WN-15J

Jeff Udd
Metallic Mining Director
Minnesota Pollution Control Agency
525 Lake Avenue South, Suite 400
Duluth, MN 55802

Re: U.S. Environmental Protection Agency Review of the Public Notice Draft NPDES Permit, PolyMet Mining, Inc., NorthMet Project, Permit No. MN0071013

Dear Mr. Udd:

The U.S. Environmental Protection Agency (EPA) has reviewed the Public Notice Draft National Pollutant Discharge Elimination System (NPDES) Permit, fact sheet, and supporting documents for the proposed PolyMet Mining, Inc., NorthMet Project, Permit No. MN0071013 received from the Minnesota Pollution control Agency (MPCA) on January 17, 2018.

EPA would like to recognize the progress that has been made regarding the design of the NorthMet project over the duration of the environmental review process. PolyMet is proposing advanced water treatment and project design components that include a tailings basin seepage capture system. Specifically, as part of the NorthMet project, the proposed seepage capture system, as described in the fact sheet on pages 17 and 70, is designed to capture the existing discharge from the tailings basin owned by Cliffs Erie, LLC that currently discharges to receiving waters surrounding the basin. EPA would also like to note that the proposed water capture systems for the mine site, plant site, and other associated areas is designed to be integrated into the project's overall water management system. The advanced water treatment technology is a step forward toward protecting water quality and we commend both MPCA and PolyMet for their effort to require and utilize this technology.

Enclosed for your consideration are our comments on the Public Notice Draft Permit. We hope that these will be helpful to MPCA as it works to prepare a proposed permit. EPA will continue to work with MPCA in our review of the proposed permit for this facility to ensure the permit issued by MPCA is consistent with the Clean Water Act (CWA) and implementing regulations. Please note that the comments below are abbreviated, and additional details are included in the Enclosure to this letter.

1. **Water Quality Based Effluent Limitations** – The draft permit does not include water

quality based effluent limitations except as described in the fact sheet (p. 41) for pH or any other conditions that are as stringent as necessary to ensure compliance with the applicable water quality requirements of Minnesota, or of all affected States, as required of all state programs by CWA Section 402(b), 33 U.S.C. § 1342(b); and 40 C.F.R. §§ 122.4(d), 122.44, and 123.44(c)(1), (8)-(9). Furthermore, the permit includes technology based effluent limitations that are up to a thousand times greater than applicable water quality standards.

2. **Effluent Limitations Guidelines Calculation** – The draft permit does not include all the requirements of 40 C.F.R. 440, Subparts G, J, and K that apply to this proposed project, including a restriction on discharge volume that is in conformance with 40 C.F.R. § 440.104(b)(2)(i) and that is equivalent to the annual net precipitation for the site.

3. **Permit Enforceability Concerns** – Several sections of the draft permit present enforcement issues that should be revised to ensure compliance with 40 C.F.R. §§ 122.4(a) and (d) (see also 40 C.F.R. § 123.44(c)). For example, the permit as written may preclude enforcement per CWA Section 402(k), 33 U.S.C. § 1342(k), for pollutants disclosed during the application process but for which there are no limitations, or for water quality standards excursions where the limitation provided in the permit appears to be greater than the applicable state water quality criterion. Additionally, the permit contains "operating limits" on an internal outfall that may not be enforceable by EPA, citizens, and potentially MPCA and, thus, may be ineffective at protecting water quality under the Clean Water Act (see 40 C.F.R. §§ 122.4(a), (d)).

4. **Decision Making Procedures** – The draft permit states that certain plans, reports, and other actions are effective parts of the permit upon submittal by the permittee, making them de facto permit modifications that, in some instances, are likely to be major modifications subject to 40 C.F.R. § 122.62 (for example, see permit section 6.10.38). EPA is concerned that the permit allows both the permittee and MPCA to modify the permit without following the public process for major permit modifications under 40 C.F.R. § 122.62. Permit modifications that do not follow federal regulations may be unenforceable, may cause confusion for regulators and public over what is covered by the permit, and therefore would not ensure compliance with the CWA (see 40 C.F.R. § 122.4(a)).

The above concerns must be addressed to ensure that the permit will achieve compliance with all applicable requirements of the CWA, including water quality requirements of Minnesota and of all affected states. If unaddressed, the above concerns may result in an EPA objection to a proposed permit. See 40 C.F.R. §§ 123.44(c)(1), (5), (7), and (9). In addition to the issues identified above, we also recommend that you consider and address the additional comments and recommendations provided in the Enclosure.

We look forward to working with you as we conduct a formal review of the permit consistent with Section II of our Memorandum of Agreement. When the proposed permit is prepared, please forward a copy, any significant comments received during the public notice period, and MPCA's responses thereto, to r5npdes@epa.gov. Please include the EPA permit number, the facility name, and the words "Proposed Permit" in the message title. If you have any questions

related to EPA's review, please contact Mark Ackerman at (312) 353-4145 or at ackerman.mark@epa.gov. Thank you for your cooperation during the review process and your thoughtful consideration of our comments.

Sincerely,

Kevin M. Pierard, Chief
NPDES Programs Branch

Enclosure

cc: Richard Clark, electronically
Stephanie Handeland, electronically

bcc: Barbara Wester, ORC
Jillian Rountree, ORC
Krista McKim, NPDES

Path and File Name:
Https://Usepa.Sharepoint.Com/Sites/R5/Wd/NPDES/R5miningteam/Shared Documents/Polymet-Northmet/Draft Permit Comment Letter/MN0071013_Polymet Northmet_Draftperltr_2018_03-14.Docx