

FLAMBEAU MINING COMPANY'S REQUEST FOR ISSUANCE OF A CERTIFICATE OF COMPLETION OF RECLAMATION FOR THE INDUSTRIAL OUTLOT PORTION OF ITS RECLAIMED MINE NEAR LADYSMITH, RUSK COUNTY AND THE DRAFT REVISED MINING PERMIT PROPOSED BY THE DEPARTMENT OF NATURAL RESOURCES

PUBLIC COMMENT SUMMARY AND DEPARTMENT RESPONSES

In accordance with s. 293.43(2m)(b), Wis. Stats., a hearing notice announcing the public hearing and public comment period was published in the Wisconsin State Journal and on the Wisconsin Department of Natural Resources' (DNR) internet site on June 6, 2022. In addition, copies of the hearing notice were provided to the specific parties identified in s. 293.43(2m)(b)1.-13., Wis. Stats., including all six signatories to the Stipulation and Order pertaining to the Certificate of Completion of Reclamation issued to Flambeau Mining Company in 2007.

A virtual public hearing was held on July 6, 2022. Facilities were also provided in Ladysmith, Wisconsin for any person who elected to present their comments in person. Fifteen people participated in the hearing and four individuals (one in person at Ladysmith) provided oral statements during the hearing. Thirteen people signed in virtually and three registered in person in Ladysmith, with one of the in-person registrants also signing in to the virtual meeting. The DNR also accepted comments by regular mail and email. The public comment period ended on July 21, 2022. The DNR received written comments from six individuals and joint comments on behalf of three environmental organizations. A list of all persons that provided public comments is included at the end of this document. All comments were posted on the DNR's internet site.

The DNR reviewed all of the submitted comments. The following summary presents the comments that were relevant to the issues of whether a Certificate of Completion should be issued for the industrial outlot portion of the mining site and what provisions should be included in the revised mining permit.

COMMENTS

1. Comment Summary: The revised Mining Permit should require additional water quality monitoring of Stream C on and near the mining site. (Multiple commenters)

Response: The DNR agrees that an assessment of Stream C is appropriate to determine what additional actions may be necessary. In 2012 the DNR's water quality program conducted a surface water quality assessment of Stream C. The study included sediment samples, fish surveys, and macroinvertebrate sampling, and included a review of surface water quality sampling by DNR and the Flambeau Mining Company. The analysis considered both copper and zinc. The study noted the presence of fish and macroinvertebrates in Stream C and found no significant acute or chronic toxicity in a Stream C water sample taken in 2011. The study suggested that dissolved organic matter in Stream C may be reducing the toxicity of copper and zinc. The study recommended further testing to assess toxicity more fully and to determine the influence of dissolved organic material.

In 2012, the portion of Stream C below Copper Lane was listed as impaired for zinc and copper. Since 2012, Flambeau Mining Company completed an extensive site reconfiguration project to improve surface water management in the industrial outlot area. The work, which was completed in 2015 and 2016, included conversion of previously constructed infiltration basins to a system of flow-through wetlands, replacement of culverts under State Highway 27 and Copper Park Lane, identification and excavation/removal of areas of shallow soils with elevated concentrations of copper, improvement of best management practices for stormwater management, and revegetation with seed mixes of native species. Based on data collected from 2016-2018, which showed there were no exceedances of the acute toxicity criteria for zinc, the portion of Stream C below Copper Lane was subsequently delisted for zinc. That segment of Stream C, however, still remains listed for copper. In 2022, the portion of Stream C above Copper Lane was listed as impaired for copper and zinc.

The DNR believes that it would now be appropriate to update the assessment of Stream C based on the work that has been completed on the industrial outlot. To that end, the DNR has been engaged in preliminary discussions with the Flambeau Mining Company regarding additional water quality monitoring and further biological assessment of Stream C. Flambeau Mining Company has committed to conducting a study to determine if Stream C is attaining its designated use and intends to submit a draft scope for DNR review in the first quarter of 2023. The DNR anticipates the monitoring and assessment will take place in 2023 and will be conducted in a manner consistent with the provisions of ch. NR 102, Wis. Adm. Code, other related administrative rules, and DNR guidance. In addition, DNR staff will conduct a variety of verification activities to ensure the data collection and analyses adhere to accepted protocols. If any additional monitoring and remediation is needed, the DNR has authority under the revised mining permit to specify those additional steps. The DNR will determine the need for follow-up actions, if any, after completion of the monitoring and biological assessment conducted by Flambeau Mining Company.

2. Comment Summary: Flambeau Mining Company should be required to conduct a site survey in accordance with provisions in the NR 700 series of the Wisconsin Administrative Rules to identify potential sources of contaminants and remediate them to comply with prescribed clean-up standards. (Multiple commenters)

Response: Prior to completing the site reconfiguration work in the outlot portion of the mining site in 2015 and 2016, Flambeau Mining Company conducted an extensive soil sampling survey in the outlot area. Areas with elevated concentrations of copper were delineated and designated for excavation as part of the site reconfiguration activity. Soil that was excavated from the site was collected, transported to, and disposed of at a licensed solid waste facility. The need for additional soil testing and potential excavation will be determined after completion of the monitoring and biological assessment discussed in response to Comment 1.

