

Minnesota appeals court orders hearing on PolyMet permit

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By Steve Karnowski | AP

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MINNEAPOLIS — A district court must determine if state environmental regulators improperly sought to suppress a federal agency’s serious concerns about the pollution risks arising from a proposed copper-nickel mine in northern Minnesota, the state Court of Appeals ruled Tuesday.

The St. Paul-based Ramsey County District Court must hold a hearing “as soon as practicable” on the Minnesota Pollution Control Agency’s dealings with the U.S. Environmental Protection Agency in the issuance of a major water permit for the PolyMet mine. It must report back with findings of fact, the appeals court said.

The allegations stem from a leaked email sent by a top official at the Minnesota agency to her counterparts at the EPA asking them not to file their written comments about the permit during the state agency’s public comment period on PolyMet’s application. Opponents of the PolyMet project say the state agency’s request kept the EPA officials’ criticisms of the permit off the public record.

The email was leaked last week by the union that represents EPA career staffers.

The email and EPA documents released this month after a Freedom of Information Act challenge show that instead of filing comments in writing, EPA officials read them to MPCA officials over the phone. The environmental group WaterLegacy had sought the documents for close to a year and is using them in its appeal of the MPCA’s decision to grant the water permit in December.

“We conclude that WL has provided substantial evidence of procedural irregularities not shown in the administrative record, and thus that it is appropriate to transfer this matter to district court for a hearing and determination of the alleged irregularities,” the order said.

WaterLegacy attorney Paula Maccabee pointed out that the district court has the power to issue subpoenas, place people under oath and allow lawyers to question witnesses.

“What this means is the courts are making sure that the permitting process has integrity,” Maccabee said. “And there will be an opportunity for the district court to find out the truth, and make sure the public knows the truth, and make sure that Minnesota doesn’t issue PolyMet a weak permit that fails to protect the environment and human health.”

An MPCA spokesman did not immediately return a message seeking comment on the order. The agency has previously defended its permitting process as rigorous and said that it made “substantive changes” to the draft permit in response to EPA officials’ concerns. EPA spokesman Michael Abboud concurred earlier this month, saying “the permit was changed to reflect many of EPA’s recommendations” following discussions between the two agencies.

WaterLegacy obtained the EPA documents after going to court to get them.

Maccabee said she and other lawyers involved in the case, who represent the Fond du Lac Band of Lake Superior Chippewa, are expected to ask Gov. Tim Walz and MPCA Commissioner Laura Bishop to put PolyMet’s water permit on hold pending the court’s findings.

PolyMet spokesman Bruce Richardson said the company views Tuesday’s order as procedural to make sure that the record is clear before the Court of Appeals addresses broader challenges to the permit.

“Because the permit meets all the requirements of the law, we believe the permit, as issued, will be upheld,” he said.

The EPA’s inspector general’s office said earlier this month that it had opened an investigation into whether agency officials properly followed the appropriate regulations during the permit review process.

Minnesota’s nonpartisan legislative auditor will also investigate. Rep. Rick Hansen, who chairs the Legislative Audit Commission and a House environment committee, said in a statement Monday that the auditor’s review would start immediately. The South St. Paul Democrat said the allegations require “an independent, nonpartisan, third-party investigation.”

PolyMet is now working to raise around \$950 million in construction financing. CEO Jon Cherry told the Star Tribune for an interview published Tuesday that he’s confident the planed mine near Babbitt and processing plant near Hoyt Lakes will move forward despite concerns over the permit. PolyMet hopes to begin major construction next year with an eye toward becoming operational in 2023.

“It’s going to happen,” Cherry said. “It is so rare to get a fully permitted mine at this time in the United States.”

Switzerland-based global mining giant Glencore AG holds a 29% stake in PolyMet, but Cherry said its final share may grow depending on how the financing is structured.

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