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Re: *In the Matter of the NorthMet Project Permit to Mine Application,*
OAH 60-2004-37824

Director Wilson:

Pursuant to your letter of August 21, 2025 ("Aug. 21 Letter"), Petitioner Fond du Lac Band of Lake Superior Chippewa ("Band") files this letter response, concerning the state of PolyMet's¹ plans for the NorthMet Project Permit to Mine Application.

¹ The Band continues to follow the parties' agreement to refer to the applicant and respondent as PolyMet. See Band Exceps. & Args. at 1 n.1; Band Mar. 11 Ltr. at 2 n.1 (citing OAH Official Record, OAH 60-2004-37824 PolyMet Official Record, at pp. 6921-6922 n.1).

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On September 30, 2025, PolyMet filed a letter stating that PolyMet is continuing to study potential changes to the flotation tailings basin (“FTB”) design, and that it “still expects that its studies will result in proposed project changes.” PolyMet claimed that its studies would be completed by November 28, 2025 and requested an extension of stay through that date. PolyMet also took the position that it can seek to amend its permit to mine application, purporting to rely on Minn. R. 6132.4200, and stated that if it does file an application amendment it intends to do so by November 28.

Your August 21 Letter allows the parties to file responses to this letter, but you directed the parties not to “repeat arguments submitted in response to [the Commissioner’s Designee’s] September 6, 2024 letter.” Aug. 21 Letter at 2. In response to your September 6, 2024 letter, the Band submitted a letter brief on September 23, 2024, explaining that, as a result of PolyMet’s abandonment of the design described in its application, this case has become moot and should be dismissed. Band Sept. 23, 2024 Ltr. at 2-5. In prior filings, the Band also raised arguments on why this case has become moot, the fact that the permit to mine application is not complete, and the need for the Department of Natural Resources (“DNR”) to dismiss the case. *See* Band Mar. 11, 2024 Ltr. at 2-4; Band Apr. 9, 2024 Ltr. at 1-4; Band Exceps. & Args. at 12-15. In light of your instruction in your August 21 Letter, the Band reincorporates its positions here by reference rather than restating them.

It is important to note, however, that PolyMet’s September 30 letter includes new information about the current state of its plans, and that new information directly implicates the Band’s mootness arguments. PolyMet states that it expects to change its plans, perhaps dramatically, and anticipates filing an “application amendment” that will reflect these changes. Thus PolyMet lacks a “requisite personal interest” in the application currently before DNR, and any decision on the plan that was before the administrative law judge would result in an advisory opinion. *See, e.g.*, Band Sept. 23, 2024 Ltr. at 2-3. DNR cannot continue to exercise jurisdiction over a moot contested case proceeding. *Id.* at 5.

If you do not dismiss this matter as moot, then the Band asks, consistent with its prior position, that after PolyMet completes its studies on November 28, you require it to submit a detailed written explanation of how its plans have changed, with all applicable supporting documentation. *See* Band Sept. 23, 2024 Ltr. at 5. You should then set a schedule for letter briefs on whether PolyMet’s changes have mooted or otherwise impacted the pending contested case, whether it would be appropriate for the petitioners to complete briefing their exceptions and arguments, or whether further briefing is warranted, consistent with the schedule the Band requested in its September 23, 2024 Letter.

In its status report, PolyMet says that dismissing the contested case hearing—which PolyMet wrongly calls an “appeal”—before it can file an “amendment” to the pending permit to

mine application would “create a procedural muddle under the contested case rules.” Not true. If this case is dismissed as moot, PolyMet would be free to file another application reflecting its new plans for the permit to mine. That would provide a clean slate for DNR’s consideration that is not muddled by a complex and long record, concerning abandoned plans, that resulted in the permit to mine being vacated and remanded from the Minnesota Supreme Court for this contested case. *In re NorthMet Project*, 959 N.W.2d 731, 738 (Minn. 2021).

Moreover, PolyMet’s suggestion that the DNR rules allow it to file “an application amendment,” is wrong. PolyMet Sept. 30, 2025 Ltr. at 2 (citing Minn. R. 6132.4200). Minn. R. 6132.4200 allows amendments to *permits to mine*, not *applications* for permits. The rule could not be clearer. Subpart 1 provides that “[a] proceeding for requesting *an amendment of a permit to mine*,” begins when the “*permittee* files an application for an amendment” to the commissioner. (emphasis added). Under Subpart 2, the commissioner reviews the application to determine “whether the proposed amendment constitutes a substantial change *from the permit to mine*.” (emphasis added). PolyMet is not a permittee and does not have a permit to mine. It is only an applicant that has filed a pending application. That makes Minn. Stat. 6132.4200 categorically inapplicable here.

In fact, there is no procedure under the Minnesota Statutes and Rules for an amendment to a permit to mine application at the contested case stage. Rather, the Statues and Rules require an applicant to finish developing its application before DNR makes its decisions whether to hold a contested case hearing and whether to grant, deny, or modify the application based on the record developed through that process. Under Minn. Stat. § 93.481 subd. 1, a permit to mine applicant “*shall* submit such information as the commissioner may require,” which includes all information described in Minn. R. 6132.2200 and .2500. *See* Minn. R. 6132.1100 subpt. 6 (requiring an application to include a mining and reclamation plan that “shall describe” how the plan “meet[s] the requirements of parts 6132.2000 to 6132.3200”). Under Minn. Stat. § 93.481 subd. 2, the commissioner may only make a decision on an application that is “deemed complete and filed.”² Once an application is deemed complete and filed, the commissioner must accept petitions for contested case hearings “on the completed application,” Minn. Stat. § 93.483 subd. 1; *see id.* (allowing petitions to be filed “within 30 days after the application is deemed complete and filed”). If a petition for contested case hearing meets the requirements of Minn. Stat. § 93.483, then the commissioner must hold a hearing “concerning the completed application before the commissioner . . . in order to make a final decision on the completed application,” *id.* subd. 3(a). If an applicant

² The Band reserves all its prior arguments that PolyMet’s pending application is not “complete” because it lacks information the commissioner requires and that DNR erred by deeming it complete. *See* Band Exceps. & Args. 42-45. However, DNR cannot compound its legal error by accepting amendments to an application on which it has accepted petitions for a contested case hearing.

could file an amended application at that stage, then it would be incentivized to wait until during or after the contested case to change its mining and reclamation plan to avoid the issues raised by the petitioner and evade objections or contested case review of new elements of its plan. That would empower an applicant to moot out the proceeding, waste the time and effort spent by the parties and DNR, and eviscerate public and agency review – in other words, exactly the effects that PolyMet’s proposed “amendment” would have.

Given the Minnesota Supreme Court’s decision reversing DNR’s decision to grant the permit to mine and ordering DNR to hold a contested case, PolyMet’s application is now at the contested case stage, where the commissioner must make a decision on the application. PolyMet simply cannot file an amended application. If PolyMet purports to do that, then DNR must treat it as a wholly new permit to mine application. And if PolyMet does submit a purported “amended application,” then PolyMet will have abandoned its pending application. At that point, there could be absolutely no doubt that this contested case hearing is moot and should be dismissed. An effort by PolyMet to avoid that result and prolong this proceeding on an abandoned application would cause the very “muddle” that PolyMet claims it wants to avoid.

Because PolyMet has not yet submitted a new permit to mine application—whether styled as an “amended” application or otherwise—the Band does not address the sufficiency of any new application or what regulatory and permitting processes may be required for such an application. The Band reserves all its rights to respond, in this or any other proceeding, to additional information that PolyMet may provide in an “amendment” or in any other form.

Respectfully submitted,

/s/ Frank S. Holleman

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