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Appeals court: DNR made legal error in Northshore decision



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Marshall Helmberger

REGIONAL— The Minnesota Court of Appeals has overturned the Department of Natural Resources' decision to move forward with permitting of a tailings basin expansion by Northshore Mining without undergoing an environmental impact statement, or EIS.

The unanimous ruling, issued Feb. 3, finds that the DNR engaged in legal error, and acted arbitrarily and capriciously when it decided last March to limit the environmental review to an environmental assessment worksheet, or EAW, a much briefer document designed to determine the need for a fuller EIS.

The appellate judges remanded the matter back to the DNR for reconsideration "in accordance with this opinion."

In a memo accompanying the decision, the judges laid out their interpretation of state rules pertaining to the environmental review process and argued that both the DNR and Northshore Mining had misinterpreted the rules when the agency decided against an EIS to study the impact of Northshore's plan to expand its Mile Post 7 tailings basin. The 40-year-old basin, created in the wake of the Reserve Mining case that forced Northshore's predecessor to cease disposal of tailings into Lake Superior, is partially filled and needs changes to reach its originally permitted capacity. Those changes include extending the length of several existing dams, relocating a portion of the rail track used to deliver coarse tailings, and diverting several streams around the facility.

The Mile Post 7 tailings dams are located directly above the cities of Beaver Bay and Silver Bay and less than three miles from Lake Superior.

In overruling the DNR, the judges sided with the environmental group WaterLegacy, which had appealed the DNR decision last April, citing an unstable upstream dam design that "had the potential to harm human life, health, and the environment by increasing the likelihood and severity of catastrophic tailings dam failure."

The DNR and Northshore both argued that the tailings project did not require a full EIS because the work was, in part, related to the existing tailings basin permit, which had already been the subject of an EIS back in the 1970s.

The court, however, found that state rules don't exempt state agencies from studying "the effects" of related projects, even if those projects had previously been subject to environmental review. "This is an important victory," said Paula Maccabee, executive director and chief legal counsel for WaterLegacy. "The Court's ruling rejects Northshore's claims that its massive tailings dam expansion is exempt from environmental review. It puts DNR on notice that previous environmental review and permitting is not a 'get out of jail free' card to avoid scrutiny of a proposed mining project."

Background

Northshore Mining utilizes the Mile Post 7 tailings basin to dispose of waste tailings from the processing of taconite mined at the Peter Mitchell pit near Babbitt. The raw taconite is shipped by rail to Silver Bay, where it is formed into taconite pellets at the company's Silver Bay processing plant.

The company's proposal to expand the basin generated considerable interest, resulting in more than 1,300 public comments, according to the DNR.

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