

Exhibit L

DEC 18 2018

WN-15J

Memorandum

SUBJECT: Review Summary of Poly Met Mining, Inc., NorthMet Proposed NPDES Permit (MN0071013)

From: Kevin M. Pierard, Chief
NPDES Programs Branch

To: File

Permit Review Summary

MPCA provided EPA Region 5 with a pre-public notice draft permit for review on January 17, 2018¹. Regular meetings were held approximately every two weeks during EPA Region 5's review, and comments identified were shared verbally with MPCA during these meetings. EPA Region 5 identified numerous substantive comments on the draft permit and prepared a comment letter to MPCA.² However, Region 5 senior management reached an agreement with MPCA to

¹ The actual public notice began on January 31, 2018 and ended on March 16, 2018.

² EPA Region 5 staff (NPDES and ORC) briefed senior management on March 9, 2018 to highlight the significance of the comments identified during review of the draft permit and the importance of sharing the comments with MPCA through a comment letter. During the briefing, EPA Water Division recommended sending a comment letter to MPCA during the public comment period to document EPA Region 5's findings. It was noted during the briefing that

- EPA provides comments on draft permits during the public comment period as a part of our regular NPDES program oversight to ensure that state permits are consistent with the Clean Water Act (CWA) and its regulations prior to the permit being proposed for issuance.
 - This practice reduces the need to issue objections on proposed permits because the state would have had an opportunity to work with EPA to address concerns before proposing the permit.
- EPA has been involved in the project for several years, as a cooperating agency during the NEPA process, which resulted in several project design changes to improve environmental protection. At the end of the NEPA process, EPA agreed with the State's proposal to address remaining surface water quality concerns during the permitting process.
- To follow-up on the NEPA agreement and to implement our Joint Priority with the state, EPA has had biweekly discussions with MPCA on various issues since the permit application was submitted in July 2016. However, concerns remain.

As indicated above EPA Region 5 identified several issues during review and provided the following general characterization of them as follows:

1. The draft permit did not include water quality based effluent limits (WQBELs) or any other conditions that are as stringent as necessary to ensure compliance with the applicable water quality requirements of all affected States as required by 40 C.F.R. 122.4(d) and 40 C.F.R. 123.44(c)(9).

forgo sending written comments.³ Following this agreement, EPA Region 5 held a conference call with MPCA on April 5, 2018 during which the comment letter was read to the State. EPA Region 5 held multiple meetings with MPCA following the April 5, 2018 conference call. During these meetings MPCA provided updates on the status of permit issuance but did not provide responses to comments received. These calls ceased in early summer, 2018. EPA Region 5 and MPCA had a face to face meeting on September 25-26, 2018 during which the concerns outlined in our April 5, 2018 conference call were discussed in more detail.

The intent of the September 2018 meeting was to provide EPA an opportunity to meet with MPCA and the company⁴ to obtain additional information on the treatment systems and operation. The second half of the meeting was for EPA to meet one-on-one with MPCA to attempt to resolve the significant issues identified by EPA Region 5 on the draft permit. Two of the more objectionable issues raised by EPA Region 5 were (1) the lack of water quality based effluent limitations (WQBELs) in the draft permit and (2) MPCA's plan to issue general permit coverage for construction stormwater discharges from peat dominated wetland systems which may release significant amounts of mercury into downstream navigable waters.

Regarding the lack of WQBELs, the NPDES program believes based on information provided by the company that there is a reasonable potential to cause or contribute to an excursion from state numeric and narrative water quality standards. MPCA referred to a "qualitative" reasonable potential analysis based largely on their confidence that the treatment system will perform as expected. Given MPCA's refusal to include WQBELs EPA Region 5 asked MPCA at the face to face meeting to include additional "operating" limits in the permit for arsenic, cobalt, lead, nickel, and mercury at an internal outfall, WS074. Following the meeting, after consideration of EPA Region 5's request and discussions between MPCA and the company, MPCA agreed to include the additional "operating" limits.⁵ Unlike WQBELs and TBELs, internal "operating"

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2. The permit includes technology based effluent limits (TBELs) that are up to a thousand times greater than applicable water quality criteria.
 3. The draft permit did not include all of the requirements of 40 C.F.R. 440, Subparts G, H and K that apply to this proposed project, namely a restriction on discharge volume that is equivalent to the annual net precipitation for the site.
 4. The draft permit contained de facto permit modifications, upon submittals from the permittee, which would be a violation of the public process associated with permit modifications under 40 C.F.R. 122.62, and create a serious compliance and enforceability concern as to the scope of what is covered by the permit per 40 C.F.R. 123.44(c)(1), (5) and 40 C.F.R. 122.4(a).
 5. Additional permit enforceability concerns, per 40 C.F.R. 123.44(c)(1) and; 40 C.F.R. 122.4(a), include that the permit:
 - a. Contains "operating limits" on an internal outfall that are not clearly enforceable by EPA or MPCA and, thus, would be ineffective at protecting water quality.
 - b. Functions as a shield from Clean Water Act enforcement for pollutants disclosed during the application process per 33 U.S.C. 1342(k).

³ Email from Kurt Thiede (EPA Region 5 Chief of Staff) to Shannon Lotthammer (MPCA) dated March 16, 2018 which outlines the agreement between EPA and MPCA. Appendix A.

⁴ PolyMet representatives and their consultants from Barr Engineering were present on the first day of meetings held on September 25, 2018.

⁵ Inclusion of these "operating" limits are for all pollutants for which modelling and/or pilot testing determined to be potentially present in waste streams at concentrations greater than water quality criteria before entering the

