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MINING

High Court: Underground seepage from Minntac subject to regulation



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REGIONAL— Polluted seepage from the Minntac tailings basin, north of Virginia, may now need to be regulated by the state's Pollution Control Agency, or MPCA. The Minnesota Supreme Court made that possibility far more likely following an order issued late last week.

The six-page ruling, signed by Associate Justice G. Barry Anderson, came in response to multiple appeals of a Court of Appeals decision issued earlier this year, which had invalidated a water discharge permit issued by the MPCA to US Steel. In a mixed ruling that touched on several issues, the appellate court had found that pollution from the Minntac tailings basin that seeps underneath the basin's dam and then enters surface waters, was not subject to regulation under the Clean Water Act, since the water seeps up from the ground.

But the U.S. Supreme Court, in April, found that pollution discharges into groundwater may be subject to the Clean Water Act if those discharges are the "functional equivalent" of a direct discharge to surface water.

The Minnesota Supreme Court, citing the April case, known as *County of Maui v. Hawaii Wildlife Fund*, determined that the state's Court of Appeals had erred when it rejected the claim of environmental groups that the polluted groundwater emanating from the tailings basin was not subject to regulation. The high court also rejected a request by the MPCA for a voluntary remand, which would have allowed the agency to rewrite its permit to account for the Maui decision. While the issue will likely go back to the MPCA eventually, Justice Anderson said the case will remain in the hands of the state's Supreme Court until all the outstanding issues are resolved.

Environmental litigants in the case had opposed a voluntary remand and Paula Maccabee, attorney for the group Water Legacy, said she was pleased that the court has officially recognized in a decision that the Maui case is controlling.

"Maui is having an immediate effect on Minnesota and how the state regulates mining," Maccabee said. "What this means is that Minnesota is going to be able to start protecting surface water from polluted groundwater discharges."

The Minnesota Supreme Court will still hear arguments on a second issue, of whether contaminated groundwater in the vicinity of the Minntac tailings facility is subject to the federal drinking water standard for sulfate, of 250 milligrams per liter. Sulfate levels in water in the tailings facility are well above 250 mg/l, and those pollutants have worked their way into the aquifer that lies underneath. US Steel contends that the drinking water standard does not apply under its tailings facility and the Court of Appeals agreed, handing a victory to the mining company. That issue will now be the sole focus of arguments before the Supreme Court since the Maui case has since resolved the other issue.

Oral arguments in the case are expected this fall, with a decision to follow.

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