3. Comment Summary: The Certification of Completion (COC) for the industrial outlot portion of the mining site should not be issued because Flambeau Mining Company did not comply with requirements specified in the Reclamation Plan modification issued in 1998 concerning removal of the perimeter fence and deadlines for putting the site to alternative

uses. Further, the COC should be denied because the site is not being used for “industrial” purposes. As a result, the Notice of Completion of Reclamation for the industrial outlot should be voided and the entire process should be restarted. (Tom Wilson)

Response: The 1998 modification of the Reclamation Plan required, among other things, that the perimeter fence be removed and that the industrial outlot portion of the mining site be put to acceptable alternative uses by the end of 2004. The perimeter fence around the entire mining site has been removed. There is a fence separating the industrial outlot from the remainder of the site, but this is not part of the perimeter fence which was required to be removed.

The current uses of the site are the same as those proposed in 2004 and they were approved by the DNR as acceptable alternate uses. In a letter dated December 30, 2004, Flambeau Mining Company documented the various alternative uses of facilities on the industrial outlot, including the proposed construction of an equestrian trailhead. In February 2005, DNR approved the alternative uses pending review and approval of the equestrian trailhead construction plans. In addition, the Stipulation and Order pertaining to the Certification of Completion process in 2007 specifies that the Notice of Completion of Reclamation approved in 2001 covered the entire mining site, including the industrial outlot and that a separate Notice of Completion for the outlot would not need to be submitted.

4. Comment Summary: The COC should be denied because of unsatisfactory uses of the site, including underuse of the of the DNR service center and equestrian trailhead and deterioration of asphalt in the parking lot and other paved areas on the site. Given the underuse of the site for these purposes, the industrial outlot should be reclaimed to support passive reclamation and wildlife habitat in a manner consistent with rest of the mining site. (Tom Wilson)

Response: In accordance with the modification of the Reclamation Plan issued in 1998, Flambeau Mining Company identified alternative uses for various project facilities located on the industrial outlot portion of the mining site and those uses were subsequently approved by the DNR. The uses approved by the DNR remain the same today and are consistent with the requirements of the Reclamation Plan, as modified. As provided in s. 293.63(1), Wis. Stats., a COC shall be issued if the DNR determines that the operator has completed reclamation in accordance with the reclamation plan.

5. Comment Summary: The revised Mining Permit should specify who is responsible and what happens to the industrial outlot if the lease between Flambeau Mining Company and the Ladysmith Community Industrial Development Corporation expires or is discontinued. (Tom Wilson)

Response: Paragraph 2.j. of the revised mining permit specifies the current approved uses of the entire mining site and indicates that any changes in those uses shall be reviewed by the DNR and treated as a modification under s. NR 132.120, Wis. Adm. Code and s. 293.55, Wis. Stats. If the lease were terminated or modified to allow other uses during the remaining life of the mining permit, this condition would trigger DNR review and a formal modification process.

6. Comment Summary: The revised Mining Permit should require removal of the fence separating the industrial outlot from the rest of the mining site and removal of all areas covered with asphalt. (Tom Wilson)

Response: The fence along the northern boundary of the industrial outlot is intended to restrict access to the hiking trail system on the main part of the reclaimed mining site from the equestrian trailhead. Those areas with asphalt pavement were approved to be left in place as part of the Reclamation Plan modification. According to the terms of the lease between Flambeau Mining Company and the Ladysmith Community Industrial Development Corporation (LCIDC), regular maintenance of the facilities on the industrial outlot, including the parking lot, is the responsibility of the LCIDC. However, should the condition of the asphalt become problematic and pose a potential environmental or stability problem, the DNR would ultimately hold Flambeau Mining Company responsible, as the property owner and holder of the mining permit.

7. Comment Summary: The COC should be denied based on the current water quality conditions of Stream C. (Multiple commenters)

Response: Section 293.63(1), Wis. Stats., provides that a COC shall be issued if the DNR determines that the operator has completed reclamation in accordance with the reclamation plan. In the case of the industrial outlot, the modified reclamation plan authorized certain facilities to remain on the site and required the company to identify and facilitate development of acceptable uses on the site. The DNR has determined the company has satisfied those requirements. Granting the COC signifies only that the company has met the requirements of reclamation. The DNR will continue to assess the condition of Stream C through the ongoing regulatory authority of the mining laws, which continue to be applicable to the company and the entire mine site. Consistent with s. 293.63(1), Wis. Stats., the Stipulation and Order pertaining to the COC issued in 2007 provides that in order for the COC to be issued for the Industrial Outlot, Flambeau Mining Company would need to demonstrate the Industrial Outlot has been reclaimed in accordance with the Reclamation Plan. Flambeau Mining Company has met these requirements.

