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That’s what Roscoe, who passed away in February 2007, would have wanted. And that’s what I want, too. The whole reason behind our writing the book was to help friends, near and far, facing similar battles to protect the earth’s natural resources.

Laura Gauger
Duluth, MN
December 20, 2012
The last truckload of ore was hauled out of the Flambeau Mine on March 7, 1997. By that time, the pit had been dug to a depth of 220 feet, was a half mile in length and 32 acres in size. What’s more, an additional 150 acres of forest, farm and swampland had been scraped away next to the Flambeau River to accommodate the piles of crushed sulfide waste rock, the mining company’s office and laboratory buildings and several man-made ponds designed to collect acid mine drainage (Figure 116-1). Kennecott claimed its little mine in the Town of Grant produced a total of 181,000 tons of copper, 3.3 million ounces of silver and 334,000 ounces of gold over its four-year lifetime (CD 116-1). But of more interest to me was the fact that the mine had also produced 9 million tons of crushed sulfide waste rock.

As reported in the March 13, 1997 issue of the Ladysmith News, Kennecott told the public that the gross value of the ore removed from the Flambeau Mine was about $300 million (Figure 116-2). However, as will be discussed in detail in the following chapter, figures from other newspapers and the United States Geological Survey suggested that the value was much higher, perhaps $600 to 750 million. Unfortunately, the public will never know which of these figures, if any, is correct. The mining company alone has the records.

When Kennecott decided to call it quits, about

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Figure 116-1. The Flambeau Mine disturbed about 180 acres of forest, farm and swampland next to the Flambeau River. The mine’s high sulfur waste rock stockpile, ore crusher, runoff pond and water treatment plant are visible in the middle of the photograph. Also note the steepness of the pit walls and how the mine came to within 140 feet of the Flambeau River (October 1995).
The Buzzards Have Landed

The Flambeau Mine produced a little more ore than planned last Friday, the last day of production. Crews actually had dug what was supposed to be the last of the ore from a trench 220 feet deep in the mine Friday morning, but when TV and print media showed up for a scheduled 1 P.M. photo shoot, a large back hoe was returned to the bottom of the pit and photos were taken as it loaded two 50-ton trucks.

The ore at the bottom of the pit is of a lower grade (about 3 percent copper) than the ore in the upper levels (which averaged 10 percent). The Flambeau Mine was one of the smallest but richest sulfide ore deposits in the world. The enormous Bingham Canyon mine in Utah, by comparison, now averages half of one percent copper.

"Today ends the production phase of the mine," general manager Tom Myatt told the media Friday afternoon. "Now we change over to the reclamation phase."

Crews dug the first of the ore in April of 1993, and the first trailer load of ore was shipped in May of that year. In the four years that have elapsed crews removed 1.84 million tons of copper ore and 9 million tons of waste rock from the 32-acre open pit.

The gross value of the ore (mostly copper with trace amounts of gold and silver) is about $300 million. That doesn't represent profit, however, according to Myatt. The costs of construction, mining, reclamation, shipping and taxes must be deducted from that. The mine's annual payroll is about $30 million.

Figure 116-2. Kennecott removed the first ore from the Flambeau Mine in April of 1993 and the last in March of 1997. After digging up hundreds of millions of dollars worth of ore, the only thing that remained for the mining company to do was push all the waste rock and sludge into the unlined pit, cover it up with topsoil and pretend like nothing had happened. See CD 116-2 for more photos and the complete article (Ladysmith News, March 13, 1997; republished with permission).

two-thirds of the ore body still remained beneath the ground. So you might be wondering why the company stopped mining. To start, the grade of copper being hauled out toward the end of mining was lower than what had been mined at the beginning (about 3 percent copper at the bottom of the pit versus an average of 10 percent at the top, according to Kennecott), and the rich gossan layer that contained the concentrated gold had been removed during the first year of mining. As a result, it was no longer as profitable for the mining company to keep digging the ore.

Don't get me wrong. An ore body containing even 3 percent copper is of great value. For example, as mentioned in the Ladysmith News article cited above, the ore at the enormous Bingham Canyon Mine in Utah was averaging 0.5 percent copper at the time the Flambeau Mine closed. The difference, however, was that the ore from the Town of Grant had to be shipped...
hundreds of miles to a smelter in Canada for processing, while the ore in Utah could be processed close to the pit, decreasing shipping costs dramatically and making it more profitable to mine ore with a lower mineral content.

The other factor coming into play regarding Kennecott’s decision to close the mine was that the mining company could dig the pit only so deep before risking a collapse of the side walls. The problem was that the pit could not be broadened out to create a gradual slope from top to bottom because the mining company was constrained by the Flambeau River on one side and State Highway 27 on the other. So the huge “benches,” or steps, going down from the top of the pit to the bottom were quite steep, to the point that the mining company had to use metal strapping and bolts to stabilize them (Figure 116-3). In fact, an article appeared in the September 1997 issue of the Engineering and Mining Journal about how Kennecott had run into all kinds of problems with the walls of the pit being unstable and how the bedrock had turned out to be much weaker than the mining company had anticipated (CD 116-3). The article even included dramatic photos of subsidence within the pit. And mind you, that’s the same bedrock we were told was so tough and hard that it would serve as an effective barrier to keep acid mine drainage from seeping into the Flambeau River.

All I can say is this: From the very beginning of Kennecott’s efforts to mine in Rusk County, the mining company had a real knack for figuring out how to defy state laws and local ordinances. But even Kennecott could not figure out how to defy the laws of nature.

The only way for Kennecott to get out the rest of the Flambeau Deposit in the future will be for the mining company to divert the Flambeau River and dig a bigger open pit or resort to digging underground shafts and tunnels. Of course, in either case the mining company will likely want to build a mill and smelter close by so it won’t have the expense of shipping the ore long distances for processing. And to be quite honest, I fully expect that Kennecott will try to do something like that down the line. After all, the mining company still owns property on both sides of the Flambeau River and has held onto the mineral rights. What’s more, if Kennecott were to build a smelter in Rusk County, the company could promote it for processing ore from all the other potential mining sites in Wisconsin.

As far back as 1994, Evelyn was concerned that
Kennecott might ask the DNR to modify the company's mining permit to allow deep shaft mining and the construction of a mill at the mine site. She also wondered who would be responsible for long-term care of the site if the mining company were to go bankrupt before reclamation was complete – and whether or not Kennecott could avoid liability for long-term care and cleanup costs altogether by selling the property after all the ore was removed. She wrote a letter to Larry Lynch of the DNR in November of 1994 to ask all of these questions, and he wrote back about a month later with some answers that we found rather shocking (CD 34-9).

To start, it was clear from Lynch's letter that conversion of the open pit mine to an underground operation was not out of the question, as long as: (1) all the parties that had signed the Local Agreement were willing to reopen and renegotiate the contract; and (2) the DNR agreed to modify the state-issued permit. Considering how the project had been rammed through the first time around, neither of those conditions seemed impossible to meet.

Lynch also stated in his letter that “increases in the size of the mining site and substantial modifications [to a mining permit issued by the DNR] do not automatically require preparation of a EIS.” So if Kennecott wanted to convert the operation to underground shaft mining and the governing bodies of Rusk County, the Town of Grant and the City of Ladysmith agreed, it looked like the DNR might not even prepare a new Environmental Impact Statement! What's more, there was a good chance the department would not conduct a bona fide public hearing either. You see, even though Wis. Stat. 293.55 states that the public is entitled to “request a hearing” on a matter like this, we knew from past experience that the DNR had taken the liberty of interpreting that statute to mean the public’s only option was to go through the rigor of a contested case hearing involving the hiring of attorneys and expert witnesses.

We had been faced with that sort of dilemma in 1992, when Kennecott approached the DNR to request a modification of its mining permit to allow an increase in production rate and the early closing of the mine. At that time the department officials refused to conduct a traditional public hearing on the matter, partly because they claimed the proposed change was not “substantial.” As you may recall, Lynch finally agreed to hold an informal meeting with us instead of forcing the issue to a contested case hearing, but the results of that meeting were anything but satisfactory. We asked ourselves, “Why should we expect anything better to happen the next time the mining company wants to alter its permit?”

Another thing we learned from Lynch's letter concerned the ability of mining companies to dodge liability for long-term care of mining waste dumps. To start, the term “long-term care” is defined in NR 182.04(27) as the “routine care, maintenance and monitoring of a solid waste land disposal facility following the closing of the facility.” According to NR 182.17, the mining company is supposed to carry out that type of activity for anywhere from 10 to 30 years after closure of the mine, which never seemed like a long enough period of time to me. But Lynch admitted in his letter to Evelyn that if Kennecott decided to sell the property, the new owner instead of Kennecott would be responsible “for implementing the approved long-term care activities for the site unless that responsibility [was] retained by the company through some other mechanism such as a contract between the parties.” So who knew what kind of outfit might end up being responsible for the monitoring and care of the site?

