

DULUTH

# Leaked e-mail comes under scrutiny at PolyMet hearing

Testimony by the email's author, a former MPCA assistant commissioner, and questioning by a lawyer for the mine opponents dominated the day.

By Jennifer Bjorhus (<http://www.startribune.com/jennifer-bjorhus/34031274/>) Star Tribune |

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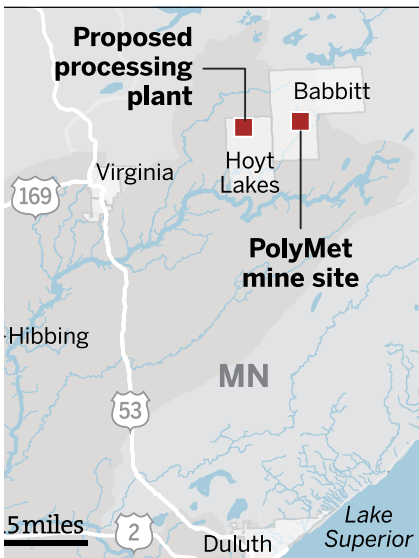
A leaked e-mail from a Minnesota pollution regulator to her counterparts at the U.S. Environmental Protection Agency took center stage Thursday at a St. Paul hearing investigating alleged irregularities in the handling of PolyMet Mining's water-quality permit.

The e-mail triggered alarm about the permit process when it was leaked last June. It revealed for the first time that Minnesota pollution regulators had asked the EPA not to send the federal regulator's serious concerns about PolyMet's draft permit in writing during the public-comment period, but to hold off. That move kept EPA reservations about the water-quality permit and its ability to control pollution, out of the public record.

On Thursday, the reason became clear. Former Minnesota Pollution Control Agency Assistant Commissioner Shannon Lotthammer, the e-mail's author, testified that she had deleted it.

"I deleted the e-mail knowing that, at least to the best of my knowledge, this was the only e-mail that contained the request," she testified Thursday.

The e-mail was one of several exchanges with the EPA about the permit that Lotthammer deleted. She said she didn't think the records-retention policy required her to save them and added, "I didn't want to leave things that somebody else had to wade through."



ources: Minn. Iron Range Resources; DNR, ESRI, Star Tribune

Lotthammer sent the key e-mail on March 13, 2018, to Kurt Thiede, second in command at the EPA's office in Chicago, one day after former MPCA Commissioner John Linc Stine made the same request on the phone to Cathy Stepp, former head of the EPA's Chicago office.

The requests became known only because the union representing career employees of the EPA Region 5 office in Chicago, which oversees Minnesota's enforcement of federal pollution laws, leaked Lotthammer's e-mail to the public and media last June.

Lotthammer's testimony and aggressive questioning by William Pentelovitch, a lawyer for the mine opponents, dominated Day Three of the evidentiary hearing underway in Ramsey County District Court. If opponents win, it could create new delays for the \$1 billion open-pit copper-nickel mine that Toronto-based PolyMet Mining Corp. wants to build in northeastern Minnesota.

Whatever the outcome, the overall dispute is likely to end up back at the Minnesota Court of Appeals, which transferred allegations of procedural irregularities at the MPCA



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Attorney William Pentelovitch, shown earlier in the week, offered aggressive questioning Thursday.

to the District Court for the investigation.

Pentelovitch called Lotthammer's e-mail "a document recording a unique and unusual, one-of-a-kind request." He argued that the MPCA's document-retention policies required such an e-mail to be preserved. Moreover, it memorialized a request that led to the special arrangement the two regulators decided on: The EPA agreed to delay its serious written criticisms until after the close of the public-comment period, when the MPCA would provide a new draft of the permit incorporating the public comments. The EPA would have 45 days to respond to it.

Echoing Stine's testimony Wednesday and Thursday, Lotthammer characterized the arrangement as a sensible one focused on efficiency and reducing the burden on staff flooded with public comments they needed to respond to. It would lead to a "better work product," she said several times.

Pentelovitch tried to show that the arrangement veered from the permit process laid out in the state's long-established Memorandum of Agreement with the EPA. That agreement does not allow for a "preproposal permit" of the sort the MPCA prepared for the EPA under the PolyMet arrangement. Pentelovitch argued that the arrangement effectively creates a new layer of permit development.

The "preproposal permit" term was a new one, Lotthammer said, that was coined by the EPA's Thiede in speaking with Lotthammer, as a way to distinguish the draft from other drafts.

Lotthammer said she was not part of the April 5, 2018, phone call in which Kevin Pierard, former chief of the water-quality permitting branch in the EPA's Chicago office, read the EPA's extensive written comments on PolyMet's draft permit over the phone to MPCA staff.

Lotthammer's testimony resumes Friday.

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