8. Comment Summary: The current groundwater monitoring program should be expanded to include monitoring wells west of the Flambeau River along the compliance boundary, monitoring wells in the industrial outlot, additional parameters and reporting of results for both filtered and unfiltered water samples. (Tom Wilson and Laura Gauger)

Response: The current groundwater monitoring program for the backfilled pit is adequate to detect changes in water quality within the pit and to project impacts to the Flambeau River. In 2018 Flambeau Mining Company requested a modification to the monitoring plan in which a number of parameters were eliminated and the frequency of sampling was reduced. The information provided in the modification request was reviewed by DNR staff and found to be technically valid and sufficient to support the modification. The DNR approved the modification request with conditions. The remaining parameters are those that have the most relevance in determining compliance and assessing the stability of the material in the backfilled pit. Monitoring and analysis of the backfilled pit water quality will continue through the long-term care period, a minimum of an additional 25 years.

Monitoring on the west side of the Flambeau River is not necessary. Analysis of hydrologic conditions during the permitting process established that the Flambeau River is a major groundwater discharge zone and that groundwater moving through the mining site and eventually through the backfilled pit would discharge to the river. Piezometric levels within the backfilled pit are consistent with that analysis, showing strong upward gradients on the west end of the backfilled pit, indicating groundwater discharge to the river.

Chapter NR 140, Wis. Adm. Code, *Groundwater Quality*, specifies that all groundwater quality samples shall be collected and handled in accordance with the sampling procedures contained in *Groundwater Sampling Desk Reference, Wisconsin Department of Natural Resources, PUBL-DG-037-96 (September 1996)*. That publication specifies that groundwater samples collected for inorganic constituents, such as dissolved metals, be field filtered and preserved as part of the standard sample collection protocol. Flambeau Mining Company and the DNR have been collecting groundwater samples consistent with the prescribed procedures since the onset of the project.

9. Comment Summary: As part of the revised permit, DNR should impose a land use restriction on the mining site to prevent incompatible future uses of the site which may result in environmental and safety issues and should list the site as a brownfield. (Laura Gauger)

Response: Inclusion of a deed restriction is not necessary at this time. The backfilled pit, the H&H site, and a number of other small spill sites are all listed on various DNR inventories, including the Wisconsin Remediation and Redevelopment Database and the Bureau for Remediation and Redevelopment Tracking System

10. Comment Summary: The surface water monitoring program for the Flambeau River should be expanded to include mandatory surface water quality monitoring upstream and downstream of the mining site and also should include sediment and biological monitoring components. (Laura Gauger)

Response: Resumption of the surface water monitoring program for the Flambeau River is not necessary. The surface water monitoring program implemented through the original mining permit, in concert with regular effluent monitoring, was intended to ensure that the effluent discharged from the waste water treatment plant did not have deleterious impacts on the river. DNR staff conducted an assessment of the surface water quality around the Flambeau mine site in 2012 to evaluate whether surface waters near the site, including the Flambeau River, have been adversely affected. Based on sampling conducted between 2010 and 2012 and a review of the sampling data collected over the years at the mine site, the assessment concluded that there were no significant changes in copper or zinc concentrations in the Flambeau River nor changes to macroinvertebrate communities in the river due to metal contamination.

11. Comment Summary: Flambeau Mining Company should be required to obtain a discharge permit under the Wisconsin Pollutant Discharge Elimination System to regulate the discharge of pollutants from the industrial outlot to Stream C. (Laura Gauger)

Response: Past remediation work at the industrial outlot has been conducted under the authority of a permit issued under ch. 30, Wis. Stats., and a WPDES Construction Site

permit. As specified in paragraph 2.i. of the revised mining permit, if any future remediation work is needed, all such work would be conducted under the appropriate regulatory authorities.

The DNR has considered whether a WPDES industrial site discharge permit would be appropriate in the case for the Flambeau mine site and has determined that the site does not meet the applicability criteria under ch. NR 216, Wis. Adm. Code, and therefore is not subject to the Industrial WPDES stormwater permit jurisdiction.

People that submitted comments by mail or email:

Johnson Bridgewater on behalf of Wisconsin's Green Fire, Wisconsin Sierra Club, and River Alliance of Wisconsin
Susan Michetti
Eric Rempala
Rusty Schultz, Natural Resource Development Association
Patricia Pesko
Tom Wilson
Laura Gauger, Deer Tail Scientific

People that provided oral statements during the public hearing:

Tom Wilson, Northern Thunder (in person at Ladysmith)
Tom Jerow, Wisconsin's Green Fire
Dave Blouin, Sierra Club
Al Gedicks, Wisconsin Resources Protection Council