

LOCAL

NorthMet mine dealt another blow as Minnesota Supreme Court tosses water permit

The Minnesota Pollution Control Agency didn't adequately consider the mine's threat to water quality, the court ruled.

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

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The Minnesota Supreme Court suspended a key permit for the proposed NorthMet copper-nickel mine in northern Minnesota on Wednesday, ruling that state regulators failed to fully consider the threat to water quality.

Regulators at the Minnesota Pollution Control Agency will now have to gather comments from federal officials in writing, and potentially set pollution limits in the mine's permit to address those comments, according to [the ruling](https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Standard%20Opinions/OPA190112-080223.pdf) (<https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Standard%20Opinions/OPA190112-080223.pdf>).

The NorthMet project, originally proposed by PolyMet Mining, would be a massive open-pit mine to extract copper, nickel and other metals at a site near Babbitt, Minn., and then ship the material for processing at the former LTV Steel site in Hoyt Lakes.

The project has faced opposition because of the potential of acid drainage and other pollution that can come from hardrock mining. The court wrote that there were "several danger signals" suggesting that state regulators did not properly consider whether the project would violate water pollution standards in the Lake Superior watershed.

Paula Maccabee, an attorney for the advocacy group WaterLegacy, one of several environmental groups challenging the water permit in court, called the latest decision "pathbreaking" because of how it holds the permit writers responsible.

"It is a real affirmation of the way that the courts will make sure Minnesota agencies will uphold the rule of law," Maccabee said.

In a statement Wednesday, NewRange Copper Nickel, the recently formed partnership of PolyMet and Teck that's now behind the project, said it is "confident that the additional proceedings will confirm the project protects water quality for all, and welcomes working with stakeholders on the permit."



ANTHONY SOUFFLÉ, STAR TRIBUNE FILE

NewRange Copper Nickel, a joint venture partnership between PolyMet and Teck, is proposing a massive open-pit mine near

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"As designed, the NorthMet Project will employ the most advanced and protective water treatment technology of any mining project in the history of the State of Minnesota," NewRange said.

An MPCA spokeswoman said the agency was reviewing the ruling.

While it worked on the original permit, the MPCA gathered feedback from the U.S. Environmental Protection Agency on the phone, not through a formal letter — an unusual arrangement that kept the EPA's concerns out of the public record and that environmental groups said corrupted the public process.

Some justices on the court seemed persuaded by those claims during arguments last November (<https://www.startribune.com/environmental-groups-ask-mn-supreme-court-to-send-polymet-mines-water-permit-back-to-square-one/600231504/?refresh=true>) — and Associate Justice Margaret Chutich even used some of the same language then that ended up in Wednesday's decision (<https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Standard%20Opinions/OPA190112-080223.pdf>), calling the phone discussions with EPA a "danger signal."

But the court did not re-open the permit to comment from everyone, which environmental groups had asked for. The groups challenging MPCA in the case were 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.

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A concurring opinion signed by five justices found that the MPCA and the EPA had also treated Fond du Lac's water quality standards, which are stricter than Minnesota's, as an "afterthought."

The court didn't delve into some other issues, such as pollution limits. The final permit included technology-based standards for water treatment, but there was no explicit cap on pollutants the mine could release into the environment.

Because of a lack of documentation of the conversations between MPCA and EPA, "we simply do not have an adequate administrative record to resolve the substantive claims" on water quality limits, Associate Justice G. Barry Anderson wrote in the unanimous

decision.

The proposed NorthMet mine faced a major setback in June when the U.S. Army Corps of Engineers revoked a separate wetland destruction permit (<https://www.startribune.com/northmet-copper-nickel-mine-minnesota-iron-range-loses-key-permit-over-threat-tribal-water-quality/600280827/>), and it faces other environmental permit challenges. A lower court had also already asked the MPCA to review a different part of the wastewater permit.

On Wednesday, the state Supreme Court also said that MPCA needs to either give the mine a special exception or find a way to limit groundwater pollution directly under the tailings basin and rock stockpiles that the NorthMet mine would use.

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PolyMet had proposed building underground walls around these sites to contain the polluted groundwater, and then pumping it out for treatment. But MPCA will now have to consider how to stop the pollution in the first place.

If the agency can't find a ready fix, "PolyMet is going to have to redesign its tailings basin and stockpiles," said Joy Anderson, the attorney from Minnesota Center for Environmental Advocacy who worked on the case. "That would be a very big deal."

Correction: Previous versions of this story misstated how many justices joined the opinion.

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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