, 2016 submission of a Methylmercury Assessment Outline for PolyMet project impacts that we prepared working with Dr. Brian Branfireun.

If it would be appropriate from EPA's perspective, Dr. Branfireun would be willing to talk with EPA staff and scientists about the information in his reports and the methylmercury assessment outline, and I would not object to that discussion so long as I could listen in. If greater formality is requested, such as responses to questions in writing, please also let me know.

Although some aspects of the methylmercury assessment would require new sampling, some of the information on hydrology and chemical inputs may already have been gathered for the PolyMet project, although not contained in the environmental impact statements. For example, it is likely that the project proponent would have had to model impacts to proximate wetlands to satisfy requirements for Section 404 and Section 402 permits.

WaterLegacy agrees that the EPA retains authority to consider methylmercury impacts of the PolyMet project under both Section 401(a)(2) and under Section 404(c) of the Clean Water Act. We believe that the methylmercury assessment approach we submitted in consultation with Dr. Branfireun would apply to both analyses.

In our brief phone call, I cited the Spruce Mine litigation in support of WaterLegacy's positions that EPA retains the authority to withdraw speciation for the PolyMet mine project under Section 404(c) and would retain that authority even if a Section 404 permit had been issued, and that impacts to downstream water quality as well as impacts at speciation sites (the PolyMet mine, tailings facility and hydrometallurgical residue facility would all dredge and fill wetlands) can be grounds for the EPA to veto a Section 404 permit. The cases to which I referred are attached.

WaterLegacy would appreciate if you could keep us informed as decisions are made about how the EPA will address assessment of PolyMet methylmercury impacts. Please also let us know if you would like to involve Dr. Branfireun and if there is any information we could supply that would be helpful in evaluating this important concern.

Best regards,
Paula

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