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MINING

## Group asks EPA to regulate state's mining industry

Marshall Helmberger



file photo

A petition to the EPA charges that the state of Minnesota has failed to properly regulate the state's metallic mining industry, resulting in negative impacts to the state's waters.

sought to erode the validity of scientific work being undertaken by the agency.

Maccabee said the Legislature's recent decision to block enforcement of the state's longstanding 10 mg/l sulfate standard for wild rice was a violation of federal law that only adds to the legal basis for the EPA to take action.

The petition, which includes hundreds of pages of exhibits gathered by the organization through public information requests, reveals that mining companies on the Iron Range are routinely exceeding pollution standards for pollutants like sulfates, bicarbonates, dissolved salts, specific conductivity, and metals, such as copper, nickel and mercury to both immediate and downstream receiving waters. It also cites data showing that water bodies, like the St. Louis and Embarrass rivers, have seen significant declines in the numbers and diversity of aquatic organisms, including fish, as a result of mining discharges.

Maccabee said she was stunned as her investigation into the issue revealed the extent of the violations, and the lack of current permits at most operating mines. She said she had long accepted the argument often heard by mining advocates, that Minnesota did a better job than most places at regulating mining. "It's been a very difficult and disappointing process to realize that when it comes to mining, we're letting the industry set its own rules," she said.

By law, the petition requires a response by the EPA, which could include public hearings followed by an order for corrective action within 90 days. The federal agency does have authority to assume direct authority for implementing the Clean Water Act if state regulators fail to do the job. Maccabee said the exhibits present a powerful case. "We have created a documentary record that requires action. The only question is how soon the EPA will act."

The MPCA is already under intense pressure from the EPA for its failure to re-issue dozens of expired mining company permits, instead allowing the companies to continue to discharge waste under old rules. In some cases, such as the Minntac tailings basin, companies are continuing to operate on permits that expired decades ago.

Documents included in the petition reveal that in 2013, the EPA and MPCA signed a Metallic Mining Joint Priority Agreement that required the MPCA to begin to clear up its backlog of over 50 expired mining company permits by 2018. As part of that agreement, the agency promised to complete a new permit for Minntac's massive tailings basin by the end of 2014. The agency had made progress towards that goal, and had planned to issue a draft permit as of March 2015 that would have eventually required Minntac to comply with the state's current sulfate standard. But the agency pulled the draft under intense pressure from Iron Range legislators and the mining industry. Shortly after, the agency announced a so-called "flexible standard" for regulating sulfate discharges.

In the recently-completed legislative session, a coalition of conservative Republicans and Iron Range DFLers passed a bill that prevented the MPCA from enforcing the state's current sulfate standard until it has completed a rule-making process, which is expected to take up to two years. MPCA officials have since stated that they won't be issuing a new Minntac permit until after that process is complete, ensuring that it won't come anywhere close to meeting the timeline set by EPA.

But MPCA's troubles aren't confined to Minntac.

"MPCA has made virtually no progress in addressing the backlog of any of the out-of-date mining permits," notes Maccabee. "That means they're allowing mine pits, waste rock piles and tailings waste facilities to continue to pollute Minnesota waters. They signed an agreement and they still won't do it," she added. "I think our political class has been intimidated by some very powerful special interests."

Maccabee said the MPCA has, on occasion, taken positive steps forward. She noted that the agency's initial list of wild rice waters impaired by sulfates appeared to be a credible effort. "The agency was poised to do the right thing, but then U.S. Steel applied pressure and they backed off."

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Were the EPA to strip the MPCA's authority over the regulation of metallic mining, it would largely prevent legislators in Minnesota from blocking efforts to cleanup the industry.

Timing is key

While the petition from Water Legacy is focused on oversight of taconite mining, it comes at a key decision point regarding PolyMet Mining's proposal for the state's first copper-nickel mine.

The Minnesota Department of Natural Resources has just released a preliminary final draft of that mine proposal to cooperating agencies, which includes the EPA.

In assembling the reams of data into a coherent package, Maccabee is hopeful it will allow EPA to gain a better understanding of the state's apparent inability to regulate the mining industry that already currently operates in the region— and that that insight will prompt closer scrutiny of the PolyMet proposal, and any future mine plans.

"Unfortunately, the MPCA has not done its job under state law and the federal Clean Water Act to protect Minnesota from mining pollution," said Maccabee.

Given the length and detail of the Water Legacy submission, MPCA officials said they could not immediately comment. They expect to issue a response later this month.

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