What bothered me even more was what Lynch had to say about perpetual responsibility for the mine site (as opposed to the 10–30 year period of “routine care, maintenance and monitoring” described above). On the one hand, he stated, “A mining company cannot avoid liability for contamination simply by selling the property. Under ss. 107.30-107.35, Stats., mining companies are held perpetually liable for mining related damages which include environmental contamination, regardless of changes in ownership of the site and any reorganization, merger, consolidation and liquidation affecting the mining company” [emphasis added]. But then he went on to say that if someone else assumed ownership of the mine site, the new owner “could also share some degree of responsibility for costs of cleanup at the site unless such liability was perpetually assumed by the company and its successors by some other means” [emphasis added]. Hmmm. To start, as explained in Chapter 34 of my story, we didn't believe that Wis. Stat. 107.32 really held a mining company “perpetually liable” for environmental damage. Those were Lynch’s words, not the words of the law. And all the doubletalk regarding who would really be accountable for cleanup costs if the mine site changed hands sounded like a setup for allowing the mining company to dump those costs onto an unsuspecting buyer. Besides that, if at any point the mining company or new owner went bankrupt, Lynch could not deny the fact that cleanup costs ultimately would be borne by the taxpayer.
Thus far we have not had to deal with the scenario of Kennecott trying to shift responsibility for care of the Flambeau Mine site to someone else. Nor has the mining company advanced any plans for developing an underground mine on its property in the Town of Grant. But it still could happen, my dear readers. For now, however, I’d like to focus on how Kennecott went about reclaiming its open pit next to the Flambeau River and just how sleazy the whole thing was done.

Once the decision was made to stop production at the Flambeau Mine, the first thing the mining company did was push an estimated 2 million cubic yards of so-called Type II waste rock back into the pit. That was the rock with the highest sulfide content, much of it containing 50% or more sulfides (mostly pyrite). Kennecott believed that by burying the crushed Type II rock in the very bottom of the pit, the sulfides would be less likely to come in contact with oxygen and produce acid mine drainage. As explained by Kennecott’s Tom Myatt in an article that appeared in the March 13, 1997 issue of the Ladysmith News, “Oxygen must be present with water to form acid from sulfur rock, but material below about 90 feet will be anoxic (without oxygen)” (CD 116-2).

Myatt’s theory sounded good, but only to a point. In particular, I wondered about all the air that was already between the particles of crushed rock before the waste was shoved into the bottom of the pit. Wouldn’t a lot of oxygen be trapped in place and react with the groundwater moving through the backfill to form sulfuric acid, leading to problems with acid mine drainage? After all, the backfill operation was not taking place in a vacuum. Concerns like these underscored the fact that no one really knew if Myatt’s theory would hold true or not. It was just that—a theory.

To make matters worse, when Kennecott pushed all the crushed sulfide waste rock into the pit, the mining company did not have to comply with NR 182.11, the natural resource rule that lists minimum design and operation requirements for mining dumps. That rule normally would have required the mining company to line the pit before shoving everything back into it. But Kennecott was allowed to ignore that rule because, as discussed earlier in my story, NR 182.02(11) says that “surface mines which are backfilled with mining waste” are exempt from the requirements of NR 182.11. So even though the Type II waste rock was so prone to causing acid mine drainage that it had to be stored on a liner before the mine ceased operations, all of a sudden that same crushed-up rock was shoved into the unlined pit, where groundwater could percolate through it on its way to the Flambeau River (Figure 116-4).

Sure, the mining company mixed a little lime with the waste rock to try to neutralize it (somewhere between 5 and 20 pounds of limestone per ton of Type II material, according to Kennecott). But we’ve already talked about how that approach, tested in the coal mining industry, is unproven in long-term effectiveness and may at best be no more than a temporary
were effective, no limestone at all was added to the estimated 2.7 million cubic yards of so-called Type I waste rock. That rock, which contained up to 1% sulfur, was merely dumped on top of the Type II rock, even though Kennecott and the Wisconsin DNR surely must have known that the Minnesota Pollution Control Agency had issued a report stating that waste rock with less than 1% sulfides could still produce toxic heavy metal leachate (CD 52-2).

In my opinion, Kennecott really bungled the whole reclamation effort when it decided to depend on using lime to prevent acid mine drainage at the mine site. More of my thoughts on the issue are included in the sidebar below.

Getting back to my story, the mining company’s

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**Kennecott’s Antacid Pill—A Little Hard to Swallow**

I am not a great fan of mixing lime with sulfide waste rock as a technique for controlling acid mine drainage. As discussed in Chapter 112 of my story, it’s kind of like taking a couple of Tums and expecting it to prevent acid indigestion forever.

That being said, even if Kennecott’s idea of using lime to prevent acid mine drainage at the Flambeau Mine site had been proven effective (which it was not), the mining company did not completely follow its own advice! What I am referring to is the fact that while Kennecott added lime to the Type II waste rock (the rock with the highest sulfide content, much of it containing 50% or more sulfides), no lime at all was added to the Type I waste material (the “low sulfur” rock that we were told contained up to 1% sulfur).

Before going further, I need to explain something about the Type I waste rock. Kennecott’s claim that the Type I material contained up to 1% sulfur was not the same thing as saying that the rock contained up to 1% sulfides. For example, if you have a 10-ton pile of waste rock that contains 2 tons of pyrite (FeS₂; iron sulfide) and 8 tons of non-sulfide minerals, the sulfide content of the waste pile is 20% by weight, but the sulfur content is only 10%. You can see the calculations for yourself by going to the CD-ROM that accompanies the book (CD 116-4). So right off the bat it appeared that Kennecott was trying to muddy the waters by making it sound like there were less sulfides in the Type I waste pile than were really there. I might also add that the volume of Type I material (estimated at 2.7 million cubic yards) was a lot larger than that of the Type II material (estimated at 2 million cubic yards).

To add to the confusion, most of the articles on acid mine drainage that Evelyn and I had come across talked about the percentage of sulfides in the waste rock rather than the percentage of sulfur. So we had no way of knowing how Kennecott’s “low sulfur” waste rock really stacked up in terms of acid-generating potential. The only thing certain was that a waste pile containing 1% sulfur had to contain more than 1% sulfides, with the true proportion depending on the type and amount of sulfide minerals present. The chemistry and math of the situation dictated it.

A second problem I had with regard to Kennecott’s Type I stockpile was that the mining company had no way of guaranteeing that the waste rock really contained less than 1% sulfur. Considering that Ed May had estimated the overall sulfide content of the Flambeau Deposit at 75%, it wasn’t unreasonable to think that some of the high-sulfide rock might have ended up in the low-sulfur waste pile. What’s more, depending on the circumstances, rock with a relatively low sulfide content still has the potential to cause severe problems with acid mine drainage. Take the example of the Summitville Mine in Colorado! The rock at that particular mine site contained less than 5% sulfides, yet it produced severe problems with acid mine drainage that persist to this day. I might add that the owner of the Summitville Mine declared bankruptcy in 1991, abandoned the mine and never did any remedial work at the site. As a result, the mine was added to the EPA’s list of superfund sites in 1994. To date, the American taxpayer has paid about $155 million to help clean up the mess, and much more work remains to be done (CD 116-5). I hope that’s not what we have in store for us in Rusk County.

And as long as we’re talking about the potential for low-sulfur waste rock to cause acid mine drainage, let me also mention what Thomas Durkin of the South Dakota Department of Environment and Jonathan Herrmann of the EPA said about the issue in 1994. That’s when they co-authored a paper about acid mine drainage that included the following statement (CD 116-6):

*The potential of sulfide rock to generate acid is strongly related to the amount of alkaline, often calcareous, material in the rock. For example, a rock containing 5 percent sulfide minerals may not generate acid due to an overabundance of calcite in the rock that is available for acid neutralization. Another rock containing less than 2 percent sulfide minerals might generate a considerable amount of acid if no neutralizing minerals are present within it.* [emphasis added]

The Minnesota Pollution Control Agency also weighed in on the issue. In particular, Evelyn noted the following in a paper she wrote in 1990 (CD 52-2):

*The Minnesota Pollution Control Agency states that in their experience waste rock material with less than 1% sulfides has produced toxic heavy metal leachate.*
So the real question regarding Kennecott’s Type I stockpile was this: Did the 1% sulfur waste rock contain enough naturally-occurring calcite or other neutralizing minerals to theoretically counteract the formation of acid mine drainage? Or was Kennecott just trying to save a few bucks by not mixing any lime with the Type I waste rock? Kennecott claimed in the EIS for the project that the company had conducted studies on the powdered waste material and the tests “indicated that waste rock with sulfur content of 2% or less would not be expected to produce acid” (CD 116-7). But yet no mention was made of the waste material containing significant amounts of neutralizing minerals like calcite (according to the EIS, the Type I material contained only “minor amounts” of calcium and consisted primarily of glacial till, sandstone, saprolite and Precambrian rock). Now I’m no geologist, so maybe I’m missing something here. But I cannot help but wonder what was really going on with the Type I waste rock. And what did the Wisconsin DNR have to say about the whole thing? At any point along the way did the department officials consider the findings of their counterparts in South Dakota and Minnesota that appeared to conflict with Kennecott’s claims? Or did they just go along with what the mining company wanted to do?

