



# Save Lake Superior Association

Winter 2020

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## Minnesota Appeals Court Strikes Down PolyMet Copper-Sulfide Mine Permit, Orders New Hearing

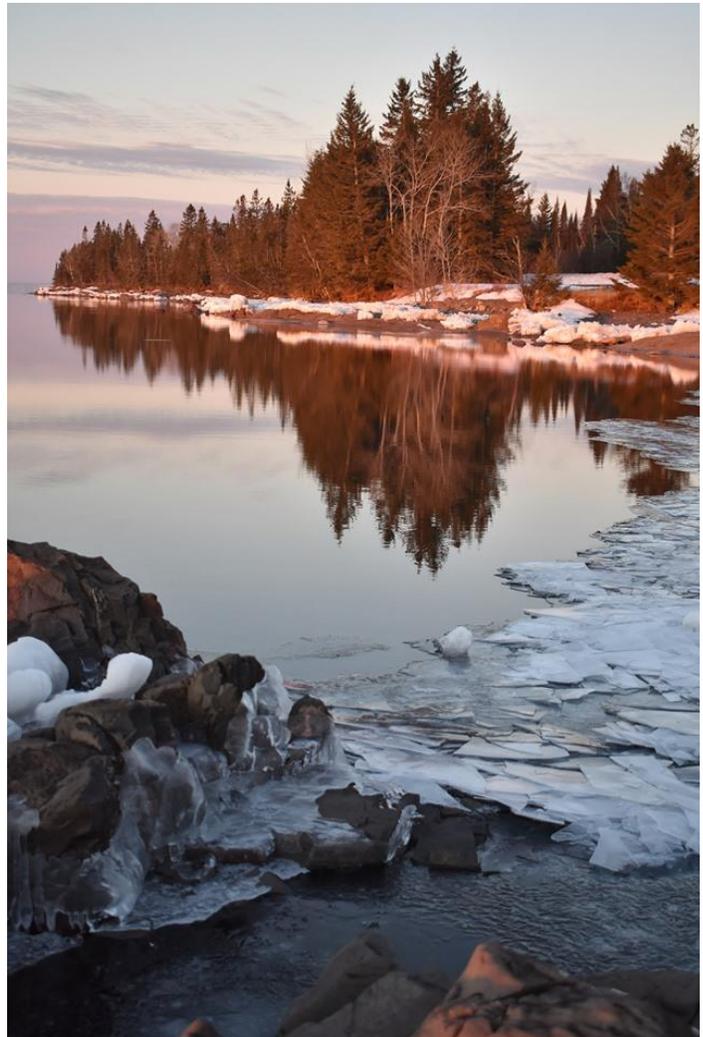
**From the press release of the Center for Biological Diversity, January 13, 2020:**

"ST. PAUL, *Minn.* — The Minnesota Court of Appeals [overturned](#) state permits today that would allow PolyMet to construct Minnesota’s first copper-sulfide mine, ordering a new hearing before an administrative law judge.

Tens of thousands of Minnesotans filed comments opposing the PolyMet open-pit mine. Thousands of Minnesotans came to public-information sessions to oppose granting permits to PolyMet. The Minnesota Department of Natural Resources’ own experts expressed concern about the safety of PolyMet’s proposed dam. Regulatory agencies ignored these concerns and approved the permits anyway.

Tribal, conservation and clean-water groups [appealed](#) the permits in December 2018. In today’s ruling the court ordered a contested case hearing, in which an administrative law judge issues an opinion after a trial where all parties submit evidence. The court’s decision requires the Department of Natural Resources to make a permit decision based on that evidence. In the meantime PolyMet cannot construct or operate its proposed mine."

Also in the release was a statement from the Save Lake Superior Association, a plaintiff in the appeal which was led by the Minnesota Center for Environmental Action. LeRoger Lind, president of Save Lake Superior Association stated: "The PolyMet mine would expose the Lake Superior watershed to a new and more toxic source of water pollution from copper-nickel sulfide mining. Children are especially at risk from mercury and toxic heavy metals in water, air and local fish as a food supply. Despite their assertions, the corporations and state agencies have not been able to demonstrate their ability to protect the public from these health threats."



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## **Court Summary**

According to the Minnesota Court of Appeals 36 page decision, then Commissioner of the DNR Tom Landwehr was required according to law to have held a contested hearing. "The DNR's decision to deny a contested-case hearing in relation to the NorthMet project was based on errors of law and unsupported by substantial evidence, and the DNR also erred by failing to include a definite term in the NorthMet permit to mine," Chief Judge Edward Cleary wrote in the decision. "For these reasons, we reverse the DNR's decisions granting the permit to mine and dam-safety permits for the NorthMet project, and we remand for the DNR to hold a contested-case hearing."

Some of the issues to be put forth in a contested case hearing would include whether an upstream construction of the tailings basin dam as proposed is unsafe (following the collapse of such dams at Mount Polley in Canada and Brumadinho in Brazil), whether the use of bentonite clay to neutralize tailings would actually work, whether there is an alternative to wet closure of the tailings basin, and whether the amount of financial assurance to reclaim the site upon closure, either planned or unexpected, is sufficient to cover the costs. The DNR did not follow the guidance of its own consultants on some of these matters.

