

NEWS LOCAL

Judge recommends DNR deny NorthMet permit to mine

In a non-binding opinion, an administrative law judge said adding bentonite clay to the mine-waste slurry and lining the tailings basin with bentonite was impractical and would not meet state law.



Brad Moore, then PolyMet's executive vice president of environmental and governmental affairs, looks out from the top of a tailings basin dam in 2017. The dam was built when LTV mined taconite near Hoyt Lakes. PolyMet plans to use the former LTV basins as the base for their mine waste storage area, raising dams to hold back the tailings from its copper processing operations. Steve Kuchera / File / Duluth Media Group



By Jimmy Lovrien

November 28, 2023 at 7:57 PM

<https://www.duluthnewstribune.com/news/local/judge-recommends-dnr-deny-northmet-permit-to-mine>

ST. PAUL — An administrative law judge recommended Minnesota regulators deny a permit to mine for the project vying to become

the state's first copper-nickel mine because its planned method of storing a slurry of waste rock "is not a practical and workable reclamation technique," the judge wrote.

NewRange Copper Nickel's permit to mine required the company to line and cap the project's tailings basin — a dam that would store waste rock left behind after processing out copper, nickel, cobalt and other metals — with bentonite, which swells when wet, to prevent oxygen from contacting the tailings and creating acid, the type of pollution environmentalists fear most with copper-nickel mining. Bentonite would also be mixed in with the tailings.



Hearing will focus on whether bentonite clay is effective in tailings dam
(<https://www.duluthnewstribune.com/news/local/hearing-will-focus-on-whether-bentonite-clay-is-effective-in-tailings-dam>)

(<https://www.duluthnewstribune.com/news/local/hearing-will-focus-on-whether-bentonite-clay-is-effective-in-tailings-dam>)

But in the 40-page non-binding opinion issued Tuesday, (https://mn.gov/oah/assets/2004-37824-northmet-dnr-permit-mine-report_tcm19-601732.pdf) Judge James E. LaFave said the method did not meet the state law([https://www.revisor.mn.gov/rules/6132.2200/#:~:text=\(1\)%20modify,and%20state%20standards](https://www.revisor.mn.gov/rules/6132.2200/#:~:text=(1)%20modify,and%20state%20standards)) because it would not make the slurry of crushed-up waste rock nonreactive and wouldn't prevent water from flowing over or through the waste upon closure.

NewRange is a joint venture formed earlier this year between PolyMet and Teck to advance the NorthMet project.

"Based upon these findings, and without passing judgment on other issues regarding the NorthMet Project that are pending before the DNR, the Administrative Law Judge recommends that the Commissioner DENY PolyMet's Permit to Mine application," LaFave wrote. "Alternatively, if the permit is granted, the Commissioner should impose the special conditions established in the original Permit to Mine (Nov. 1, 2018), along with additional or revised special conditions set forth by the DNR."

It's now up to the DNR on whether to accept the judge's recommendations.

In a statement, DNR Deputy Commissioner Barb Naramore said the decision will be left to a "final agency decision maker within the DNR, along with their legal counsel for review." Naramore said the decision maker is a senior DNR leader who had no role in the original permit decision and, along with their legal counsel, has not and will not have contact with the DNR permitting team on this case.

 [Join the conversation](#)



Weigh in

What do you think about this news about the NorthMet project? Or about the project in general?



[Read the Comments](#) (#viafoura-conversations)

"Others in DNR leadership do not direct or advise the work of the final agency decision maker. As such, the DNR will not comment on the substance of the (administrative law judge's) recommendations or the timing and content of the final agency decision maker's process," Naramore said.

Environmental groups opposed to the mine celebrated the judge's opinion and pointed to several permitting setbacks now faced by the project.

“Yet another PolyMet permit has now been found to violate Minnesota statutes and rules intended to protect the environment from pollution,” Paula Maccabee, advocacy director and counsel for WaterLegacy, said in a news release. “We are pleased that the administrative judge concluded that PolyMet’s application for a permit to mine should be denied due to failure to meet basic legal requirements to control pollution from reactive mine wastes.”

Opponents have long said pollution from the mine and tailings basin could flow into the downstream St. Louis River and Lake Superior.

“This is yet another repudiation of the permits issued to PolyMet, and should be the final nail in the coffin of this failed proposal,” said Kathryn Hoffman, CEO of the Minnesota Center for Environmental Advocacy. “The administrative law judge reviewed volumes of evidence and expert testimony warning that PolyMet’s proposal would fail to protect people downstream. The Minnesota DNR should heed the judge’s clear recommendation that the permit to mine be denied.”

NewRange spokesperson Bruce Richardson said the company was reviewing the recommendation.

In his opinion, LaFave sided with the environmental groups and the Fond du Lac Band of Lake Superior Chippewa in several key instances.

LaFave wrote that while the state's law requires "substantially all" water be prevented from flowing over or through the waste, it is undisputed that approximately 298 million gallons of water would seep from the tailings basin every year.

