

ENVIRONMENT

DNR must consider anew whether to study massive pool of mine waste above Lake Superior, court rules

The tailings basin at Milepost 7 could be studied for the cumulative effects of extending its dams, even though the project was approved in the 1970s.

By Chloe Johnson
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The Milepost 7 tailings basin photographed from a helicopter in 2010. Pictured beyond the basin is Silver Bay, the Northshore Mining processing plant, and Lake Superior. (Provided by Lori Andresen)

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The Minnesota Court of Appeals handed environmental groups a win in their continuing legal fight against the expansion of a massive pond for mining waste three miles from Lake Superior.

The appellate ruling said the Department of Natural Resources was too quick to reject a comprehensive study of the basin, which holds more than 40 years' worth of mine waste near Silver Bay.

Now, DNR must again consider whether to conduct an environmental impact statement (EIS), the review that environmental groups sought because of the potential for catastrophic pollution if one of the dams at the Milepost 7 site breaks.

The advocacy group WaterLegacy argued that the state could not rely on the review it completed before the basin was constructed in the 1970s. The court agreed, writing that DNR made a decision that was “arbitrary and capricious” and that the agency had made a legal error in its justification to skip the EIS.

The ruling does not require DNR to do the study, only to determine anew whether it's necessary.

“It's a really important victory for environmental protection,” said Paula Maccabee, the attorney for WaterLegacy. “The fact that somebody looked at something [more than] 40 years ago doesn't mean that they have a get out of jail free card for further environmental review.”

The state or Northshore Mining, which operates the basin, could petition the State Supreme court to re-hear the case.

DNR “has not yet determined whether it will petition the Supreme Court for further review,” spokeswoman Gail Nosek wrote in an email.

A spokesperson for Cleveland Cliffs, which owns Northshore Mining, did not respond to questions.

Milepost 7 was constructed after one of the most infamous cases of environmental pollution in Minnesota. For years, Reserve Mining dumped its waste directly into Lake Superior. A federal judge later ruled that practice was illegal.

A combination of natural ridges and three large dams ring the 2,150-acre basin where Northshore deposits a slurry of fine sediment and water. The dams' walls are themselves built out of larger pieces of waste rock, and grow progressively as more waste is trucked and piped there. Northshore and DNR both previously argued that the final height of the dams was already permitted at the beginning of the project, back in 1977.

DNR did complete an environmental assessment worksheet for parts of the project in 2023, including the relocation of a railroad and wetland mitigation work in two nearby streams. But the agency argued that those actions should not be considered together with the raising of the dams, and did not require the much more detailed EIS.

Environmental groups argued then that the risks were too high.

In the ruling Monday, Court of Appeals Judge Renee L. Worke wrote that the state had not properly accounted for the cumulative impacts of all this work.

“We cannot agree that a project expected to continue for the next 40 years is not reasonably foreseeable, or that the future effects of that project should be considered ‘past actions,’” Worke wrote.

Usually, work on a project cannot proceed until a state agency has finished considering all the studies and permits that may be necessary.

“There’s a really good argument they should stop their building until the environmental review is complete,” Maccabee said.

Nosek wrote that Northshore doesn’t have to do that.

“They can continue to operate the tailings basin, including constructing dams, as long as they comply with their permits,” she wrote.

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