All I can say is this: Based on the amount of pollution that has already started to show up in the monitoring wells at the Flambeau Mine site (which you will be able to see for yourselves in a later chapter), it appears that Kennecott’s program of adding a little lime to the Type II waste rock and no lime at all to the Type I waste rock has turned out to be a miserable failure—like throwing a couple of Tums in the mine pit.

But again, the Flambeau Mine did not have to follow the same rules that to this day the DNR expects everyone else to follow. So all the toxic substances that had been extracted from the contaminated water at the mine site and stored on a liner with the Type II waste rock were eventually pushed back into the unlined pit. That meant the whole water treatment process had been no more than a farce. How dare Kennecott brag about the pure water coming out of the treatment facility and then dispose of the sludge in an unlined pit!

And we weren’t talking about just a small amount of sludge, either. I never saw the exact figures, if indeed such figures exist, but the final EIS for the project had stated that up to 124 tons of toxic sludge would be produced by the water treatment plant per day (CD 12-4). Figuring that the plant was in operation for about four years, that worked out to over 180,000 tons of sludge!

Besides the vast volume of sludge that was pushed back into the pit, the other factor of concern to us was that all the toxic substances contained in the sludge were no longer locked up within solid bedrock, like they had been before Kennecott came on the scene and crushed the rock. Some of the sulfur was now sulfuric acid, and the toxic heavy-metal compounds were either dissolved or present as fine particles with a
large surface area, ready to contaminate the groundwater moving through the backfilled pit on its way to the Flambeau River. Only time will tell how big of a mess we—or the generations to follow—will have to face.

There is no doubt that groundwater will constantly be coming in contact with all the highly-reactive sulfide waste in the backfilled pit. All you have to do is look at a few photos that were taken on the last day of mining (Figures 116-3, 116-4 and 116-6). You will notice a 15 to 20-foot deep lake of contaminated groundwater at the very bottom of the pit—and if the photos were in color, the water would be a muddy green. During mining, water was constantly leaking into the pit because the mine had cut into and disrupted the aquifers that normally carried pure water toward the Flambeau River. In fact, the final EIS for the project estimated that anywhere from 125 to 300 gallons of groundwater would enter the pit per minute for the life of the mine.

Up until the very end of mining, Kennecott kept pumping all that water out of the pit to keep things dry for the miners. The water was then discharged into the Flambeau River, but only after first being stored in a surge pond and routed through the mine’s wastewater treatment plant (Figures 116-7 and 116-8). I cannot emphasize enough that the once-pure groundwater had to be treated because of how it had become contaminated with acid and heavy metals from the exposed sulfide minerals in the mine pit. The whole thing was an example of classic acid mine drainage, no doubt about it. Throughout the years of mining, there was always dirty green water in the bottom of the pit.

We knew that merely filling in the mine pit with waste rock wasn’t going to change the fact that water would still be moving through the backfilled pit toward the Flambeau River. The only difference was that now the water would be moving through a pile of hazardous waste and would no longer be getting pumped to a water treatment plant to take out the acid and heavy metals. And as pure water moved into the backfilled pit, contaminated water would be moving out—either into the Flambeau River, up into the man-made wetlands or out the sides of the pit. As far as I know, at the very end of mining the mining company didn’t even bother to pump the pit dry before starting to shove the Type II waste rock into it. It wouldn’t have mattered, because more water would have quickly leaked in to replace it.

The whole process of backfilling the Flambeau Mine pit took a little less than a year. And I might add that a lot of stuff got shoved into the pit besides just the sulfide waste rock and sludge. The original

Figure 116-6. At the very end of mining, at least fifteen feet of contaminated water was allowed to accumulate in the bottom of the mine pit. Kennecott apparently was not concerned about pumping and treating the water to remove toxic substances because everything was soon going to be pushed back into the pit anyway (News photo, Ladysmith News, March 13, 1997; republished with permission).
Kennecott developed an elaborate system of collecting and treating acid mine drainage from the open pit and waste rock stockpiles during the mining years. Unfortunately, the system was disassembled at the end of mining even though the mine pit was backfilled with the same kind of acid-generating waste (Final EIS for the Flambeau Mine, March 1990).
DNR-approved plan (which was modified later, as you will see) also allowed the mining company to bury various “demolition wastes” on site, including:

- The heavy plastic liners used beneath the ore crushing area, high sulfur waste rock stockpile, runoff pond and surge pond;
- All masonry structures and concrete (including the concrete retaining walls used for the high sulfur waste stockpile);
- Pipes, culverts, asphalt and riprap; and
- The company septic tank.

I guess you could say that Kennecott used the mine pit to dispose of all its crap.

After everything got shoved into the pit, the mining company proceeded to cover up the whole mess with glacial till and topsoil. And then Kennecott turned its attention to doing a lot of above-the-ground cosmetic work to cover up the time bomb beneath the surface. In particular, the original reclamation plan called for restoring the site to its original contour, creating a 7.5-acre wetland over the west end of the backfilled pit (close to the river) and transforming the entire site into a savannah prairie ecosystem (Figure 116-9; CD 116-9). Kennecott even had the gall to suggest that the final product was going to be a “blessing to wildlife” (Figure 116-10).

But that’s not exactly what ended up happening. Somewhere along the line the mining company started altering the reclamation plan that had been reviewed by the public and approved by the DNR as part of the Master Hearing process. And Kennecott did it without notifying the public or getting official approval from the department until after many of the changes had already been made. I will provide specific details later in the chapter, but for now let me whet your appetite by listing just a few examples of how Kennecott violated the terms of the approved reclamation plan.

For starters, the mining company changed the specified location of the 7.5-acre wetland so that it would be tucked away in the northeast corner of the mine site instead of over the west end of the backfilled pit (apparently because problems with acid mine drainage were less likely to be detected at the new location—at least that’s how it looked to me). And rather than convert the entire 181-acre mine site to natural prairie, which had been a selling point to gain public support for the project during the approval process, Kennecott left all of its mining buildings in place and recontoured about 30 acres of the mine site for use as an industrial park! In all fairness, the mining company apparently did this at the urging of some of our local officials. But the problem was that the public was left out of the process. As I’ve said all along, once a mining company gets its foot in the door, there is no guarantee it will follow the plans painstakingly hammered out during the permitting process. While the company may agree to do certain things on paper, it will proceed to do whatever is most expedient.

Kennecott Reneges on its Promises

There is a lot of drama that goes with the story of Kennecott’s reclamation of the Flambeau Mine site and how the mining company changed so many of its plans at the last minute. One of the main players who helped us fight the buzzards’ attempt to blindside the public was my friend Tom Wilson, who at that time lived in the Town of Cleveland in Jackson County, Wisconsin. Before going further, I’d like to tell you a little bit about Tom, who has become a real force in Wisconsin to help protect our small, rural communities against mining company aggression.

I met Tom in February of 1997, when I traveled to Whitehall, Wisconsin to testify against Kennecott’s plans to lease some of Trempealeau County’s forestland. Tom spoke out that day in a polite but forceful style that really impressed me, and I’m pleased to say that our paths have crossed a number of times since then. In particular, whenever an important meeting is going on regarding the mining issue, you can bet that Tom will be there. He’s easy to pick out of the crowd because he is usually wearing a tweed flat cap and has a small ponytail that neatly hangs down the back of his neck. He is slender and tall, walks and stands very straight, and whenever he talks to me, there is a hint of a smile on his face. But most important, Tom is a very informed and spirited environmental person, and there is no doubt in my mind that his heart is in the right place. He’s the kind of guy who always seems eager to learn more about whatever is going on and is a very capable and tough fighter. I respect him greatly, as I do Northern Thunder, the environmental group with which he is affiliated.

Much of the information you are about to read about Kennecott’s attempt to change its reclamation plans for the Flambeau Mine site has been gleaned from letters sent to me by Tom. He really went into this reclamation thing in great detail. And since I’m getting older, it’s a comfort to know there are younger ones like Tom to keep the fight going.

So let me tell you what happened. On January 8, 1998, Jeff Earnshaw of Kennecott wrote a letter to
Figure 116-9. The Flambeau Mine reclamation plan that was evaluated as part of the Master Hearing process and approved by the DNR in early 1991 called for converting the entire mine site to savannah prairie and creating a pond at the west end of the backfilled pit. Unfortunately, Kennecott made significant changes to the approved plan after the fact (Final EIS for the Flambeau Mine, March 1990).
The Buzzards Have Landed

Can Mines be a “Blessing to Wildlife?”