READ MORE

DNR contested case hearing will examine PolyMet use of bentonite clay in NorthMet mining

permit(<https://www.duluthnewstribune.com/business/dnr-contested-case-hearing-will-examine-polymet-use-of-bentonite-clay-in-northmet-mining-permit>)

Court: DNR must set term — in years — on PolyMet dam, hold hearing on effectiveness of dam

liner(<https://www.duluthnewstribune.com/business/court-dnr-must-set-term-in-years-on-polymet-dam-hold-hearing-on-effectiveness-of-dam-liner>)

Minnesota Supreme Court: Too late for DNR to include documents supporting clay liner in PolyMet

dam(<https://www.duluthnewstribune.com/business/minnesota-supreme-court-too-late-for-dnr-to-include-documents-supporting-clay-liner-in-polymet-dam>)

Court of Appeals weighs PolyMet

permits(<https://www.duluthnewstribune.com/business/court-of-appeals-weighs-polymet-permits>)

"Petitioners maintain that whatever the term 'substantially all' means, that is not it," LaFave wrote. "The Administrative Law Judge agrees."

To illustrate 298 million gallons of water, LaFave said that the amount of water would require 27,091 trucks holding 11,000 gallons each. At 53 feet long, the trucks lined up bumper-to-bumper would stretch 271 miles, "approximately the distance between St. Paul and Grand Marais," LaFave said.

On the requirement to store the waste "such that the waste is no longer reactive," LaFave said the DNR incorrectly interpreted that law. He said the agency's reading would put the DNR in a position of enforcing water quality standards, which is the responsibility of the Minnesota Pollution Control Agency.

But even if the DNR was interpreting it correctly, LaFave pointed to recent rulings that "indicate that seepage from the NorthMet Project would not meet water quality standards."

In August, [the Minnesota Supreme Court sent a water permit back to the Minnesota Pollution Control Agency](https://www.duluthnewstribune.com/news/local/court-says-mpca-did-not-take-hard-look-at-northmet-permit)(<https://www.duluthnewstribune.com/news/local/court-says-mpca-did-not-take-hard-look-at-northmet-permit>) after the court said the agency did not adequately consider whether a key water permit for a proposed copper-nickel mine would comply with the Clean Water Act and did not take seriously federal regulators' concerns, which were left out of the public record.

In June, [the U.S. Army Corps of Engineers revoked](https://www.duluthnewstribune.com/news/local/army-corps-revokes-key-northmet-copper-nickel-mine-permit)(<https://www.duluthnewstribune.com/news/local/army-corps-revokes-key-northmet-copper-nickel-mine-permit>) a key federal discharge permit after determining it "does not ensure compliance with water quality requirements of the Fond du Lac Band of Lake Superior Chippewa." The company can still reapply for the permit.

LaFave's opinion comes after a contested case hearing was held earlier this year. The hearing had been ordered by the Minnesota Supreme Court when it determined there was not enough evidence to prove the effectiveness of bentonite [in an April 2021 decision](https://www.duluthnewstribune.com/business/court-dnr-must-set-term-in-years-on-polymet-dam-hold-hearing-on-effectiveness-of-dam-liner). (<https://www.duluthnewstribune.com/business/court-dnr-must-set-term-in-years-on-polymet-dam-hold-hearing-on-effectiveness-of-dam-liner>)

Whatever the DNR decides — to reissue the permit as is, to reissue it with conditions or to outright deny the permit — the decision can

be challenged at the Minnesota Court of Appeals, meaning it could again work its way up to the Minnesota Supreme Court.

For more than two decades, PolyMet has been trying to bring the NorthMet copper-nickel mine, processing facility and tailings basin near Hoyt Lakes and Babbitt online. PolyMet formed the NewRange joint venture with Teck earlier this year, and Swiss mining giant Glencore purchased [PolyMet earlier this month\(https://www.duluthnewstribune.com/news/local/polymet-shareholders-ok-glencore-takeover\)](https://www.duluthnewstribune.com/news/local/polymet-shareholders-ok-glencore-takeover) and took the company private.

