



Plaintiffs on the hook for \$60,000 in court fees in connection to Flambeau Mine case



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Laura Gauger had concerns about the environmental impacts of the Flambeau copper mine ever since it opened in 1993.

The roughly 32-acre mine located in north-central Wisconsin's Rusk County had a short lifespan, sending out its last shipments of copper in 1997. It was around that time Gauger, a pharmacist with a degree from UW-Madison, started requesting environmental impact data from the Wisconsin Department of Natural Resources.

Within the next decade, the long-time Wisconsin resident who recently moved to Minnesota, would amass enough surface water and groundwater data on a small creek referred to only as "stream C" on site diagrams for the Flambeau Mine that she would co-author "[The Buzzards Have Landed](#)" with the late Roscoe Churchill and go

on to file a [lawsuit](#).

Now, she and the other plaintiffs, the [Wisconsin Resources Protection Council](#) and the Center for Biological Diversity, are on the hook for more than \$60,000 to cover [court-related fees](#) to Flambeau Mining Company, a subsidiary of London-based [Rio Tinto](#), one of the world's largest mining companies.

They are being asked to cover the legal fees not because the mining company was cleared of violating environmental standards, but because the DNR failed to require Flambeau to secure the necessary permit that would have limited what was dumped in the water.

"The court set a really bad precedent," Gauger said. "They essentially said if the Wisconsin DNR errors, the polluter is, in effect, not responsible. So then what are citizens supposed to do, take on the DNR?"

At a time when residents near the proposed iron ore mine near the Penokee Hills in northern Wisconsin are citing environmental concerns in suing to halt the project, Gauger said the outcome of her case could have a chilling effect on the willingness of ordinary citizens to speak up.

“If polluters can get away with bullying even one citizen for trying to enforce the federal Clean Water Act, it will make it more difficult for all of us to protect our drinking water, lakes and streams,” Gauger said.

The case against Flambeau Mining Company began in 2011. U.S. District Judge Barbara Crabb initially ruled in favor of Gauger and the other plaintiffs, finding the mining company did violate the Clean Water Act by dumping waste into the tiny waterway.

The 7th Circuit Court of Appeals, however, reversed Crabb’s decision on what Gauger refers to as a technicality.

Despite stream C being classified as a “navigable waterway” by the DNR during the mine permitting process in the early 1990s, a classification that protects it under the Clean Water Act, the DNR failed to require the mining company to secure a national pollution discharge elimination system permit.

The permit sets strict limits on what can be discharged into navigable streams.

In August, Crabb lowered the amount of court fees the mining company was seeking to have covered from \$157,000 to around \$60,000.

She lowered the amount after finding the mining company was not able to prove that the case was frivolous.

“Their claim — that the company violated the Clean Water Act — was not obviously meritless,” Crabb wrote.

In addition to Crabb finding the case had merit, Gauger said another telling indicator that stream C is polluted was the recommendation made by the DNR to add it to the federal Environmental Protection Agency’s impaired waters list in 2011. The reason: unsafe copper and zinc toxicity levels.

“It is very clear stream C is polluted and it is because of the Flambeau mine,” she said.

Gauger said another troubling result of the ruling is it has allowed other mining companies and lobbyists trying to site mines in Minnesota, Michigan and Alaska to use Flambeau as an example of a mine that did not pollute the environment.

In a September 2013 letter to Minnesota Gov. Mark Dayton, for example, Minnesota Mining states that during the operation and closure of the Flambeau Mine not a single permit condition was violated and the mine has not polluted nearby waterways.

“The Wisconsin DNR holds this mine up as an example of a successful operation and successful closure,” read the letter.

Gauger said she continues to have concerns about the stream.

“It seems to have been trivialized,” she said. “If we can pollute small stream after small stream, eventually we will end up with really big problems.”

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Jessica VanEgeren joined The Capital Times in 2008, primarily covering Capitol politics and law enforcement. She previously covered business in the Madison area and state government and politics in South Carolina.



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