## **MPCA Also Under Scrutiny**

As reported on January 20, 2020, MINNEAPOLIS (AP) —" Legal challenges to the proposed PolyMet copper-nickel mine enter a new phase this week when a judge opens a fact-finding hearing into allegations that the Minnesota Pollution Control Agency improperly tried to suppress serious concerns by the federal Environmental Protection Agency (EPA) about the project's risks to clean water.

Ramsey County Chief Judge John Guthmann will hear testimony and gather evidence during the hearing, which opens Tuesday and is expected to last five to 10 days. He will then prepare written findings for the Minnesota Court of Appeals on the alleged procedural irregularities. The appeals court will then consider his report as it weighs a broader legal challenge by PolyMet's critics to the water quality permit that the MPCA issued in 2018 for what would be Minnesota's first copper-nickel mine."

The allegations against MPCA procedures surfaced after an anonymous whistleblower leak. In June, 2019, the union representing Minnesota staff at the EPA released an internal email sent by Shannon Lotthammer, who was then assistant commissioner at the MPCA, to her federal counterparts asking them not to submit written comments on the PolyMet water discharge permit.

Lotthammer's email came less than one week after EPA documents warned the MPCA that the mine's draft permits lacked water-quality-based effluent limitations — standards that ensure bodies of water receiving discharged water are not polluted. "The above concerns must be addressed to ensure that the permit will achieve compliance with all applicable requirements of the (Clean Water Act), including water quality requirements of Minnesota and of all affected states," Kevin Picard, chief of the EPA's National Pollutant Discharge Elimination System programs branch wrote in a letter to Jeff Udd, the MPCA's Metallic Mining Director. "If unaddressed, the above concerns may result in an EPA objection to a proposed permit." (Duluth News Tribune, Environmental Protection Agency releases PolyMet documents, June 13, 2019)

When questioned during the fact-finding hearing on January 21, former MPCA Commissioner John Linc Stine initially denied that a phone conversation he had with the head of the EPA's Chicago office in March 2018 was about PolyMet. But on further questioning and after reviewing e-mails referring to the exchange, Stine acknowledged that he discussed PolyMet with Cathy Stepp, then head of the EPA Region 5 office. Cathy Stepp has left the EPA as of January 17, 2020. (Star Tribune, Jan. 23, 2020)

Linc Stine testified that his request was only an efficiency matter, as the public comment period on the water quality permit MPCA had published for PolyMet was soon closing and the agency had to respond to hundreds of comments. (Left out of the hearing was the political push to get PolyMet permitted under Gov. Dayton, preventing controversy for the incoming Walz administration. The MPCA granted the permit on December 20, 2018--after Walz was elected but before he took office.)

Testimony will continue from the MPCA and PolyMet during the last week of January, seeking to show that nothing in state law or regulations prohibited the MPCA from listening to the EPA read its criticisms of the PolyMet permit, rather than submitting them in written form, which would have made them available to the public. According to testimony from former EPA official Kevin Pierard who oversaw the permit, Lotthammer had told him their decision to avoid written comments was in part motivated by avoiding media coverage. (Minnpost, Former EPA official: Minnesota regulators wanted PolyMet critiques kept out of public comment to avoid 'press,'" Jan. 22, 2020)

Of further concern is the fact that the MPCA disposed of all computer hard drives, notes, emails and other documents related to the permit. The agency has denied that the materials it destroyed were relevant to its official record on the permit.

At the end of the proceedings, Chief Judge John Guthmann will decide what should be included in the administrative record of how the MPCA's water quality permit was developed. He will prepare his findings on the alleged irregularities to be sent back to the Court of Appeals.

Our agencies are using public money to defend themselves. In 2016, the DNR received \$3.2 million and the MPCA received \$1.2 million for PolyMet-specific legal fees; and then in 2017, the DNR received \$1.5 million and the MPCA received \$500,000 for general legal fees. In 2019, another \$1.6 million was granted to the MPCA exclusively for defending its PolyMet permit decisions. (Duluth News Tribune, Walz looks to boost legal funds to defend PolyMet, other decisions, Feb. 21, 2019). Gov. Walz's two top advisers – his chief of staff and deputy chief of staff — worked for the law firm that represents PolyMet. Indeed, Walz's deputy chief of staff was one of PolyMet's top outside lawyers and did not leave that post until days before joining the Walz administration. (Minnesotans must demand answers to key questions about PolyMet, Minnpost Community Voices, Dec. 6, 2019)

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We appreciate your interest as well as your support.		

**Ongoing**

Challenges to the PolyMet air quality permit and the Clean Water Act Section 404 wetlands permit are also pending. Federal lawsuits against the USFS land swap with PolyMet have also been refiled.

Evidence is mounting to support the position of SLSA throughout this process: copper-nickel sulfide mining cannot be done in the watersheds of northeast Minnesota without polluting our water. The environmental process has been controlled by political and corporate interests, evading any science, knowledge, or concerns that would prevent such mining in the Lake Superior watershed. The mining of low-grade minerals depletes and pollutes our water resources

while covering the landscape with 99% waste rock, much of which has the potential to leach. Such mining does not contribute to a thriving economy or a healthy future for northeast Minnesota.

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