



MN Supreme Court finds MPCA violated law when it suppressed EPA concerns with PolyMet water permit

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St. Paul, Minnesota -- On Wednesday, the Minnesota Supreme Court ruled that the Minnesota Pollution Control Agency (MPCA) violated state law when it suppressed the U.S. Environmental Protection Agency's (EPA) concerns about PolyMet's water permit during the public comment period. From the decision:

On the issue of the permitting process, we conclude there are danger signals suggesting that the MPCA did not take a hard look at whether the permit complies with the Clean Water Act (CWA) and that the MPCA did not genuinely engage in reasoned decision-making in dealing with concerns that were raised by the EPA. We therefore conclude that the action taken by the MPCA in issuing the permit was arbitrary and capricious and remand to the MPCA for further proceedings. (pg 6)

This precedent-setting win makes clear that state agencies cannot selectively shield information gathered during public processes to hide criticism of a proposal, and it recognizes that how agencies act matters in terms of the strength and validity of permits. In addition, the decision concludes that PolyMet's plan to allow groundwater at the mine facility to become polluted violates Minnesota rules, and orders MPCA to reconsider this portion of the mine plan.

The decision deals another critical blow to PolyMet's proposed mine, which suffered a significant setback earlier this summer when the U.S. Army Corps of Engineers revoked its federal wetlands permit.

The Minnesota Center for Environmental Advocacy (MCEA) represented itself along with Friends of the Boundary Waters and the Center for Biological Diversity in the appeal.

"Today the Minnesota Supreme Court recognized that what our state agencies do during permit review processes matters. Unfortunately in the case of PolyMet, our state MPCA violated the public's trust, and state law, when it suppressed crucial scientific concerns about the water permit," **Joy Anderson, senior staff attorney for MCEA, said of the high court's ruling.**

"This decision is important not only for the PolyMet case, but to ensure that when our state agencies make any decision that affects Minnesotans, they do so openly and fairly."

"This case is about government honesty and transparency. For almost two decades, we've seen PolyMet attempt to skirt regulations and violate the law in an effort to force through its mine. Today, the Minnesota Supreme Court found that there was clear evidence that the Minnesota Pollution Control Agency failed to seriously address issues with this permit. It's unfortunate that it took five years to hold MPCA accountable for its failure to do its job, and to

protect human health and the environment,” **said Chris Knopf, executive director of Friends of the Boundary Waters Wilderness.**

“This is another victory for the crucially important waters and wetlands at the headwaters of the Lake Superior watershed, and for all of us who’ve been fighting to protect this beautiful place for the past decade,” **said Marc Fink, senior attorney with the Center for Biological Diversity.** “As we’ve said for years, this open pit copper mine proposal should be scrapped and this area protected for future generations.”

Joining MCEA, Friends of the Boundary Waters, and the Center for Biological Diversity as *amicus curiae* in the case were the largest federal union in the country, local law professors, and other groups, all of whom urged Minnesota’s highest court to take this case given its infringement on core democratic values and the public’s right to access government data.

The *amicis*’ primary concern was that while the Minnesota Court of Appeals’ earlier decision in this matter confirmed that MPCA scrubbed important information about EPA’s concerns from the public record, the decision also found that the law provided no remedy for MPCA’s misconduct. Because the suppressed information was later made public through EPA staff “leaks,” the court concluded that the parties - and the public - were therefore unharmed. Today’s opinion rejects this conclusion, and remands the proceeding to MPCA for the agency to consider the inadequacies EPA identified in the permit and to decide whether the permit must be amended to ensure consistency with the Clean Water Act and state and tribal water quality standards.

Previously, the Minnesota Court of Appeals correctly found that MPCA failed to evaluate whether contaminated groundwater from PolyMet’s proposed sulfide mine would pollute downstream waters in the Lake Superior watershed. That Court already reversed and remanded the permit back to MPCA to address this critical omission, which is still pending.

As it stands, PolyMet continues to lack needed permits to move forward with its unprecedented and destructive sulfide mine proposal.

For additional information about the Supreme Court’s decision, or to request an interview about the decision or copy of the decision, please contact Sarah Horner at the contact information listed at the top of this release.

See the following section of this release for information on sulfide-mining’s climate impacts as well as the mining industry’s claims that we need to mine for raw minerals to meet clean energy demands.

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Background on suppression of EPA comments

After the Minnesota Pollution Control Agency noticed PolyMet’s proposed water permit - formally called a National Pollutant Discharge Elimination System or NPDES permit - for public comment in 2018, it learned that the Environmental Protection Agency was among many parties with concerns.

MPCA asked EPA not to submit any written comments on the permit during the public comment period because it did not want EPA’s concerns made public. Instead, EPA had a telephone call with MPCA to air those concerns—including that the permit appeared to authorize discharges that would violate health standards for water quality. MPCA then destroyed emails and notes relating to MPCA’s request that EPA not submit public written comments.

Additional information on sulfide-mining and clean energy demands

Sulfide mining has never been done anywhere in the world without causing significant pollution to nearby water sources. In addition, mine dam collapses, such as the Mount Polley disaster in 2014, threaten water downstream and worker safety. The PolyMet permits issued in 2018 by the previous administration are inadequate to protect Lake Superior, the St. Louis River, the Fond du Lac Band of Lake Superior Chippewa, Duluth, or other downstream waters and communities from the acid mine leakage that would inevitably seep from PolyMet's mine.

The mine's construction would also destroy thousands of acres of wetlands, [carbon sinks we cannot afford to lose](#) in the rapidly accelerating climate crisis.

While the mining industry claims sulfide mining is necessary to produce the copper needed for the "Green Economy," that claim is disingenuous and inaccurate. We can't mine our way out of the climate crisis, and we know that a less energy intensive way to get copper is to recycle it, a practice that is dramatically underutilized in the United States and elsewhere. Further, demand projections are speculative and technological advancements are already starting to erode them. If and when mining of the materials is necessary, it should be done under the highest industry standards -- standards which are out of date in Minnesota.

None of that can be said for PolyMet's proposal for Northeastern Minnesota, a project plagued by flawed permits for a water-rich region with [low-grade ore that would require crushing a lot of rock to get a little copper](#).

The PolyMet "Name Change"

In connection with the recent closing of a joint venture and corporate moves including the purchase by Glencore PLC of all remaining shares of PolyMet stock, PolyMet has rebranded as "NewRange Copper Nickel LLC." As the permits were issued to PolyMet and continue to list PolyMet as the permittee, additional state procedures would be necessary to formally address these changes.

About MCEA

MCEA is Minnesota's premiere nonprofit environmental law and public policy organization working to protect every aspect of our environment and the health of our people.