

DULUTH

Groups ask Minnesota Supreme Court to send water permit for proposed PolyMet mine back to square one

Environmental groups challenged the state's agreement with the EPA to keep information about the controversial project out of the public record.

By **Chloe Johnson** (<https://www.startribune.com/chloe-johnson/9346094/>) Star Tribune |

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Environmental advocates, mining company PolyMet and the state's pollution regulator sparred in Minnesota's high court Wednesday over whether a wastewater permit for the state's first copper-nickel mine should be thrown out.

At stake was whether the state would have to restart the permit process with a new public comment period, which would be a major setback for a project that's already stalled. An appellate ruling in January determined the state [had to redo one part of the water permit related to groundwater](https://www.startribune.com/minnesota-court-of-appeals-strikes-down-another-permit-for-states-first-planned-copper-mine/600139128/) (<https://www.startribune.com/minnesota-court-of-appeals-strikes-down-another-permit-for-states-first-planned-copper-mine/600139128/>), to conform with federal law.

The Minnesota Supreme Court justices focused questions on whether the Minnesota Pollution Control Agency (MPCA) erred in asking the Environmental Protection Agency (EPA) in 2018 to keep its comments on the permit out of the public record. Instead of writing a public response letter, EPA officials discussed the project with the MPCA by phone.

"The EPA eventually didn't issue any comments in like the biggest mining situation ever to occur in Minnesota," Associate Justice Margaret Chutich said. "When in all of the other mining cases, there are written comments and there are responses. I mean ... isn't that like a danger signal here?"

Bryson Smith, an attorney for the MPCA, responded that lower courts had failed to find a connection between that decision and the permit that was ultimately issued.

[An internal report from the EPA](https://www.startribune.com/epa-botched-oversight-of-permits-for-polymet-mine-internal-investigation-finds/600048644/) (<https://www.startribune.com/epa-botched-oversight-of-permits-for-polymet-mine-internal-investigation-finds/600048644/>) found that that agency shirked its oversight of the project, in part because it did not submit written comments. But before the court, arguments centered on the actions and motivations of state officials.

Environmental advocates argued that the public process had been corrupted. Paula Maccabee, an attorney for the group WaterLegacy, said the MPCA ultimately didn't consider concerns from the EPA about Great Lakes water quality and other issues that later came to light.

"The court should not adopt a rule of law that lets MPCA get away with this," Maccabee told the justices.

Smith argued that the EPA could have sent in a comment letter but chose not to.

"Rather than reflect anything nefarious, this indicates that the final permit satisfied any concerns that EPA or some of its staffers may have had," Smith said.

That argument seemed persuasive to some on the court. Associate Justice Natalie Hudson said the EPA staff were "big boys and girls. And they could have stepped in at any point, either during the comment period or after the comment period."



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The closed LTV Steel taconite plant sits idle near Hoyt Lakes, Minn., where PolyMet intends to refurbish some of the facility for a copper-

Previous decisions in lower courts have not faulted the MPCA for communicating with EPA officials by phone, though a trial court found that the MPCA sought to avoid bad press in doing so.

On Wednesday, WaterLegacy, the Fond du Lac Band of Lake Superior Chippewa, the Minnesota Center for Environmental Advocacy, Friends of the Boundary Waters Wilderness and the Center for Biological Diversity all argued for restarting the permit process with fresh public comment.

The MPCA and PolyMet countered that the groups didn't have a valid claim to force a restart, saying state and federal officials were actually communicating more regularly than in other permit reviews.

"MPCA asked EPA to be involved early in this process to streamline it," said PolyMet attorney Jay C. Johnson. "There were frequent phone conferences twice a month for two years with EPA and PCA that lasted an hour and a half each."

Also at issue were questions about whether the MPCA should have imposed end-of-pipe pollution limits under federal law on the treated wastewater that PolyMet would discharge. The discharge would eventually flow downstream to the St. Louis River, which flows through Fond du Lac tribal lands.

The band has its own water quality standards, which are tighter than Minnesota's rules because members rely on fish in the waters for food.

"Today, it is unsafe for band members to engage in subsistence fishing, due to toxic human health effects from mercury-contaminated fish," Matthew Murdock, an attorney for the Fond du Lac Band, told the court.

Evan Nelson, an attorney for three other environmental groups, also said PolyMet's permit did not follow state groundwater rules, adding that the mining company should have been required to put a liner in the areas where it would store waste.

PolyMet's \$1 billion NorthMet project, near Hoyt Lakes, would be the first hard-rock mine in Minnesota. PolyMet is based in Canada but is owned by Swiss mining giant Glencore. The project has also been at the center of several other legal challenges, notably over the design of a tailings basin that would store mine waste.

Another proposed copper-nickel mine, the Twin Metals project near Ely, faces even higher hurdles. The Biden administration canceled the lease for the operation in January. Twin Metals sued the federal government over that decision this summer.

A third nickel project, Talon Metals' Tamarack Mine in Aitkin County, is also planned, but the company has not yet submitted detailed permit applications.

Chloe Johnson covers climate and other environmental issues for the Star Tribune and the Mississippi River Basin Ag & Water Desk, a consortium of 10 news organizations. She is a corps member with Report for America, a national service program that places journalists into local newsrooms.

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