

March 9, 2007

Steve Chester, Director
Michigan Department of Environmental Quality
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Dear Steve:

We regret having to write this letter, especially after your admirably prompt action taken after your review of the February 26th letter to you from Andy Buchsbaum and Phil Power. We are writing now, however, because we believe there is strong evidence of a serious and continuing disconnect between the underlying corporate culture in the Office of Geological Survey and state policy governing metallic mining as set out by the new Part 632 statute and accompanying regulations and Governor Granholm's charge to you and your Department in her letter of February 23, 2006. We believe this disconnect is so deep and so serious as to warrant an independent investigation. We have undertaken in this letter to set out some of the many ways in which this gap has damaged the DEQ, hindered the orderly conduct of departmental business and risked damage to the environment and the public.

While we hesitate to use the word "scandal", it cannot be denied that the pattern of behavior within the OGS in connection with its review of the application filed by Kennecott Eagle Minerals Company ("KEMC") goes far beyond one instance of suppression from the public record of relevant information. While one instance is bad, a continuing pattern of attitude and behavior is far worse – and very dangerous to your department and to the public. In this context, we applaud your decision to engage an independent investigator.

We believe that the long-standing assumption about mission within the Office of Geological Survey is to facilitate mining and to do whatever is necessary to issue mining permits to applicants, whereas the statutory mission of the DEQ is to protect Michigan's environment from pollution, impairment or destruction. We realize this long-standing attitude in OGS pre-dates and has arisen without your direct involvement. But we believe the pattern is so wide and so deep that without prompt independent investigation and public remedy the Department will be put at risk of continued suspicion.

Consider the underlying pattern over many, many months suggested by the following recital of episodes:

- ✓ Joe Maki, the head of your mining team and director of the OGS office in Gwinn, suppressed and deleted from the public record the HCIItasca May 22, 2006 report because he did not believe it to be "relevant" in reviewing the permit application. This attitude, if true, reflects an

arrogant and astonishingly narrow view of his responsibilities. Evaluating risk of subsidence of the mine is hardly irrelevant, especially given the location of the mine directly under the headwaters of the Salmon Trout River. Were any other memoranda or technical materials of any sort suppressed by Mr. Maki or any other DEQ staff member, for this or other reasons, stated or unstated?

- ✓ In the Marquette Mining Journal issue of March 2, 2007, the DEQ spokesman, Robert McCann, “insisted there was no evidence anyone had deliberately suppressed the (HCItasca) documents, saying the likely explanation was ‘just mistakes’”. Frankly, it’s hard *for us* to believe that, nor do we believe an independent investigation would reach such a conclusion. Instead, Mr. McCann’s comments sound a lot like an attempted institutional whitewash and lead to questions about the Department’s sincerity in undertaking the promised “procedural review”.
- ✓ Evidently, David Sainsbury (the DEQ sub-contractor to HCItasca on geological rock mechanics) shared his memoranda criticizing Kennecott’s analysis of the potential for weakness in the crown pillar of the mine as “technically antiquated” and “sloppy” with Kevin Beauchamp, of Golder Associates, a major technical sub-contractor to KEMC. Was KEMC thereby given the opportunity to review and participate in what was supposed to be an independent evaluation of their work while that very evaluation was in progress? Did Beauchamp ever communicate this information, in any way and at any time, with KEMC personnel? Have there been any other instances of communication, formal or informal, between KEMC and any DEQ staff? As anecdotal background noise, OGS has been aware of inappropriate job offers having been made to OGS employees’ family members; what has been done to inoculate OGS employees from inappropriate offers of any sort?
- ✓ HCItasca, a subcontractor for OGS’s review of Kennecott’s permit application, lists Rio Tinto, Kennecott’s parent company, as a prominent client. HCItasca also references Golder Associates, Kennecott’s subsidence contractor, as a partnering firm on its website. These facts should have been enough to call into question the appropriateness of Itasca as a consultant on this project. The relationships and economic interests between Itasca, Rio Tinto and Golder cry out to be fully probed, especially since we know that Golder was made privy to Itasca’s work. Itasca is likely motivated to keep Rio Tinto, the owner of KEMC, as a client. Just how motivated was Itasca? And where does MFG, DEQ’s primary environmental consultant on review of Kennecott’s application, fit into this story?

- ✓ The general approach of senior DEQ leadership has been that the permitting process is designed the way it is – with iterations followed by critical commentary, in turn followed by further corrected iterations – in order “to get to a permittable project”. In effect, this sets in motion a self-perfecting permitting procedure rather than offering the Department an opportunity to regulate mining in the public interest. Is this process an expression of historic attitudes within the Office of Geological Survey or does it represent current state policy as set out in statute, regulation and gubernatorial instruction?
- ✓ Repeated, targeted FOIA requests from a variety of parties have been ignored, only partially answered and unlawfully denied. Our *own* experts and attorneys pin-pointed a problem with the extremely limited extent of the department’s information about the possibility of subsidence; why didn’t OSG chief Hal Fitch? And who allowed all those FOIA requests to be denied, possibly illegally, or only the convenient requests to be answered?
- ✓ OGS has repeatedly missed deadlines and suffered credibility setbacks. Remember the flashy KEMC display OGS allowed at the last public hearing and that the hearings were so poorly run that citizens were left talking to empty chairs while Hal Fitch and other DEQ personnel walked away? OGS was woefully late in releasing the draft permit conditions for the March 6-8 and 12, 2007 hearings. The list of slapdash procedural missteps – suggesting a deep seated dismissive attitude – goes on and on.
- ✓ To date, OGS has all but ignored the endangered species aspects of this application, as they have other intellectually and legally challenging issues. To our knowledge, OGS has not discussed the ESA issues with the appropriate federal agencies. In fact, DNR intelligence points to OGS ignoring wildlife and fisheries concerns raised by their sister state agency. Why is that?
- ✓ To date, OGS has all but ignored the important issues of the definition of the “affected area”, a subject that was much discussed and in great detail in the work group meetings. KMEC has so far insisted that the only affected area is, essentially, the mining site, whereas there is considerable hydrologic and other evidence that the site itself is inextricably connected with adjacent, very carefully maintained and extraordinarily important sites such as the Yellow Dog River, the Huron Mountain Club and the McCormack Tract. It remains a mystery why OGS has not even proposed to identify the kinds of data that will be required to develop an informed decision of what constitutes the affected area. Why?