I was really offended when I read a little advertisement that Larry Mercando put in the Ladysmith News in July of 1992. In it, he implied that the reclaimed Flambeau Mine was going to be a “blessing to wildlife” (Figure 116-10). I found it hard to believe that a mine with so much potential to contaminate the Flambeau River with acid mine drainage could do anything but condemn the fish, clams and other aquatic species in the river. And to paraphrase U.S. District Judge Miles Lord of Minnesota, even if a variety of birds, animals and plants managed to do well on the restored prairie next to the river, the best the mining company could hope to accomplish would be something not quite as good as had been there before.

In Kennecott’s little ad, however, Mercando actually had the gall to say, “There are many examples where an area has been better after a mine has been there than before.” How arrogant for him to suggest that a mining company could ever improve on the intricacies of nature! And when I looked closely at the rest of the advertisement, it became clear to me that the whole thing was full of half-truths and lies. For starters, Mercando cited the Jackson County, Wisconsin taconite mine and a number of coal mines in Pennsylvania as being prime examples of how former mine sites could attract “deer, turkey, pheasant and other wildlife.” While that may have been true, not one of those mines was a metallic sulfide mine! Of course, there is no example of a successfully reclaimed metallic sulfide mine anywhere in the world. Problems with acid mine drainage have always occurred, resulting in fish kills and poisoned drinking water.

Mercando also mentioned in the ad that “thanks to a gold mine” somewhere out west, a new wetland had been created in a drought-stricken part of Nevada “to protect game birds and wildlife.” Hmm. For Mercando to provide such limited information about the impact of gold mines on wildlife seemed rather disingenuous to me. First of all, it was likely that the mining company in question had created that wetland only because the company was required to replace another one that had been destroyed during mining. And second, gold mines are notorious for killing birds and other forms of wildlife—not protecting them. Just look at what happened at one of Kennecott’s own gold mines! As reported in the March 27, 1991 issue of the Wisconsin State Journal, “Kennecott paid fines of $90,000 in a federal court plea stemming from the 1988 deaths of more than 1400 migratory birds at a cyanide tailings pond at its Alligator Ridge gold mine in Nevada.” A field agent with the U.S. Fish and Wildlife Service was quoted in the same article as saying, “It would appear this is going on around the country. [Tailings ponds] are very attractive to migratory birds, particularly in the desert. Down they go. … The stuff’s hotter than a pistol.” Mercando, on the other hand, downplayed the company’s liability by stating, “It’s like somebody falling in front of your house” (CD 89-22). So is it possible for a mine to be a “blessing to wildlife”? In my opinion, the only way for an outfit like Kennecott, Exxon, Rio Algom or any of the other mining companies of the world to be a “blessing to wildlife” would be for each and every one of them to pack up and go home.
Larry Lynch of the DNR to officially request a change in the company’s reclamation plans for the Flambeau Mine (CD 116-10). But we didn’t find out anything about it until three months later, when Skip Shireman, the father of my good friend Sandy Lyon, happened to see a very small public notice about Kennecott’s proposal in his local newspaper, the Sawyer County Record. I later discovered that a notification of the mining company’s plans had also appeared in the Ladysmith News. But instead of being featured as a front-page story for all to see, the information was merely posted as a legal notice on page 11 of the paper (Figure 116-11). The print was so small that you practically needed a magnifying glass to read it. All I can say is that I didn’t see the announcement when it came out.

In fact, I don’t know of any of my friends in Rusk County or around the state who saw the legal notice—except for Skip. And in case you’re wondering why Skip saw it when none of the rest of us did, let me say this: Skip was the kind of guy who read the entire newspaper—from back to front. In fact, he used to say that he would read the obituaries first, and if his name wasn’t there, he’d read the rest of the paper! That’s the kind of avid news reader it took to spot the small notice about Kennecott’s change in plans. And when Skip saw it, he told Sandy, and Sandy in turn sent a copy of the notice to me. Wasn’t that crazy? As Tom Wilson emphatically said to Larry Lynch in a letter dated June 26, 1998, “For all the supposed “public noticing” for this permit change request, of the literally thousands of people who have expressed concerns about this mine, only one individual actually saw the small notice in a local paper. There is something very wrong with this system, even if it may follow the letter of the law” (CD 116-11).

When we heard about the changes proposed by Kennecott, we were shocked, especially since the notice stated that the DNR was “prepared to approve the modifications.” How could that be, when a public hearing had not even been scheduled by the department? Tom quickly responded by putting together a press release that was endorsed by ten different environmental groups (CD 116-12). He summarized the

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**Figure 116-11.** The DNR did not go out of its way to talk to the public about Kennecott’s request to change the approved reclamation plan for the Flambeau Mine. Instead the department issued a statement that was buried in the fourth column of the legal notices on page 11 of the local newspaper. See CD 116-13 to read the notice in its entirety (Ladysmith News, March 26, 1998).
myriad of changes proposed by Kennecott and then posed the question, “How can a reclamation plan which took years of public debate, hearings, baseline measurements and a supposedly stringent administrative permitting process be changed simply on the basis of a request from the mining company?” My friend Jeff Peterson agreed with the sentiment and added, “This is just another example of the Golden Rule as understood by the Thompson administration: Those who own the gold get to make their own rules.”

We felt Kennecott and the DNR were trying to roll right over us and that a bad precedent was being set by the department for modifying mining permits without soliciting adequate public input. In particular, my friends at Crandon were concerned that the DNR might do the same thing to them someday, if the Crandon mine were ever built.

As you might imagine, those of us who were leery of what Kennecott wanted to do were anxious to get a copy of the exact proposal submitted by the mining company to the DNR. But that wasn't exactly an easy thing to do. As Tom pointed out, “Copies of the plan were not widely distributed in either depository libraries or regional DNR offices where citizens could review them” (CD 116-14). But somehow my friend Dave Blouin, who to this day works with the Mining Impact Coalition of Wisconsin and the regional Sierra Club in Madison, Wisconsin managed to get his hands on a copy of the plan and shared it with the rest of us (CD 116-15). Following, then, is a summary of the most significant changes to the reclamation plan requested by Kennecott and our concerns with the proposal.

### Changes to the Flambeau Mine Reclamation Plan Proposed by Kennecott (January 1998)

1. Disregard the original plan to convert the entire 181-acre mine site to natural prairie for wildlife habitat and passive recreation. Instead leave mining facilities in place, including the mining company’s wastewater treatment plant, administration and laboratory building, utility hookups and railroad spur, and reserve a total of 32 acres of land for use as an industrial park.

The proposal to create an industrial park at the mine site was a major switch from the original reclamation plan that called for all of the mining company’s buildings to be dismantled at the end of mining so that the entire area could be converted to natural prairie. As Tom Wilson stated, “Mining company literature, advertisements and public presentations designed to gain public support for this project promoted an image of wildlife habitat ... not an industrial park” (CD 116-14). And even though the mining company still planned to convert the remaining 149 acres of the mine site to prairie, having an industrial park right next to a nature area was not what I would call a compatible land use. Worse yet, the 32-acre development was to be located in the southern part of the mine site, not far from the Flambeau River. That’s just what we needed—more dirty industry next to the river. So how could the original reclamation plan have gotten so turned around?

Let me start out by saying that Kennecott was not the only one to push for creating the industrial park. The other parties to blame for their role in scuttling the original reclamation plan included the Ladysmith Community Industrial Development Corporation (LCIDC), Wisconsin’s Mining Investment and Local Impact Fund Board, Rusk County Board Chairman Bernice Dukerschein and Ladysmith Administrator Alan Christianson. I wouldn’t doubt that some of those guys had been planning this thing all along but were slippery enough not to mention it at the Master Hearing. They probably figured it would be easier to get approval for their scheme later on, when the public wasn’t watching so closely.

I might add that the DNR also played a role in the whole mess. You see, when the department prepared the EIS for the Flambeau Mine, the following statement was slipped into the document with regard to the company’s reclamation plans (CD 116-9):

*Flambeau Mining Company has proposed to reclaim the mine site by dismantling the facilities and revegetating the area to promote long-term environmental stability, but if an approved alternate use is demonstrated and approved by the Department, certain ancillary facilities such as the plant access road, parking lot, rail spur, buildings and other facilities could be left in place.*

And sure enough, after the mine had been up and running for just a little more than a year, Alan Christianson set about trying to find a way for the City of Ladysmith and Rusk County to make use of the buildings at the Flambeau Mine site once the mine closed. There is no doubt he knew the approved reclamation plan called for dismantling the buildings at the end of mining. But I guess the mining company’s facility next to the Flambeau River looked like a plum he could pluck right handy. And he had the kind of connections to make things happen.

