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POLYMET WATER POLLUTION PERMIT REVERSED!

State Erred in Failing to Evaluate Seepage through Groundwater to Surface Water

ST. PAUL, MINN., January 24, 2022 – Today the Minnesota Court of Appeals reversed the PolyMet copper-nickel mine water pollution (NPDES/SDS) permit.

The Court ruled that the Minnesota Pollution Control Agency (PCA) erred in failing to analyze whether untreated mine and tailings basin polluted seepage is the “functional equivalent” of a direct discharge to surface water and must be regulated under the Clean Water Act.

Paula Maccabee, Advocacy Director and Counsel for Minnesota-based non-profit WaterLegacy, stated, “This is a huge victory. As of today, PolyMet’s water pollution permit has been thrown out by the Court. PolyMet no longer has a permit to mine, and they no longer have a water pollution permit. It is long past time for Minnesota to pull the plug on PolyMet and its parent mega-corporation Glencore.”

This decision is a victory for environmental groups, the Fond du Lac Band of Lake Superior Chippewa, and tens of thousands of Minnesotans who commented throughout the environmental and permitting process opposing PolyMet/Glencore toxic water pollution.

Maccabee explained, “Untreated toxic seepage from PolyMet/Glencore mine wastes to surface waters in the Lake Superior basin would be toxic to fish and wild rice and would increase mercury contamination, harming the developing brains of fetuses, infants, and children. Toxic seepage would continue for centuries, if not forever.”

The Court of Appeals also emphasized, “the PCA’s efforts to discourage the EPA [U.S. Environmental Protection Agency] from providing written comments during the public-comment period had the purpose and effect of avoiding or minimizing public criticism of the proposed permit and, in addition, avoiding the need for the PCA to publicly respond in writing to the EPA’s comments.” The Court found the PCA’s procedures “are contrary” to statutory requirements “to increase public accountability of administrative agencies.”

Maccabee stated, “Without whistleblowers, FOIA lawsuits, and court orders, we would never have learned that the MPCA used a corrupt process to keep EPA’s criticisms of the PolyMet permit secret. Minnesotans deserve agencies that protect people, not polluters.”

For more information on the PolyMet mine controversy, visit: <https://waterlegacy.org>

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Permit Background

The PolyMet NPDES/SDS water pollution permit was issued by the Minnesota Pollution Control Agency (MPCA) on December 20, 2018. WaterLegacy, other environmental groups and the Fond du Lac Band appealed. In June 2019, on WaterLegacy's motion, the Court of Appeals sent the water pollution permit to district court for a hearing on whether the PCA had used "irregular procedures" to issue the PolyMet permit, including an unprecedented effort to prevent the EPA from sending its comments.

WaterLegacy filed seven Minnesota Data Practices Act requests, nine federal Freedom of Information Act (FOIA) requests, and two FOIA lawsuits to expose EPA's comments and a corrupted process. The EPA's secret comments concluded that the PolyMet permit would violate pollution standards and the federal Clean Water Act. The district court confirmed that MPCA had requested that the EPA withhold these and that MPCA had destroyed its "smoking gun" emails making this request of the EPA.

In 2020, the United States Supreme Court ruled in the case of *County of Maui v. Hawaii Wildlife Fund*, that discharge through groundwater that was the "functional equivalent" of direct discharge must comply with the Clean Water Act. In another case litigated by WaterLegacy and the Fond du Lac Band, the Minnesota Supreme Court applied the *Maui* case to reverse U.S. Steel's Minntac tailings basin permit due to MPCA's failure to consider impacts of discharge through groundwater to wetlands, streams, and lakes.

Other PolyMet Permits

- The PolyMet permit to mine has been overturned by the Minnesota Supreme Court due to an inadequate plan to control acid mine drainage and the lack of a permit term. The Court required a contested case hearing before any permit could be reissued.
- The legality of PolyMet dam safety permits is still pending, and won't be decided until after the contested case hearing on the permit to mine.
- PolyMet's wetlands destruction permit has been suspended as a result of federal litigation by the Fond du Lac Band. The Band has determined PolyMet pollution will affect their waters, and the U.S. Army Corps of Engineers must now hold a hearing.
- The PolyMet air pollution permit is currently in litigation as well, based on arguments that planned mine expansions will result in air pollution that exceeds federal limits.

PolyMet Copper-Nickel Sulfide Ore Mine

The PolyMet copper-nickel sulfide mine is proposed in the headwaters of the St. Louis River, the largest United States tributary to Lake Superior, upstream of the Fond du Lac Reservation, the City of Duluth, and the St. Louis River estuary.

The ore body PolyMet/Glencore would mine is low-grade. PolyMet's profit margins are thin, and its waste and tailings storage designs would allow escape of untreated pollution. The track record of sulfide ore mining in water-rich environments like that proposed for the PolyMet mine is that 100% of these mines have resulted in water pollution.