

NewRange Copper Nickel LLC

Please find attached the NewRange Copper Nickel LLC comments to the MPCA Construction Stormwater General Permit Draft



NewRange Copper Nickel LLC

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March 3, 2023

Minnesota Pollution Control Agency
c/o Todd M. Smith
Stormwater Research Engineering Outreach
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Dear Mr. Todd Smith,

Reference: Construction Stormwater General Permit Draft Comments

Thank you for the opportunity to comment on the Construction Stormwater General Permit (Permit) draft. This letter outlines NewRange Copper Nickel LLC's comments on the Permit. Poly Mining, Inc. (PolyMet) changed its name to NewRange Copper Nickel LLC (NewRange) and recently completed a joint venture between PolyMet Mining Corp. and Teck American (Teck). NewRange will continue development of the NorthMet Project and continue to explore the Mesaba deposit, which were previously managed by PolyMet and Teck, respectively. For our comments below, we have listed the Permit language in italics with the MPCA proposed language changes in red italics with NewRange's comment following it.

Section 2

This permit does not authorize discharges to wetlands unless the permittee complies with the requirements in Section 22. Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented. [Minn. R. 7090.0186]

The requirement for wetland permits, other determinations or mitigative sequence to be finalized prior to authorizing coverage under this section of the Permit is overly restrictive. In the cases where projects are in a combination of uplands and wetlands, and portions of the upland work could proceed, this delay is unnecessarily burdensome as it may cause unwarranted delays, especially in cases where the majority of the work is in uplands. Other state and/or federal agencies have the jurisdiction to enforce wetland regulations, and it is unnecessary for the MPCA to add further layers of wetland regulation within the confines of this Permit. The MPCA should re-consider including this proposed language in this section.

Section 8.5

For projects, including a common plan of development or sale, disturbing less than 25 acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed no later than 14 calendar days after the construction activity has ceased. [Minn. R. 7090]

Section 8.6

For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7 calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased. [Minn. R. 7090]

Soil stabilization timeframes have been shortened on sites disturbing 25 or more acres with the premise that the MPCA believes larger sites with more potential for harm should be stabilized quicker. Project proposers are already required to provide stabilization within seven (7) days for sites near sensitive waters. This proposed requirement states that all sites over 25 acres must stabilize the soils within seven (7) days, regardless of receiving water type. NewRange feels the 14 days allowed for flexibility on larger projects with complex construction and schedule concerns. The requirement for 7 days may place an unnecessary burden on available resources. This will increase construction and monitoring costs associated with large projects while not lessening environmental risks or potential stormwater discharges versus sites less than 25 acres. The MPCA should reconsider changing the current language in Section 8.4.

Section 9.9

Permittees must provide silt fence or other effective sediment controls at the base of stockpiles on the downgradient perimeter prior to the initiation of stockpiling. Sediment controls must be managed in accordance with section 9.6. [Minn. R. 7090]

The proposed change to require downgradient perimeter controls prior to initiation of stockpiling is not always practicable. Establishing perimeter controls prior to stockpile placement, especially against sloped hillsides or similar will limit the project proposer's ability to properly establish the stockpile. There is also an increased risk to damage of the perimeter control, therefore reducing control effectiveness. The MPCA should reconsider the proposed language change to this section.

Section 9.18

Any sediment control made of soil/muck must be temporarily or permanently stabilized within 24 hours [Minn. R. 7090]

NewRange agrees stabilizing any sediment control made of soil/muck is especially important if it is within proximity to a wetland or waterbody. We feel the requirement to stabilize within 24 hours is not enough time and may be overly restrictive depending on its location (i.e., not near a wetland or waterbody). A requirement of 7 days for stabilization would be more appropriate if it is not within 100 feet from a wetland or waterbody, as the control would be inspected daily during the time prior to permanent stabilization.

Section 10.2

Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. ~~temporary or permanent sediment basin on the project site unless infeasible.~~ To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees ~~may dewater to surface waters if they visually~~ must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. ~~If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties.~~ [Minn. R. 7050.0210]

NewRange does not support a requirement for visually checking and photographing all dewatering activities every 4 hours. A 24-hour period between inspections seems more reasonable and economically feasible for projects. This is a significant burden on resources for large sites to be visually inspecting and photographing locations every 4 hours, especially before sunrise or after sunset when photographs may be of little use. The MPCA should reconsider the proposed language requiring the visual check and photograph every 4 hours.

The proposed language also prohibits dewatering if discharge from the sediment control device has visible turbidity. Filter bags, sediment traps, and sediment basins often don't remove all visible turbidity. The proposed change may mean more extensive treatment could be required for dewatering activities. Additionally, naturally occurring water with high-humic content appears brownish, which is unrelated to construction activities. Humic conditions can occur in lakes, wetlands, and streams. The MPCA should modify the proposed language to the following:

"If discharging to a surface water, permittees must discharge sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench or ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent discharges with visible turbidity related to sediment. To the extent feasible, use well-vegetated (e.g., grassy or wooded) upland areas of the site to infiltrate dewatering water. Permittees must visually check and photograph the discharge at the beginning and every 24 hours of operation to ensure adequate treatment has been obtained and nuisance conditions to a surface water (see Minn. R. 7050.0210, subp. 2) will not result from the discharge."

Item 10.3

"If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must occur before dewatering is resumed. Nuisance conditions includes, but is not limited to, a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast, or has a visible oil film, or has aquatic habitat degradation that can be identified by an observer. [Minn. R. 7050.0210]"

"Nuisance conditions" and "aquatic habitat degradation" require definition. As written, these terms are overly broad and easily misinterpreted. Additionally, waterbodies in nature often have "a visible contrast" without impact from construction. This statement would be problematic when pumping clear water into a turbid or humic stream or when pumping naturally humic water into a less humic stream.

NewRange supports adding language to define nuisance conditions, such as reference to [Minn. R. 7050.0210 Subp. 2](#), and [aquatic habitat degradation](#) and removing the reference to visual contrast.

Section 11.8

Permittees must drain temporary and permanent sedimentation basins and remove the sediment when the depth of sediment collected in the basin reaches 1/2 the storage volume within 72 hours of discovery. [Minn. R. 7090]

Site and weather conditions may not allow the removal of sediment within 72 hours, especially during weekends and holidays, during an extended period of inclement weather, or in remote locations where equipment may not be readily available. MPCA should consider revising this section to allow flexibility due to site specific conditions.

Section 11.9

Permittee's must inspect and photograph dewatering discharges at the beginning and once every 4 hours during operation. [Minn. R. 7090]

This section repeats the requirements contained in Section 10.2. The NewRange comments noted with respect to section 10.2 also apply here. MPCA should remove this section from the Permit.

Thank you for allowing NewRange the opportunity to provide comments on the proposed changes to the Construction Stormwater General permit. Please contact us at any time with any questions regarding our comments.

Sincerely,



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