

Alyssa Bryant

From: Jeff Cox
Sent: Monday, September 12, 2016 12:23 PM
To: Alyssa Bryant
Subject: FW: Duluth Seaway Port Authority - Reject OAH Evidentiary Hearing Resolution - PolyMet

From: Deborah DeLuca [mailto:ddeluca@duluthport.com]
Sent: Monday, September 12, 2016 12:07 PM
To: Council <Council@duluthmn.gov>
Cc: Emily Larson <ELarson@DuluthMN.gov>
Subject: Duluth Seaway Port Authority - Reject OAH Evidentiary Hearing Resolution - PolyMet

Please see message below sent on behalf of Vanta E. Coda II, Executive Director of Duluth Seaway Port Authority.

Thank you.

Deborah DeLuca

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Dear City Councilors:

Acting at the request of a group of citizens, three Duluth City Councilors have drafted a resolution for adoption by the entire City Council. That resolution “calls” for the Minnesota Department of Natural Resources (MDNR) to submit “any” application from PolyMet for a permit to mine to the MN Office of Administrative Hearings for an evidentiary hearing prior to the MDNR making their final decision as to whether or not to approve the permit. The goal of the OAH evidentiary hearing would be to determine whether the “proposal would meet the requirements of state law.”

The Duluth Seaway Port Authority respectfully urges the City Council to reject this resolution for several reasons:

- It is not the role of the Duluth City Council to tell the state agencies how to do their work.

- The MDNR orchestrated a rigorous and well defined environmental review process, in accordance with state and federal law, of the proposed project before the permit stage was reached. The Final Environmental Impact Statement (FEIS) and the MDNR's Record of Decision document the entire review process, including the comments from experts opposing the project. The FEIS was objectively reviewed by federal and state agency experts, as is required of the MEPA/NEPA process. The review process also afforded many, many opportunities for meaningful public input. And the public availed itself of these opportunities.
- The existing process has been effective to date. This was no softball review. The public's comments, tens of thousands of them, were considered and responded to. The proposal was sent back for revisions, resulting in a more protective plan for the project. After a 10 year process, the federal and state agencies involved in the review determined that the project is capable of meeting applicable federal and state environmental regulations. Financial assurances have also been addressed.
- The issues being raised by the groups asking for the OAH hearing were among the issues already raised and addressed in the environmental review and the MDNR's decision of adequacy.
- The review process is not over. When the application for a permit to mine is submitted to the MDNR, the applicant will have to provide additional detail on the project and considerable additional data demonstrating environmental protections. The MDNR will review the permit – and there will be additional opportunity for independent review and for the public to comment and raise objections. Adding an OAH hearing step is outside of an already extensive process and adds questionable value.
- The proposed resolution implies that the DNR's future decisions on the project will not be "fact-based" or based on "evidence and science," unless an OAH hearing is conducted. We would respectfully suggest that the City Councilors are not in a position to make that determination.
- In framing this resolution, the City Council is essentially stating that they do not trust the MDNR's review process, or that an opposing group's opinions about a MDNR review are sufficient to reject the process. If this is the case how can we have any confidence in permits granted to the City of Duluth by the MDNR? Should this resolution not also include a commitment for the City to request OAH evidentiary hearings in regard to its own MDNR-permitted projects?

Thank you for considering our position. We respectfully request that the Duluth City Council reject the proposed resolution.

Sincerely,



Vanta E. Coda II
Executive Director