

Northeast Minnesota Mine Project/Clean Water Act: U.S. Corps of Engineers Revokes Section 404 Permit



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The United States Army Corps of Engineers (St. Paul District) (“Corps”) issued a June 6th decision that revokes a previously suspended Section 404 Clean Water Act Permit for the NewRange Copper Nickel Company (“NewRange”).

The proposed NewRange project involved a mine and processing plant to extract copper, nickel, and precious metals in Minnesota.

The Corps had in 2019 completed a Record of Decision and authorized under Section 404 of the Clean Water Act the discharge of dredged and fill material into 901 acres of wetlands and indirect impacts to 27 acres of wetlands in association with the construction and development of the mine. It had determined that the project was compliant with all applicable federal laws and regulations. Further, the Minnesota Pollution Control & Ecology agency had issued pursuant to Section 401 a Water Quality Certification.

The Corps suspended the Section 404 permit in 2021. The suspension was in response to the United States Environmental Protection Agency’s (“EPA”) request that it be allowed to consider the effects from the project under Section 401(a)(2) of the Clean Water Act.

EPA stated it needed to consider effects from the project on the water quality of downstream neighboring jurisdictions. These included the Fond du Lac Band of Lake Superior Chippewa (“Band”).

EPA subsequently issued a “may affect” determination to the Band and the State of Wisconsin on June 4, 2021. The Band submitted an objection to the Section 404 Clean Water Act Permit in 2021 and requested that the Corps hold a public hearing on its objection.

A three-day public hearing was held in May 2022.

The Band contended that the discharge from the project would violate its water quality requirements for mercury and specific conductance. EPA agreed with this determination and recommended that the Corps not reinstate the suspended 404 permit. This recommendation was based on EPA’s contention that it was unaware of any Clean Water Act Section 404 permit conditions that would ensure compliance with the Band’s water quality requirements for its Reservation waters.

The Corps concluded that it was unable to include sufficient conditions in the Section 404 permit that would ensure compliance with applicable downstream water quality requirements of the Band. As a result, it determined it could not reissue or modify the suspended Section 404 permit. In addition, it concluded the permit would have to be revoked.

The St. Paul District engineer utilized its authority pursuant to 30 CFR § 325.7(a)(e) to revoke the permit because of its conclusion that it was in the overall public interest to do so.

NewRange may submit a new 404 application.

A copy of the Corps' decision can be downloaded [here](#).