You see, besides being the city administrator,
Christianson was a central figure in the Ladysmith Community Industrial Development Corporation (LCIDC). The sole purpose of that group was to promote economic development in the area. And you can bet the members of the organization, including people like Frank Beer, Jim Weisenberger and Don Rubow, were ready to back Christianson in his efforts to make a few more bucks off the mine site.

Christianson also had the support of Rusk County Board Chairman Bernice Dukerschein and some of the county supervisors, including Tony Daniels and Thure Osuldsen. The net result was that the city, county and LCIDC authorized him to prepare a number of grant applications on their behalf to plan for a new industrial park at the mine site (CD 116-16). In particular, Christianson submitted a proposal to the state’s Mining Investment and Local Impact Fund Board in the fall of 1994. The board members at that time included Lloyd Kincaid and Erhard Huettl of Forest County, Elizabeth Sorensen of Rusk County and Wisconsin Secretary of Revenue Mark Bugher, among others. And, as reported in the October 13, 1994 issue of the Ladysmith News, the city and county were awarded a total of $13,000 to conduct a feasibility study on the reuse of the mine buildings (CD 116-17). I might add, however, that the local governments failed to use the money within the required time frame and subsequently had to forfeit the grant. But that didn’t stop Christianson from going back for more. He secured a $20,000 grant from the impact fund board in 1995 and really hit the jackpot in 1997, when the board members approved a $380,000 grant for the project.

There were several things wrong with this picture. First of all, how could the state have awarded $400,000 in grants to the city and county between 1995 and 1997 for developing an industrial park at the mine site when Kennecott hadn’t even applied to the DNR for the necessary permit change until 1998? In addition, LCIDC jumped the gun by entering into a long-term lease with Kennecott in late 1997 for occupancy of the proposed industrial park. It felt like none of the parties involved had taken the approved reclamation plan seriously.

To make matters worse, even though the property in question was located within the Town of Grant, the townspeople were not consulted on the matter. As far as I know, the Town of Grant was not even a shareholder of LCIDC or represented on its board of directors. As Tom Wilson stated, “The City of Ladysmith is upstream from the proposed industrial site. This site is actually in Grant Township and impacts from any past or future pollution will more likely affect the residents and sportfishers of, say, the Holcombe Flowage. Why is Ladysmith dominating this decision-making process?” (CD 116-14).

I had nothing against the idea of creating new jobs for the people of Rusk County—but not at the expense of honoring the original contract, especially since creating an industrial park next to the Flambeau River ran so contrary to what had been promised to the community.

It was also of concern to people like Tom, Dave Blouin, Al Gedicks and myself that part of the industrial park was to be located where the ore crusher had stood and the Type II waste rock had been stored during mining. There were no monitoring wells in that particular area, and we wondered if the soil and water might be polluted to the point where nothing would grow there (and hence Kennecott’s original plan to plant prairie grass and trees would fail). What better way to cover up the problem and avoid liability than by using the area as an industrial park? I might add that we indeed learned a few years later, after the industrial park was up and running, that so much copper and sulfur had started to show up in a small pond next to the rail spur that Kennecott had no choice but to remove the spur, dig up the entire two feet of soil and gravel beneath it and haul the material away to a licensed landfill for proper disposal. You will read much more about that in a later chapter.

Another point of contention regarding the proposed industrial park was that Kennecott wanted to leave its water treatment facility intact. We felt that was a setup for inviting other dirty industries to move into the area, causing further environmental harm to the Flambeau River. In fact, we found out after-the-fact that Craig Molstad, a community planner hired by Rusk County in 1992, had posted an advertisement on the internet in October of 1995 in which he stated, “Rusk County, Wisconsin would welcome a [metal] plating shop” (CD 116-18). Of course, the proposed location was the Flambeau Mine site. But if such a shop moved onto the site and pollution started to show up, who would be responsible?

We really didn’t know what to make of the proposal to leave all of the mining company’s buildings and utilities in place for a new industrial park. As Tom Wilson wrote, “Some suspect that the primary intention of Kennecott Minerals is to maintain the mining infrastructure in place so, if upcoming gubernatorial and legislative elections result in a more favorable political climate for mining activities, they will be able to easily reopen the mine site and extract the lower-grade gold and copper ores that were denied
them in the original permitting process” (CD 116-12). And I think Tom was right. We knew Kennecott could come back at any time and apply for a mining permit to sink a shaft and remove the rest of the ore. And when the mining officials decided the time was right, all they would have to do was evict the tenants of the industrial park and move back into their old digs.

2. Disregard the original plan to create a 1.0-acre wetland in the northeast corner of the mine site and a 7.5-acre wetland over the west end of the backfilled pit. Instead consolidate the two wetland areas into one 8.5-acre wetland to be located northeast of the pit and create two “biofilters” in the southwest and southeast corners of the mine site.

To this day, the whole concept of “creating” wetlands bothers me. Who was Kennecott to think it could replace and alter wetlands that had taken thousands of years to form? Yet, the mining company seemed to think it could play God and reenact Day 3 of the Biblical Creation. Just look at the advertisement that Larry Mercando put in the July 30, 1992 issue of the Ladysmith News (Figure 116-12)!

When I read the part about the “thriving” 1-acre wetland that the mining company had created at the mine site and how it was an “aquatic nursery,” the only thing missing from the verse was: “And Larry said it was good.”

Mercando also said the following in his little advertisement: “The reclamation plan, carefully engineered, evaluated and approved by the Wisconsin Department of Natural Resources will be fully implemented after the Flambeau Mine’s operations have finished.” Unfortunately, however, by the time 1998 rolled around, Kennecott had changed its tune. The company apparently took a real look at what it had created at the mine site and saw it was not good. So instead of going ahead with the original plan to create a 7.5-acre wetland over the west end of the backfilled pit, Kennecott announced it was going to switch the location to a relatively isolated area in the northeast corner of the mine site, where the low sulfur waste rock had been stored without a liner. Here was the official explanation offered by Kennecott for its change in plans (CD 116-15):

The northeast location for the wetland will provide an improved wetland hydrology. The 8.5 acre wetland will have minimal open water which will enhance the diversity of flora and fauna in the wetland system.

Now, I’m no expert in wetland ecosystems, but I failed to see why it would be advantageous to have “minimal open water” in a wetland area. No, there had to be a more plausible explanation for the change in plans. And when we looked at a map showing the predicted direction of groundwater flow through the reclaimed mine site and superimposed it on another map showing the wetland locations, we started to understand what was really going on. Take a look for yourself, and you will see what I mean (Figure 116-13).

It’s clear from the map that groundwater is moving through the backfilled pit toward the river. And since the pit is filled with metallic sulfide waste rock and sludge, you can consider the groundwater vectors within the backfilled pit to really be acid mine drainage vectors. If the mining company had gone ahead with its original plan to create a wetland over the west end...
Figure 116-13. This is what really happened to the Flambeau Mine site after the pit was backfilled with metallic sulfide waste. Kennecott broke its promise to convert the entire site to natural prairie and instead created an industrial park in the southeast corner of the property, close to the Flambeau River. And instead of locating the primary wetland over the west end of the backfilled pit, the company moved it to the northeast corner of the mine site where problems with acid mine drainage would be less likely to be detected. Two additional wetland areas were “created” as part of the revised plan (one to the west of the pit and the other to the south of the rail spur), but to this day Kennecott refers to them as “biofilters” instead of “wetlands,” which allows the company to avoid being fined for violation of surface water quality standards [Diagram adapted from figures provided in the Final EIS for the Flambeau Mine (CD 116-9) and Kennecott’s revised reclamation plan (CD 116-15)].
of the backfilled pit (as shown in Figure 116-9), problems with acid mine drainage surely would have surfaced and the DNR would have had no choice but to take formal enforcement action against the mining company for violating surface water quality standards. Perhaps the whole thing would have even ended up in court. In my opinion, that was the real reason Kennecott changed the location of the wetland. It was a much safer bet for the company to “create” a wetland in the northeast corner of the mine site where it would not intercept the contaminated groundwater moving through the backfilled pit. What it all boils down to is this: There is no denying that polluted groundwater from Kennecott’s waste dump will continue to seep into the Flambeau River for centuries to come, and the mining company’s decision to move the wetland was no more than a thinly veiled attempt to avoid getting caught and having to do something about it.

Besides the 8.5-acre wetland in the northeast corner of the mine site, the mining company also “created” two smaller wetlands as part of its revised reclamation plan. One of them was to the west of the backfilled pit, close to the Flambeau River, and the other was in the southeast corner of the mine site, close to the rail spur (Figure 116-13). But instead of calling these marshy areas “wetlands,” Kennecott and the DNR to this day refer to them as “biofilters.” To me, it’s kind of a word game that the company and the department are playing with the public. It allows them to admit that the surface water is polluted (which it is) but shields the mining company from any enforcement action. You will read more about this later in my story. But for now just consider the mere existence of the two “biofilters” at the mine site to be undeniable proof of how the Flambeau Mine is leaking acid and heavy metals into our water supply.

