Message

From: Paula Maccabee [pmaccabee@justchangelaw.com]
Sent: 9/18/2015 10:18:25 PM
To: Proto, Paul [proto.paul@epa.gov]
Subject: Minnesota Section 303(d) List - Concerns about Mining Influence and Protection of Wild Rice Waters and Mercury-Impaired Waters

Hi Paul,

I was wondering what the status is regarding EPA's review of Minnesota's 2014 Section 303(d) list, particularly as it pertains to wild rice waters and mercury-impaired waters. Although we received the EPA's July 13, 2013 comments on the MPCA's 2012 draft impaired waters listing and the attached June 5, 2014 acknowledgement of WaterLegacy's comments on the MPCA's proposed 2014 Section 303(d) list, we have not received any further analysis of the issues we raised regarding wild rice waters and mercury impaired waters.

If you haven't already seen these documents, I wanted to make sure you had a chance to review WaterLegacy's Petition for Withdrawal of Program Delegation from the State of Minnesota for NPDES Permits Related to Mining Facilities. Our petition raises a number of issues regarding the State's non-compliance with Clean Water Act requirements, discussing concerns about failure to list wild rice waters impaired due to sulfate pollution in Part II, which begins on page 21 of the Petition.

We also include among the supporting Exhibits to this Petition several documents pertinent to the issue of listing wild rice waters impaired due to excessive sulfates. Exhibit 18, on p. 398 contains the legislation enacted by the Minnesota Legislature this year that precludes compliance with Section 303(d) requirements. Exhibit 19, pp. 399-414, contains documents WaterLegacy obtained from the MPCA through a Data Practices Act request pertaining to the listing of wild rice impaired waters. For your convenience, copies of WaterLegacy's Petition, Table of Exhibits and the full Exhibits themselves have also been uploaded to DropBox, where they are available at https://www.dropbox.com/sh/wkpf9ze32f0xlkb/AAC3sWkO10HnK_LMgPud808qa?dl=0.

I would request copies of any communication and comments EPA has prepared or provided regarding the MPCA's 2014(d) Section 303(d) list.

I would also ask whether it would be helpful for your office to receive more detailed information about mercury impairments in the waters that are downstream of the proposed PolyMet NorthMet project. WaterLegacy and others requested additional listings of mercury-impaired waters in 2014 and documented the basis for our requests using various sources of mercury data, as reflected in the attached letter and spreadsheet. We are aware of additional mercury sampling data collected since the PolyMet SDEIS, which we could provide to you if you are continuing to review the adequacy of listings of mercury-impaired waters.

Please feel free to call me at 651-646-8890 or provide an update by email. I look forward to hearing from you, and would be happy to answer any questions you may have.

Sincerely yours,

Paula Maccabee, Esq.
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