

Statement from a spokesperson for MCEA:

Administrative Law Judge recommends DNR deny PolyMet Permit to Mine

PolyMet's bentonite scheme violates Minnesota rules on mine reclamation

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St. Paul, Minnesota – After reviewing volumes of evidence and listening to a week of expert testimony, an independent arbiter has concluded DNR should deny the PolyMet Permit to Mine. Finding that a key component of PolyMet's pollution containment plan for its proposed sulfide mine in Northeastern Minnesota would not meet Minnesota rules on mine reclamation, the decision states that "PolyMet is unable to meet either standard of the Reactive Waste Rule," and concludes that "the Administrative Law Judge recommends that PolyMet's Permit to Mine application be DENIED" (emphasis in original.)

Administrative Law Judge James E. LaFave issued his opinion on November 28, about 9 months after a contested case hearing was held on the mining proposal's so-called "bentonite plan" last March.

"This is yet another repudiation of the permits issued to PolyMet, and should be the final nail in the coffin of this failed proposal," stated **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."

The Minnesota Center for Environmental Advocacy (MCEA), a nonprofit law firm and advocacy organization, was one of the parties to the case along with Water Legacy and the Fond du Lac Band of Lake Superior Chippewa. MCEA also represented Friends of the Boundary Waters Wilderness, Duluth for Clean Water, Center for Biological Diversity, Friends of the Cloquet Valley State Forest, Save Our Sky Blue Waters, and Save Lake Superior Association during the hearing.

The judge's findings make clear that yet another of PolyMet's permits is insufficient to protect Minnesotans from the risks associated with the mining proposal. In this case, the judge determined that the use of bentonite "is not a workable practical reclamation technique and does not satisfy the requirements of Minnesota's Reactive Waste Rule." The Reactive Waste Rule is designed to protect natural resources and people living downstream from the risk of pollution, including heavy metals and sulfates leaching into the St. Louis River from the proposal's tailings basin. The St. Louis River is the largest U.S. tributary to Lake Superior, and tens of thousands of Minnesotans depend on the river and Lake Superior for drinking water.

In order to satisfy the applicable rules PolyMet must either store its mine waste in such a way that is no longer reactive, or permanently prevent “substantially all” water from coming into contact with mine waste and draining to Minnesota waters. PolyMet’s proposal, and DNR’s permit, fail to do either, the Judge wrote.

Because the hearing was intended to provide information and a recommendation to the Minnesota Department of Natural Resources (DNR), the opinion is nonbinding. It will now be sent to the DNR, where a designated staff person within the agency will decide whether to adopt the judge’s recommendation.

PolyMet has already lost several permits that are required to build or operate a copper-nickel sulfide mine. Its water pollution permit was reversed by the Minnesota Supreme Court in August, its wetlands destruction permit was revoked by the US Army Corps of Engineers in June, and its air permit is currently being challenged in court.

The permit to mine at the center of today’s opinion was reversed by the Minnesota Supreme Court in April 2021 because there was not enough evidence in the record to support PolyMet’s assertion that lining its proposed tailings basin with bentonite clay during construction and after the mine’s closure would prevent pollution from seeping out of the basin. To remedy the absence of evidence, the Court ordered this contested case hearing to examine the practicality and workability of the pollution containment plan.

This was the first evidence-based hearing held in front of a neutral decision maker about the design of PolyMet’s proposed mine. While MCEA and others requested that the hearing should examine other factual claims under dispute, such as the safety of the mine waste dam and whether the financial assurance in the permit is adequate to protect Minnesota taxpayers, the Minnesota DNR denied these requests for a broader hearing.

The parties in the case will have the opportunity to file objections to the ruling, after which the DNR will review the opinion and issue a decision about the permit’s status.

The Judge’s decision is available upon request, please contact Aaron Klemz at the email or phone number above.

Statement from a spokesperson for Friends of the Boundary Waters:

PolyMet’s House of Cards Continues to Crumble

After five years of legal action following DNR’s flawed and short-sighted decision to issue PolyMet a Permit to Mine in 2018, an Administrative Law Judge has recommended Minnesota DNR deny PolyMet’s Permit to Mine.

The case, which was ordered by the Minnesota Supreme Court, involved DNR's decision to permit PolyMet to use a bentonite clay liner — a cheap, questionable method — to contain the massive amount of reactive mine waste it would produce. This method is so risky that DNR's own consultants called it "wishful thinking."

The court agreed.

"The crux of the issue is simple: Will the method to contain the waste work? The evidence is clear, and the judge's ruling is clear: No. PolyMet's cheap, untested scheme violates DNR's own rules and if allowed to go through, could have catastrophic consequences for the water quality throughout the entire region," says Chris Knopf, executive Director of Friends of the Boundary Waters Wilderness.

After listening to expert testimony, carefully weighing competing arguments and examining evidence, the judge concluded that PolyMet is unable to meet **basic** standards designed to protect people and the environment from the pollution the mine will inevitably create. In light of this, the judge wrote he "recommends that PolyMet's Permit to Mine application be DENIED."

Following the recommendation for DNR to deny the permit, we will have to see if the agency, which has taken an increasingly pro-industry stance, will move forward with the controversial plan or require PolyMet to revisit and redesign its plans.