All of the changes that Kennecott wanted to make to the wetland section of the reclamation plan were significant, to say the least. But the most disturbing thing to me about the whole thing was how the DNR had neither the backbone to interfere with what the buzzards wanted to do nor the decency to hold a bona fide public hearing on the matter.

3. Leave the massive 400-foot long concrete wall in place that was constructed to prevent a landslide at the west end of the mine pit.

Many people do not know about the huge concrete wall that was constructed along the west end of the Flambeau Mine pit in 1992. And the reason they don’t is because the wall was not part of the original project design approved by the DNR in 1991. You see, we were told during the Master Hearing that the bedrock between the proposed mine pit and the Flambeau River was as tough and impermeable as the Hoover Dam (which, by the way, turned out to be untrue, as will be discussed in another chapter). But no one at the hearing said much about the structural stability of the overburden between the mine pit and the river. I’m talking about the layers of sand, gravel and glacial till above the bedrock. Was there a chance that the overburden might collapse and slide down into the mine as the steep benches of the pit were excavated?

During the Master Hearing, the only thing we heard about the overburden was that the mining company had discovered a “permeable zone of sand and gravel located between the Flambeau River and the northwest corner of the proposed pit” (CD 116-19). And to avoid having water leak from the river into the mine pit through that zone, the company had proposed to construct what it called a “bentonite slurry cutoff wall” between the pit and the river (Figure 116-14). The mining company tried to downplay the whole thing by telling us that bentonite was nothing more than clay, but when we saw the dimensions of the proposed wall, we could tell that the material above Kennecott’s “Hoover Dam” was in big trouble. You see, the proposed wall was to be about 400 feet long, three feet thick and extend from the ground surface to the top of the bedrock, ranging from 20 to 50 feet below the surface. The theory was that the bentonite in the wall would act as a sealant to help keep water from leaking into the mine pit.

But there was another problem with the overburden that the original mining permit did not address. And it had to do with sideslope failure. As you can see by looking at Figure 116-14, there was a potential for the overburden between the bentonite slurry wall and the mine pit to collapse and slide down into the pit, especially as the miners pushed closer and closer to the river with steeper and steeper benches. So to prevent that kind of landslide from occurring, Kennecott submitted a proposal to the DNR in 1992 to build a concrete wall between the bentonite slurry wall and the pit (CD 116-19). The wall was to be 2 feet thick, 400 feet long and extend to a depth of 8 to 25 feet below the ground surface—a truly massive structure that would take eight weeks to build. The DNR went along with the mining company’s proposal, and part of the wall with its tie rods can be seen in Figure 116-15. If Kennecott had not been so intent on pushing the pit so close to the river, I doubt if the concrete retaining wall would have been needed. But the ore in
that part of the deposit must have been so rich that it justified the expense.

At the end of mining, the original reclamation plan called for Kennecott to bury “all masonry structures and concrete” in a designated area of the mine site about 1,800 feet from the river. But for whatever reason, the mining company did not want to honor that promise with regard to the concrete wall at the west end of the pit, even though the structure was only about 140 feet from the river. So besides going back on its promise to convert the entire mine site to natural prairie and construct a viable wetland over the west end of the backfilled pit, Kennecott also asked the DNR for permission to ignore the set requirements for the proper disposal of concrete and leave the wall in place. The company stated, “This is consistent with the backfilling of materials which contacted waste rock and were part of the open pit construction” (CD 116-10).

But leaving a massive concrete wall intact and so close to the river was a little different than shoving pieces of broken up concrete into the pit, and I couldn’t help but wonder if there was more to the story than what we were being told. I might add that the bentonite slurry wall was left in place as well.

What irked me the most about the whole thing, however, was that Kennecott had already filled in the mine pit and left the concrete wall in place before the public knew anything about it or the DNR had officially approved of the change in plans. It kind of

Figure 116-14. The original project design for the Flambeau Mine included the construction of a bentonite slurry wall between the west end of the mine pit and the Flambeau River to help prevent river water from leaking into the pit (Final EIS for the Flambeau Mine, March 1990).

Figure 116-15. Because of the steep benches in the west end of the mine pit, Kennecott had to construct a 400-foot long concrete wall to prevent the overburden from collapsing into the pit. This is a south-to-north view of the wall (File photo, Wisconsin DNR, September 1995).
made the whole thing a mute point. Even if the department had determined that the wall needed to be demolished, it would have been virtually impossible for the mining company to do so at such a late stage of the game. Like I said earlier, once a mining company gets its foot in the door, you never know what it’s going to do.

4. Remove perimeter fencing around the mine site after the reclamation is certified as complete by the DNR.

   During the mining years, there was a 6-foot high chain link fence around the entire perimeter of the mine site for safety and security reasons (Figure 116-9). It was topped with barbed wire, I suppose to keep all of us radical protestors from getting onto the property and causing trouble. You may recall, however, that it didn't work (Figure 93-5)! At any rate, the original reclamation plan called for Kennecott to remove all that fencing prior to receiving official certification from the DNR for completion of its reclamation activities. That made sense, because the whole idea behind the reclamation plan was for the mining company to successfully restore wildlife habitat. Since fencing was a barrier to the movement of critters, we figured the only way to tell if the mining company had succeeded in establishing quality habitat was for the fence to come down and see what happened when animals freely moved onto and off the site. But all of a sudden, Kennecott proposed to the DNR that the fencing stay in place until after the mining company received its certificate of completion. The mining officials said they were concerned about “the newly reclaimed mine site [being] vulnerable to potential impact by wildlife and human activities” (CD 116-20). While that argument made sense for the early stages of reclamation work, when trees and grasses were being planted, it was quite a different matter for the mining company to want to leave the fence in place beyond the point in time when the reclamation was supposedly complete.

   As far as I could tell, the only one to benefit from the reclamation being certified as complete before the fence came down was Kennecott. First of all, it was to the mining company’s advantage to have the reclamation work declared complete as quickly as possible—because that’s when the clock would start ticking on its thirty-year obligation for long-term care of the site. Second, if problems with wildlife survival started to show up after the fence came down and Kennecott’s work had already been certified as complete, the mining company could just wave its certificate in front of our noses and go its merry way. And third, on a more technical note, we were concerned that unless Kennecott were held to removing the fence by a particular point in time, the mining company might never take it down, limiting access to an area that we had been told would be open to the public.

5. Retain the power supply to the mine site, including a line to the area adjacent to the west pit wall.

   We understood that a power supply would be needed at the mine site, if indeed Christianson and LCIDC were given the green light for their industrial park. But why did Kennecott want to maintain a power line in the vicinity of the west end of the backfilled pit, close to the Flambeau River? The mining company’s explanation was that it needed the line to power an irrigation system for watering newly-planted vegetation. That made sense, but we still saw no need to keep the power line in place after reclamation was complete. Leaving an industrial-grade power source like that intact would only invite future mining or industrial development right next to the river. No thanks!

6. Change the maintenance methods applied to the grassland portion of the reclaimed mine site.

   The main point here is that Kennecott wanted to abandon the part of the original reclamation plan that called for using periodic controlled burns to manage the prairie ecosystem at the mine site. Even though burning off the vegetation was the most natural way to maintain and revitalize the prairie, the mining company wanted to get by with just mowing the grass now and then to control the weeds.

   Now, I’m no expert in prairie restoration, but the change in plans did not make sense to me. You see, when I was a kid, it was not unusual to see a farmer set fire to his hay field every once in a while to help control the weeds and give the soil a boost. We didn't call it a “controlled burn,” but it was the same idea. Burning the field got rid of the thistles, quack grass and mustard and put enough potash into the ground so that a fresh growth of nice green grass would spring up right away. Mowing, on the other hand, was an altogether different deal. If a farmer had a weedy hay field and merely cut it down, the “weed seeds” would drop to the ground and sprout back up. Why then, I wondered, should the mine site be any different?

   In support of its proposal to do away with the controlled burns, Kennecott stated that it had installed two sets of prairie test plots at the mine site in 1993 to “assess combinations of management strategies”
and that mowing had worked well to control weeds while not having a deleterious impact on the desired native plant species (CD 116-15). But when Tom Wilson studied Kennecott’s proposal in greater detail, he had no choice but to draw the following conclusions (CD 116-11):

[I] can find no justification in the [revised] reclamation plan … for the abandonment of a regular burning regime in favor of mowing. According to the commentary associated with the revised plan it does not appear that burning was included in the side-by-side trials during the test plot phase, and all resources consulted have come out in favor of burning. The decision seems to have come strictly from Flambeau [Mining Company] and appears to have been fairly arbitrary.

Tom hit the nail right on the head. It looked like Kennecott wanted to renege on its original promise to do periodic burns more out of convenience than for sound ecological reasons. It’s as if the mining company didn’t understand the difference between managing a prairie and mowing a lawn.