- ✓ Materials already made public under FOIA show that Department of Natural Resources staff and Air Division staff at DEQ both recognized the danger to aquatic life from airborne emission of toxic (Copper and Nickel) metals from the Eagle Prospect mine site. Why, then, did OGS “put the blinders on” with respect to this risk, as those materials *put* it? Why has OGS ignored the absence of any discussion of the environmental impact of air- and wind-borne particulate dispersion on flora and fauna throughout the entire area, including specifically the fish in the Salmon Trout River? Who within OGS made that decision?

- ✓ Within the last few days, another mining company, Prime Meridian, announced plans to undertake exploratory drilling on several sites, some of which are within a few kilometers of the Eagle Prospect site. Local landowners are beginning to react. Evidently, Prime Meridian expected to start drilling using defunct state lease agreements from the Department of Natural Resources. The DNR Minerals Leasing office was not aware that Prime Meridian had plans to investigate this area, and, only after citizens brought this to their attention, informed Prime Meridian that the 2004 agreement has expired and of the requirement that they must re-submit their application and plans, which would require full agency/field evaluations for each application. Evidently, the DEQ wetland people have no applications for permits pending from Prime Meridian. Mr. Maki was previously overseeing field exploration and reclamation for OGS; who will now fill this very important role? Here is another mining company planning to start exploratory drilling in an especially sensitive area in the immediate future utilizing expired state lease agreements, but neither the DNR nor the DEQ appear to have any knowledge or oversight of this process. What steps are being taken by the DEQ internally and in cooperation with the DNR to monitor and control what may be an unprecedented rush to exploit the mineral resources of the U.P.? How can you assure the public of diligent, effective and forward-looking oversight of other possible sulfide mining operations and exploration?

Save Joe Maki’s suppression of documents, no one instance of this recital is conclusive evidence of misfeasance by the Office of Geological Survey in this matter. But taken together, they mount up to strong evidence of a pervasive pattern of attitude, habit and assumption that is both contrary to state policy and damaging to the public interest. Importantly, they only give rise to more questions that must be answered for the department’s own sake as well as the public’s welfare and the health of the environment. The following episodes illustrate the habits of thought and unexamined assumptions that permeate the OGS:

- ✓ The DEQ news release of March 1, 2007, indicated that “the department will be undertaking an extensive procedural review to determine how these documents were not immediately given the proper consideration

and to ensure that there is a complete public record of information related to the mining proposal and its review.” Who is undertaking this review? When do you expect the review to be completed? Will you release to the public the entire results of the review?

- ✓ The same press release also says, “affected staff will be reassigned to other projects.” Who is being reassigned? (It is common knowledge that Joe Maki is at least one person supposedly being reassigned; are there others?) To what other projects? For how long? How can you be certain that the same staff who compromised the Department’s reputation will keep their hands off the Eagle Prospect matter in the future?
- ✓ Hal Fitch, the long-time director of the Office of Geological Survey, presided over the Office during the time the work group gathered to draft the statute, through the contentious writing of regulations, the ridiculous preliminary approval determination and through the embarrassing incidents of the past few weeks. Did Mr. Fitch see the documents suppressed by Mr. Maki? What documents did Mr. Fitch actually see, and did he know of or was he involved in any in the suppression of documents? At a minimum, Mr. Fitch has handled the workings of his Office very badly during this period. What are you going to do about that?

We have previously urged you to launch an independent inquiry into these matters and into the workings of the Office of Geological Survey and again, we appreciate that you have taken this step. Please inform us of the investigation’s scope, time period, and the tools and authorities made available to Mr. Padden; and we must also urge you to make public the fact that this investigation is occurring, the charge to the investigator, his scope of authority, and of course the results. Public concern about agency transparency will not be allayed by an investigation that is carried out in the shadows.

We believe these questions, although uncomfortable and possibly embarrassing, are essential if you are to carry out your pledge to us and to the public to undertake a thorough review of the Eagle Prospect Mine permit matter. Based on our conversations with you and with Skip Pruss, these questions are not wholly dissimilar to those already in your minds. As time is of the essence if the reputation of the DEQ and of your leadership is to be preserved, we earnestly solicit your response no later than the middle of next week.

Sincerely,

Andy Buchsbaum, Director, Great Lakes Natural Resource Center, National Wildlife Federation

James Clift, Policy Director, Michigan Environmental Coalition

Paul Dimond, Wolfpack member

Rusty Gates, President, Anglers of the Au Sable

Dick Huey and Babette Welch, Co-founders, Save the Wild U.P.

Cynthia Pryor, Executive Director, Yellow Dog Watershed Preserve

Philip Power, Huron Mountain Club

Anne Woiwode, Director, Mackinac Chapter, Sierra Club

Lisa Wozniak, Executive Director, Michigan League of Conservation Voters

Cc: Stanley Pruss