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Court: Flambeau Mining Company Violated Clean Water Act

MADISON, *Wis.*— A federal court ruled yesterday that the Flambeau Mining Company violated the Clean Water Act on multiple occasions by allowing pollution from its Flambeau Mine site, near Ladysmith, Wis., to enter the Flambeau River and a nearby tributary. Eleven of these occasions occurred within the applicable statute of limitations, resulting in liability for 11 violations of the Act.

“The Clean Water Act requires that discharges of pollutants to public waters like the Flambeau River be regulated by a permit that sets clear limits on the amount of pollutants and protects the water quality of the stream,” said James Saul, an attorney with McGillivray, Westerberg & Bender. “The Flambeau Mining Company never sought or obtained such a permit and therefore was found to be in violation of the Act.”

The lawsuit resulting in yesterday’s ruling was filed early last year by the Wisconsin Resources Protection Council, the Center for Biological Diversity and Laura Gauger against the Flambeau Mining Company, a subsidiary of Rio Tinto plc and formerly of Kennecott Minerals Company. The complaint charged that the mine site, which closed in 1997, discharges stormwater runoff containing toxic levels of metals from a detention basin known as the biofilter.

Monitoring data from the mining company and the Wisconsin Department of Natural Resources show that copper levels in the discharge exceeded Wisconsin’s acute toxicity criterion of 8 µg/L — set to protect fish and other aquatic species — sometimes by several times.

Plaintiffs prevailed on most issues in the case on pre-trial motions. The sole issue left for the liability trial was whether Flambeau Mining Company’s discharges actually reached the Flambeau River or an adjacent tributary known as Stream C. During a five-day trial in May, Flambeau Mining Company claimed that the discharges never reached these waters.

In yesterday’s order, the judge rejected that claim, in part by citing multiple documents authored by Flambeau Mining Company itself stating that the discharge entered Stream C. For example, the judge noted, “Anyone concluding that no biofilter discharge ever reached Stream C . . . would have to disregard the evidence of the plan that defendant designed for handling runoff from the industrial outlot — a plan that the DNR approved.”

“We’re glad to see the court recognized what concerned citizens have known for years: that even a relatively small-scale copper mine can still pollute our waters for years after it has closed,” said WRPC Executive Secretary Al Gedicks.

“We cannot allow mining companies to pollute our water,” said plaintiff Laura Gauger. “They need to follow the same laws as you and I do.”

The court’s decision also undercuts the Flambeau Mine’s status as an environmentally successful “example mine.” Wisconsin’s Mining Moratorium Law prohibits the mining of a sulfide ore body unless mine proponents can point to a mine that has been closed for at least 10 years without polluting the environment.

“There are a number of large copper-mine proposals pending in this region, and the continuing pollution at this much smaller and short-term mine does not bode well for the larger strip-mine projects,” said Marc Fink, attorney with the Center for Biological Diversity.

The judge approvingly noted Flambeau Mining Company’s efforts to remediate the mine site. Many of these measures, including a recent series of infiltration basins, were undertaken after plaintiffs filed their suit.

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The Wisconsin Resources Protection Council (WRPC) is a statewide, nonprofit membership organization concerned with the environmental impacts of metallic mining on the state’s precious water supplies, on the tourism and dairy industries, and upon the many Native American communities that are located near potential mine sites. WRPC educates the public about the consequences of allowing international mining corporations to develop a new mining district in the Lake Superior region.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 375,000 members and online activists dedicated to the protection of endangered species and wild places. www.biologicaldiversity.org

Ms. Laura Gauger is a member of WRPC and the Center of Biological Diversity. Ms. Gauger is formerly a resident of Spooner, Wis., and currently resides in Duluth, Minn.

The citizen groups and Ms. Gauger were represented in the case by attorneys James Saul, Pamela McGillivray, Christa Westerberg and David Bender (McGillivray, Westerberg & Bender; Madison, WI), Kevin Cassidy and Dan Mensher (Pacific Environmental Advocacy Center; Portland, OR) and Marc Fink (Center for Biological Diversity; Duluth, MN).