I could go on and on about all the changes to the reclamation plan proposed by Kennecott and how we were suspicious of most everything the mining company wanted to do. But I think I’ve said enough to give you the gist of what was going on. No matter if it was the proposal to create an industrial park at the mine site, move the primary wetland, bury the concrete retaining wall in place, delay the removal of the perimeter fence, maintain the industrial-grade power source next to the river or do away with controlled burns, the mining company appeared to be motivated by the bottom line rather than sound ecology or a genuine commitment to honor promises made. It was as simple as that.

When I think back on all the significant changes to the reclamation plan that Kennecott requested at the last minute, I cannot help but conclude that neither the mining company nor the DNR had known much about anything when the original plan was drawn up and approved. But what made the whole thing even worse was how the local mining officials, including Jeff Earnshaw and Jana Murphy, seemed to think they could just keep modifying the plan as they went along without paying attention to the legally-binding permit. As you might expect, that approach didn’t sit very well with people like Tom Wilson and myself. We were very concerned about what Kennecott was doing and wanted to know why the mining company felt the need to modify its reclamation plan so drastically. It looked like we were headed for a showdown!

**Challenging Kennecott’s Plans**

Shortly after the public notice came out about the proposed changes to the reclamation plan for the Flambeau Mine, Tom Wilson stepped forward to push for the DNR to conduct a public hearing on the matter. But he was told by Larry Lynch that our only option for getting a public review of Kennecott’s proposal would be to go through the rigors of a contested case hearing—just like he had told us in 1992 when we wanted the DNR to conduct a public hearing on Kennecott’s plans to close the mine early. The only difference was that this time around the DNR at least admitted that the proposed changes were “substantial,” which we felt put us in a better position to demand a bona fide public hearing. But Lynch still would not back down—as far as he was concerned, it was a contested case hearing or nothing.

Well, we didn’t like the idea of having to hire a lawyer to represent us at a contested case hearing and being questioned in front of a hearing examiner by attorneys from the DNR and Kennecott. But we were not about to let Lynch intimidate us like he had done in 1994. So we called his bluff and got together the necessary number of people to request a hearing. I might add, however, that it was real scramble! You see, Wis. Stat. 293.55(1)(d) specifies that any request for a hearing on a modification to a reclamation plan must be filed “within 30 days of notice.” And as you know, most of us had not even seen the legal notice regarding Kennecott’s proposal until several weeks after the fact. But that’s when Tom Wilson stepped forward and took the bull by the horns. He contacted people across the state, and thanks to his efforts, enough of us found out in time to meet the deadline. All it took was five petitioners, but we had twelve, most of whom you have already met: Tom Wilson, Marie Anderson, Dave Blouin, Carole Crisler, Aaron Ellringer, Laura Furtman, Al Gedicks, Sheila Hansen, Kira Henschel, Sandy Lyon, James Powell and myself.

Well, Kennecott and the DNR didn’t know what to do with us! As you know, the mining company had been so sure of gaining approval from the DNR for the changes to the reclamation plan that many of those changes had already been implemented. In fact, the mining company was almost done! The concrete wall had been buried, the land had been recontoured and graded to accommodate the new industrial park, and water had been rerouted to the northeast corner of the mine site to create the new wetland. About all that was left to do was reseed the area. The DNR must have known that all of this was going on but apparently hadn’t seen the need to follow proper procedure...
and alert the public to the situation. Like I said before, when a mine comes to town, it’s not unusual for contracts, laws and regulations to be brushed aside by not only the mining company, but the state itself.

Despite the fact that the DNR had told us we could request a contested case hearing on the matter, I bet the department officials were not too thrilled when the requests started to roll in. They knew that if a hearing took place, Kennecott would be publicly exposed for violating the terms of its permit and the DNR would look pretty bad for not having stopped the company.

Some of our local officials also had reason to worry about the possibility of a hearing on the reclamation plans. For example, the City of Ladysmith and Rusk County had been awarded hundreds of thousands of dollars in grants from the state to plan for an industrial park at the mine site. If all of a sudden those plans were thrown out the window, would the city and county have to pay the money back? And what about the lease that the Ladysmith Community Industrial Development Corporation had already signed with Kennecott? Would LCIDC be held to the terms? I bet at least a few of the local officials were sweating a little bit over what might happen.

And then things got really interesting. With so much of its revised reclamation plan already complete, Kennecott announced that it was not willing to participate in the contested case hearing we had requested. The mining company claimed the hearing might take too much time and that the reclamation work already in progress had to proceed on schedule to keep costs down. How arrogant! What right did the mining company have to refuse a legally-requested hearing? What’s more, Kennecott seemed to forget that it was in the middle of implementing a non-approved plan and had no right to proceed until a hearing was held and official approval granted.

But that wasn’t even the half of it. Kennecott also resorted to using threats as it tried to bulldoze right over us. And believe me, “bulldoze” was the operative word. You see, the mining company came out and said that it would bulldoze the industrial buildings at the mine site and revert to the original reclamation plan if we didn’t back off on our request for a contested case hearing. What a clever move on the part of Kennecott! It shifted the spotlight away from the company and made us look like the bad guys—as if we were causing Rusk County to lose out on some economic development opportunities. After all, Ladysmith already had an industrial park, and it was far from being fully occupied.

Besides that, we thought Kennecott could not be serious about tearing down the buildings. As Tom Wilson explained in a personal letter to me, if the mining company really went back to the original reclamation plan and demolished the industrial buildings, the company would also be obligated to “revert to the original placement of the wetland … and establish a prairie on the site of the Type II waste rock storage facility, which may prove impossible.” And then there was the whole issue of the 400-foot concrete wall that had already been buried in place. Certainly, it would cost the mining company a lot of time and money to switch back to the original reclamation plan at such a late stage of the game. Tom summed it up best when he said, “I think they are bluffing and trying to hold us all hostage to this economic development thing.”

Needless to say, Tom did not run scared when Kennecott tried to play hard ball with us in Rusk County. In fact, he even went over to London to fight the buzzards on their own turf. Here’s what happened:

Rio Tinto Zinc was scheduled to hold its annual shareholders meeting in London on May 13, 1998, just as things were really starting to heat up in Rusk County over the proposed changes to Kennecott’s reclamation plan. And with the help of some of our friends at PARTIZANS and another London-based organization called Mine Watch, Tom was able to get a proxy statement from a sympathetic shareholder and fly to London to participate in the meeting. He addressed the shareholders and officers who assembled that day, including Robert Wilson, RTZ’s Chairman of the Board.

At the meeting, Tom publicly asked Chairman Wilson why RTZ/Kennecott was threatening to bulldoze its buildings at the Flambeau Mine site rather than allow a public review of the environmental impacts of the new reclamation plan. But all the chairman would say was that his company had already undergone a full environmental review process for the initial permitting of the mine and felt no further examination was required. Hmmm. Chairman Wilson seemed to forget that the initial review process had not covered the proposed changes.

Tom also called RTZ’s chairman on the carpet when he said to him, in front of everyone (CD 116-21):

*How can you justify telling your shareholders that [Rusk County] is experiencing an economic renaissance as a result of your mining investment when Ladysmith and Rusk County have the lowest per...*
capita income and the highest unemployment in the State of Wisconsin—over three times the state average unemployment rate? And how can you tell your shareholders that this is an example of an environmentally successful mine reclamation after your Wisconsin representatives are presently threatening our state legislators to renege on your offer to make now-empty buildings available for local post-mining economic development rather than allow your revised reclamation plans to be exposed in a public review hearing?

I can understand and have learned to expect your company to consistently lie to the people of Wisconsin, but how can you so blatantly lie to your own shareholders on these issues?

Tom really laid it out and it pleased me to no end. As part of his testimony, he also talked about a flier that Northern Thunder had put together regarding “the real truth about sulfide mining.” It was a compilation of over sixty advertisements that the organization had sponsored in various newspapers in Wisconsin to: (1) expose misinformation being circulated by mining companies like Kennecott; and (2) fill in the “missing pieces” for the public. To this day it’s an excellent reference for anyone fighting the buzzards, and that’s why I have included a copy of the complete flyer on the CD-ROM that accompanies the book (CD 116-22). Unfortunately, when Tom showed up at the RTZ meeting with a stack of flyers to distribute to the board members, he was prevented from doing so.

Still, however, Tom managed to really lay out the facts of the situation to the thousand-or-so shareholders who heard him speak at the meeting. And Mine Watch proceeded to distribute a press release about the whole ordeal that highlighted just how bullheaded the RTZ chairman had been regarding our request for an environmental review of Kennecott’s new reclamation plans (CD 116-23). The whole thing made RTZ look pretty bad.

And there may have been a trickle-down effect. Shortly after the meeting was held, Tom managed to succeed in brokering a deal with Kennecott and the DNR by which we were able to avoid a contested case hearing and still get our concerns addressed. Let me explain.

