

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
Park Falls Service Center  
875 S 4<sup>th</sup> Avenue  
Park Falls, WI 54552

Scott Walker, Governor  
Cathy Stepp, Secretary  
John Gozdzialski, Regional Director  
Telephone 715-762-3204  
FAX 715-762-4348  
TTY Access via relay - 711



10/12/2011

IP-NO-2011-55-03344 & 03345 & 03346

Flambeau Mining Company  
C/o Jana Murphy  
N4100 Hwy 27  
Ladysmith, WI 54848



Dear Ms. Murphy:

We have reviewed the application of Flambeau Mining Company for a permit to change the stream course, grade in excess of 10,000 square feet on the bank of an unnamed stream and fill wetlands, in the Town of Grant, Rusk County. You will be pleased to know your application is approved with a few limitations.

I am attaching a copy of your permit which lists the conditions which must be followed. A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (715) 762-1344.

Sincerely,

Jon J. Kleist

Water Management Specialist

cc: Bill Sande, Project Manager, (715) 934-2170, U.S. Army Corps of Engineers  
CeCe Tesky, Rusk County Zoning Administrator  
Kirk Kokichek, Conservation Warden-Ladysmith  
Agent, Foth; James Hutchison, Sharon Kozicki, Steven Donahue  
Phil Fauble, WDNR Madison





8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at:  
<http://dnr.wi.gov/runoff/stormwater/techstds.htm> .
12. Appropriate erosion control measures must be in-place and effective during every phase of this project.
13. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.
14. Site stabilization between October 1 and April 15 requires sodding or seeding and mulching (with a non-toxic tackifier), or erosion control blankets.
15. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount necessary for construction.
16. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.
17. You must maintain a log of the erosion control inspections, repairs made, and rain events. This must be made available to Department personnel upon request and must remain on the project site at all times work is being performed.
18. You must not deposit or store any of the graded materials in any wetland or below the ordinary high water mark of any waterway. All graded materials must be placed out of the floodway of any stream.
19. You must not operate any construction equipment below the ordinary high water mark of any waterway.
20. You must supply a copy of this permit to every contractor associated with this project.
21. Final site stabilization requires the re-establishment of vegetation with native species and must not contain invader species such as Reed Canary Grass (*Phalaris arundinacea*) or Purple Loosestrife (*Lythrum salicaria*).

22. Construction must be done during low water periods.
23. All of the removed materials from the biofilter (east infiltration basin) must be properly disposed and/or land filled. You must provide the Department with a written statement describing where the spoil materials were transported and disposed, within 7 days of spoil disposal.
24. You must develop a surface water monitoring plan to evaluate the effectiveness of the project at modifying stormwater discharge at the reclaimed mine site, specifically the removal of copper and zinc from Stream C. The plan must be submitted for review and approval by department staff within 3 months of the date of this permit and implementation must begin by March 15, 2012.
25. All equipment used for the project including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be decontaminated for invasive and exotic viruses and species prior to use and after use.

The following steps must be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.

1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps.
3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
4. **Wash your equipment** with hot (>104° F) and/or high pressure water,

- OR -

Allow your equipment to **dry thoroughly for 5 days.**

#### FINDINGS OF FACT

1. Flambeau Mining Company has filed an application for a permit to change the stream course and grade over 10,000 square feet on the bank of an unnamed navigable stream (locally referred to as Stream C), Town of Grant, Rusk County, also described as the SE ¼ of the SE ¼ S9, T34N, R6W.
2. The purpose of the project as described by the applicant is to enhance stormwater management across the project area and return the site closer to pre-construction conditions. This proposal is to remove a portion of a rail spur and culverts, convert the

biofilter (stormwater pond/wetland) to an infiltration basin, construct two additional infiltration basins, fill 500 square feet of wetlands to divert the stream flow of Stream C from the north side of the rail spur through wetlands on the south side of the rail spur.

3. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
4. Acute toxicity criteria (ATC) have been exceeded for copper and zinc in the unnamed tributary to the Flambeau River, locally known as Stream C.
5. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
6. The proposed project will impact wetlands if constructed in accordance with this permit. The applicant proposes to fill approximately 500 square feet of wetlands in conjunction with the realignment of the waterway.
7. The Department held a public informational hearing for the proposed project in Ladysmith WI on August 31, 2011.
  - The meeting was attended by approximately 25 persons, 19 attendees filled out hearing appearance forms and 6 provided verbal testimony.
  - The verbal testimony included concerns or comments regarding (paraphrased);
    - Stream C water and sediment has elevated copper levels
    - The project plan is to deal with contaminated surface water
    - The Flambeau mine is in ceded territory
    - The applicant needs to identify and address source of copper and or other contaminants
    - Infiltration basins need to be maintained to function properly
    - Ground water monitoring should be required
    - Surface water monitoring should be required
    - Directing the surface water into infiltration basins will pollute the ground water and/or make it harder to identify the source of contaminants in Stream C or the Flambeau River
    - The infiltration basins are part of the underground injection program which is regulated by the EPA
    - The mining reclamation plan needs to be re-opened
    - The local ground water has historically had elevated levels of metals such as iron, copper, zinc, and manganese
8. The Department received 15 letters during the public comment period after the public informational hearing was held.
  - The written comments or concerns included (paraphrased);
    - Additional monitoring of groundwater and surface waters should be performed and sampling locations were suggested

- Without additional monitoring it will not be possible to determine if there is degradation to water quality
- The change of stream course will detract from the aesthetic qualities of the waterway
- Burying the stream will adversely affect the flood flow capacity of the stream
- Constructing the infiltration basins will exacerbate the discharge of pollutants into stream C and the Flambeau River
- The source of the pollution should be identified and corrected
- The applicant is hiding the reason for the permit which is to address contaminated surface runoff
- Plan does not provide adequate base line monitoring (for surface and ground water)
- Project is not exempt from the stormwater standards as there is greater than 1 acre of connected imperviousness, if the buildings, parking lots, and equestrian trail head are included
- General concerns about putting contaminants into the groundwater
- Concern about groundwater contaminating surface waters with the infiltrated runoff
- Stream C is a navigable waterway
- Sediments from the biofilter should be sampled
- Infiltration basins need to be maintained and if not maintained will become ponds
- Better to leave the site as it is until the source of the pollution can be identified and cleaned up

9. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 30.195, 30.19(4), 281.15, Wisconsin Statutes and Chapters NR 102, 103, 115, 116, 117, 150, 299, 341, and 343 of the Wisconsin Administrative Code.

#### CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

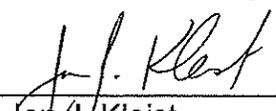
**The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.**

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and section NR 310.18, Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated; and
3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wis. Stats.; and,
4. Your commitment to appear at the contested case hearing, if one is granted, and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at Park Falls Service Center, Wisconsin on October 12, 2011.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By   
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Jon J. Kleist  
Water Management Specialist