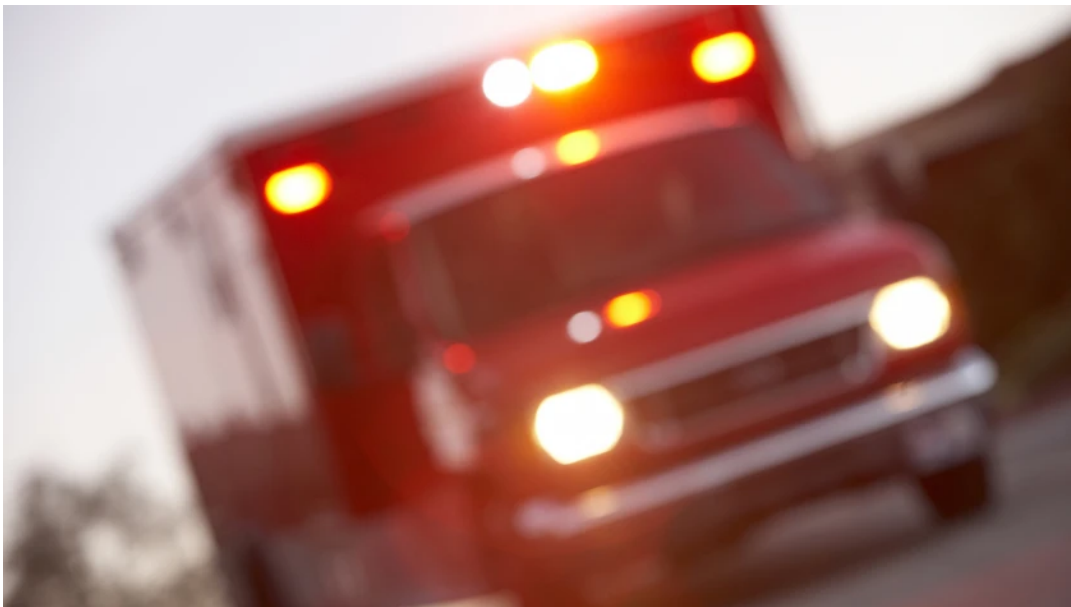
While the project earned key permits in 2018 and 2019, it has faced significant legal challenges ever since.

MORE BY JIMMY LOVRIEN



<https://www.duluthnewstribune.com/news/local/additional-leases-or-not-mesabi-metallics-said-it-will-finish-pellet-plant-mine>)

Additional leases or not, Mesabi Metallics said it will finish pellet plant, mine(https://www.duluthnewstribune.com/news/local/additional-leases-or-not-mesabi-metallics-said-it-will-finish-pellet-plant-mine)



(<https://www.duluthnewstribune.com/news/local/1-teen-dead-another-in-critical-condition-after-crash-near-orr>)

1 teen dead, another in critical condition after crash near Orr(<https://www.duluthnewstribune.com/news/local/1-teen-dead-another-in-critical-condition-after-crash-near-orr>)

Nov 16



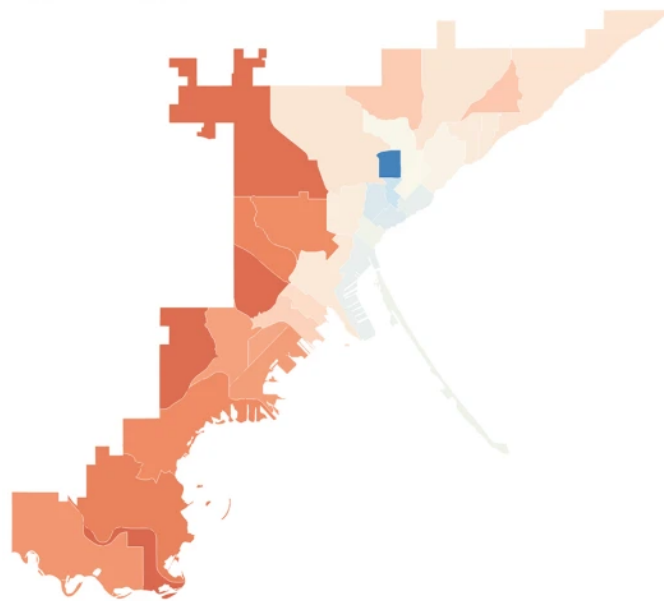
(<https://www.duluthnewstribune.com/news/local/minnesota-adds-20-wild-rice-lakes-and-streams-to-impaired-list>)

Minnesota adds 20 wild rice lakes and streams to impaired list(<https://www.duluthnewstribune.com/news/local/minnesota-adds-20-wild-rice-lakes-and-streams-to-impaired-list>)

Nov 15

Duluth Mayor Race — Emily Larson vs. Roger Reinert

Larson Reinert



Created with Datawrapper

(<https://www.duluthnewstribune.com/news/local/track-duluths-2023-election-results-here>)

Duluth's 2023 election, mapped(<https://www.duluthnewstribune.com/news/local/track-duluths-2023-election-results-here>)

Nov 8

1 Comments

Share

News reporting

Tags

(#conversations)



By Jimmy Lovrien(<https://www.duluthnewstribune.com/jimmy-lovrien>)

Jimmy Lovrien covers mining, energy, climate, social issues and higher education for the Duluth News Tribune. He can be reached at jlovrien@duluthnews.com or 218-723-5332.

www.duluthnews.com/jimmy-lovrien

Twitter (<https://twitter.com/JimmyLovrien>)

LinkedIn (<https://www.linkedin.com/in/jimmylovrien>)

my-
lovrien)

in LinkedIn

CONVERSATION

Loading...