About a week after Tom made his comments to RTZ’s chairman, he was back in Wisconsin trying to get the DNR to agree to a public hearing (as opposed to a contested case hearing) on Kennecott’s revised reclamation plan. He scheduled a telephone conference for May 21, 1998 with Larry Lynch and DNR Attorney Chuck Hammer to see if there was some way to get around the impasse. At first Lynch and Hammer stuck to their guns and told Tom it was perfectly legal for the department to post a notice of the proposed changes without giving citizens the opportunity to participate in a traditional public hearing—and that our only option was to pursue a contested case hearing.

But Tom stuck to his guns as well, and the fact that we not only had the right to request a contested case hearing but had done so gave us some leverage. You see, no one wanted a contested case hearing. So by the time Tom got off the phone with Lynch and Hammer, the two officials had agreed to set up an informal meeting between the twelve petitioners and representatives from the other side, including LCIDC, Kennecott and the DNR. The idea was to give the petitioners a chance to hear a presentation about the proposed changes and ask questions. And we also knew that after the meeting was held, we would still have the right to a contested case hearing, if we felt it was necessary.

A few days before the meeting was held, Tom sent a letter to RTZ Chairman Robert Wilson and carbon copied it to Larry Lynch, Alan Christianson, Jana Murphy, Jeff Earnshaw and the twelve petitioners. He basically let RTZ know that the company was not in the driver’s seat on this issue and outlined all the expensive and embarrassing consequences for the company officials, were they to ignore the concerns of the petitioners. Tom concluded the letter by saying, “The ball is in your court. You can either meet us half way and work with us, or you can stonewall and scuttle the whole deal” (CD 116-24).

The day of the meeting finally arrived on June 16, 1998. Thirty-seven people were in attendance, including seven of the twelve petitioners who had originally requested the contested case hearing. Marie Anderson was one of them, and she even brought her video camera to tape the whole thing. The other petitioners who were present included Tom Wilson, Aaron Ellringer, Dave Blouin, Al Gedicks, Laura Furtman and myself. Kennecott was represented by Jeff Earnshaw and Jana Murphy, and the company also brought in Steve Apfelbaum and Tom Hunt of Applied Ecological Services, the firm Kennecott had hired to address various reclamation issues such as wetland placement and the selection of plant species for the mine site.

The DNR was also there in force. The department sent six representatives, including Larry Lynch (who ran the meeting), Chuck Hammer, Tom Portle, David Kunelius, Bill Scott and Ken Markart. In addition, Alan Christianson, Frank Beer, Jim Weisenberger and Don Rubow were there on behalf of LCIDC.
state and local officials showed up as well, including Rep. Marty Reynolds (D-Ladysmith), Rusk County Board Chairman Thure Osuldsen, and Grant Town Supervisors Fred Stevens and Henry Golat. And for some unknown reason, several people came from as far away as Fond du Lac and Three Lakes to represent a group known as People for the USA, one of those "Wise Use" groups that favors mining. Add to that a number of our environmental friends like Betty Wolcott and the Styczinski brothers, and you have a picture of who was in attendance.

When I think about it, there could have been a real show-down at the meeting that day. For example, Laura and I were sitting right across the room from Jeff Earnshaw. He went on and on about how the Flambeau Mine had "complied with every law" and told us that the reason the company had proposed changing the reclamation plan was because corporate headquarters wanted a "superior project." He also said, "It's almost a foregone conclusion that nothing else will ever be mined here again." I wish he would have proceeded to explain why, then, the mining company had proposed to keep all the mining infrastructure in place. But on that point he was silent.

Earnshaw also talked about Wisconsin's "tough mining laws," and that's when I could sit still no longer. I raised my hand, looked him right in the eye and said, "I'll listen to what you say, but I don't believe you." Boy, did Earnshaw's face turn colors! It almost matched his red hair.

On the whole, everything went fairly smoothly that day. And within a few days of the meeting, Tom Wilson drafted a letter to Larry Lynch in which he listed the concerns we had voiced at the meeting and how those concerns could best be addressed by the department (CD 116-11). As shocking as the devil, both the DNR and Kennecott listened to Tom, and as a result we were able to get an acceptable settlement. I can best summarize what Tom accomplished for us by showing you a letter that was sent to him by Larry Lynch (Figure 116-16) and another sent by Kennecott to the DNR (CD 116-20). As you will note, we got almost everything we wanted.

After the DNR and Kennecott agreed to the conditions presented by Tom, enough petitioners withdrew their requests for the contested case hearing that it was not held. The department proceeded to issue its official ruling on the proposed changes to the reclamation plan on July 30, 1998 (CD 116-25), and Jana Murphy announced in the very next issue of the Ladysmith News that it would take about "4 weeks to complete remaining reclamation work at the site" (CD 116-26). When I read what Murphy had said, it confirmed what we had been saying all along—that most of the reclamation work had been completed by Kennecott before the DNR officially approved of the changes.

Even though we got the best settlement we could, to this day I still have a gripe about the whole thing. When the original permits were granted, the public really had no idea how the project eventually would unfold. If we had known that part of the site was going to be turned into an industrial park after mining ceased, if we had known the mine was going to close a year early at a cost of at least $1 million to the community, or if we had known about the endangered species living in the river, would Kennecott still have gotten its permit to mine? That's the tragedy in the whole process, and it applies to any new mining proposal. Even if you think you know what you're getting, the DNR can pull the rug out from under you by granting all kinds of requests to alter the mining permits after-the-fact and without even holding a public hearing.

Before drawing this chapter to a close, I must pause to give Tom Wilson special recognition for his efforts to stop Kennecott from walking all over us. As I'm sure you noticed, he was the real force behind the resistance and the one who put together the case against Kennecott's revised reclamation plan. If it hadn't been for Tom, I doubt there would have been a meeting between the petitioners and Kennecott, much less any real concessions from the mining company.

So what does the mine site look like today? As I sit here writing, the mine is closed and the wound filled in and grassed over. The mining company's buildings still stand, although the new industrial park has been far from successful in attracting new businesses to the area. In fact, as far as I know, the only real tenant over the years has been the Wisconsin DNR, which continues to rent the mining company's administration building for use as the department's Ladysmith Service Center. I'm told a local utility has used another on-site building for equipment storage, but otherwise there is not much happening. On the whole, the industrial park looks deserted.

Isn't it ironic? If the DNR had been on the scene in the late 1980s to really look at what Kennecott proposed to do, we never would have had a mine. And if the department had been here during the mining years to protect the endangered species in the river and monitor the shipments of gold, we would have had a safer and more profitable mine. But now that
Figure 116-16. Tom Wilson made a convincing case to the DNR for denying certain changes that Kennecott wanted to make to the approved reclamation plan for the Flambeau Mine. The final result shows that dedicated people like Tom who are not afraid to fight can accomplish great things (July 9, 1998).
the mine is closed, the DNR is sitting on the actual site where all the misdeeds took place, like a misplaced afterthought.

**CD-ROM References**

**CD 116-1.** Flambeau Mine general information, as reported on Kennecott’s web page, August 2003 (http://www.kennecottminerals.com).


**CD 116-4.** “How the sulfide content of mining waste rock differs from its sulfur content,” a paper by Laura Furtman, July 2005.

**CD 116-5.** Superfund information on the Summitville Mine, as reported on the EPA’s web page, July 2005 (http://www.epa.gov/region8/).


**CD 116-10.** Letter written by Jeff Earnshaw of Kennecott to the DNR, officially requesting a change in the reclamation plans for the Flambeau Mine, January 8, 1998.

**CD 116-11.** Letter written by Tom Wilson of Northern Thunder to the DNR regarding Kennecott’s proposal to change the reclamation plans for the Flambeau Mine, June 26, 1998.

**CD 116-12.** Press release from Northern Thunder and nine other environmental groups regarding concerns over Kennecott’s proposal to modify its reclamation plans, April 30, 1998.


**CD 116-14.** Questions and concerns raised by Tom Wilson, Dave Blouin and others regarding changes to the reclamation plan for the Flambeau Mine, June 5, 1998.


**CD 116-16.** Mining-related agenda items addressed by the Rusk County Board, August 16 and September 27, 1994.


**CD 116-18.** “Rusk County, Wisconsin would welcome a plating shop,” an advertisement posted on the internet by Craig Molstad, October 1995 (http://www.finishing.com/0000-0199/066.html).


**CD 116-20.** Letter sent by Kennecott to the DNR, accepting many of the modifications to its revised reclamation plan requested by the petitioners, July 9, 1998.


**CD 116-24.** Letter sent by Tom Wilson to RTZ Chairman Robert Wilson, calling the mining company’s bluff, June 10, 1998.

**CD 116-25.** DNR’s findings of fact and letter of conditional approval to Kennecott regarding the mining company’s proposal to modify its reclamation plans, July 30, 1998.