TESTIMONY OF SCOTT STRAND
EXECUTIVE DIRECTOR
MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY

HOUSE ENVIRONMENTAL, NATURAL RESOURCES, AND AGRICULTURE FINANCE COMMITTEE

February 11, 2014

Thank you, Madam Chair, members of the committee, for the opportunity to testify on this important topic. My name is Scott Strand, and I am the executive director of the Minnesota Center for Environmental Advocacy (MCEA). MCEA is a public interest organization that uses law and science to protect Minnesota's environment, and MCEA has been involved in the topic before this committee for decades.

Financial assurance for the mining industry, if done poorly, could leave Minnesota's taxpayers and future generations on the hook for the cost of cleaning up mine sites long after the profits have left the state. This is a subject that demands tough legislative oversight, and I commend the committee for taking this on.

Minnesota does have financial assurance rules for the nonferrous mining industry, and, as you have heard, the rules lay out a number of criteria that any financial assurance package has to meet. Those rules, however, do leave a lot of discretion to the DNR, and PolyMet is the first time those rules have been applied.

So my testimony is focused on outlining several key principles for putting a financial assurance package together within the context of those rules.

1. **Address financial assurance at the EIS stage.**

If the DNR knows enough about the waste water treatment plants, the hydraulic barriers, the groundwater pumps, and so on to assure the public that there will not be water quality problems, then it knows or ought to know enough to tell the public what it will cost and how much money needs to be set aside to maintain those structures for the long term. The time for that assessment is now, not at the permitting stage or in annual work plans after the mine has already opened.

2. **Use objective outside indexes to set key figures needed to calculate financial assurance.**

Discount rates, expected rates of investment return, inflation adjustments, equipment and labor costs, and so on should all be determined by referencing reliable outside indicators. Example: use discount rate figures from the Office of

Management and Budget (OMB) or the U.S. Treasury Department (currently -1 to 2%, depending on the term). These should not be subject to negotiation.

3. **Respect Murphy's Law. Include the cost of remediating reasonably possible accidents or contingencies.**

The financial assurance package cannot assume that everything will work perfectly forever. Waste water treatment plants break down, pipelines burst, earthen dams spring major leaks, power is interrupted, contamination levels are higher than expected, and mines shut down before their planned closure dates. Financial assurance must not only cover reclamation costs, long-term water treatment costs, and wetland mitigation, but must also cover the cost of reasonably foreseeable contingencies.

4. **Do not rely on third-party guarantees.**

Even if they are available, corporate guarantees, surety bonds, letters of credit, or insurance policies do not meet the requirements of Minnesota rules. Banks and insurers can and do bankrupt themselves. They also can and do refuse to pay, even though their legal obligation appears clear, because simple delay can force states to accept reduced payments. Third-party guarantees are not immune from the reach of a bankruptcy court either. Bankruptcy courts routinely use so-called "channeling injunctions" to release non-debtor guarantors from liability in exchange for payments into the bankruptcy estate. Only a trust fund meets the test.

5. **Place the risk of uncertainty on the company, not on the taxpayers or the environment.**

Predicting future costs is difficult. But the risk of miscalculation must be on the mining companies, not on Minnesota's taxpayers. And the answer to uncertainty cannot be to "kick the can down the road" to some future date. Asking for financial assurance after a problem has arisen is too late. That means the financial assurance for long-term water treatment needs to be done before the mine commences operations and must assume that treatment will be required in perpetuity.

There is no such thing as a risk-free mine. But, if DNR follows the principles we have laid out here today, Minnesota's taxpayers and our environment will be far better protected.

Thank you.