

# Minnesota Court Decisions & Legislative Inactions

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# Limbo Creek

In the Matter of: petition of MCEA for Commencement of an environmental Assessment Worksheet, A20-1592, Minnesota Supreme Court (September 28, 2022)

- Limbo Creek is more protected than a ditch
- Not conclusive that Limbo Creek is a public water
  - Did not decide on other waters

# PolyMet

In the Matter of Issuance of Air Emissions Permit No. 13700345-101 for  
PolyMet Mining, Inc., City of Hoyt Lakes, St. Louis County, Minnesota,  
No. A22-0068, Court of Appeals of Minnesota (June 21, 2022)



Court ends  
challenge to  
air permit,  
for now




**Improper service kills challenge**

Dismissed for lack of proper service; that failure meant that the court lacked jurisdiction.

Supreme Court: petition for further review granted

# Osakis

In the Matter of Denial of a Contested Case Hearing Request and Reissuance of National Pollutant Discharge Elimination System/State Disposal System Permit No. MN0020228 for the City of Osakis Wastewater Treatment Facility, A21-0986, Minnesota Supreme Court (July 19, 2022)



Court: MPCA  
failed to  
meet its own  
standard



### Failure to meet standard

- MPCA's lake-eutrophication standards require consideration of three variables, not one.

### Arbitrary & capricious order

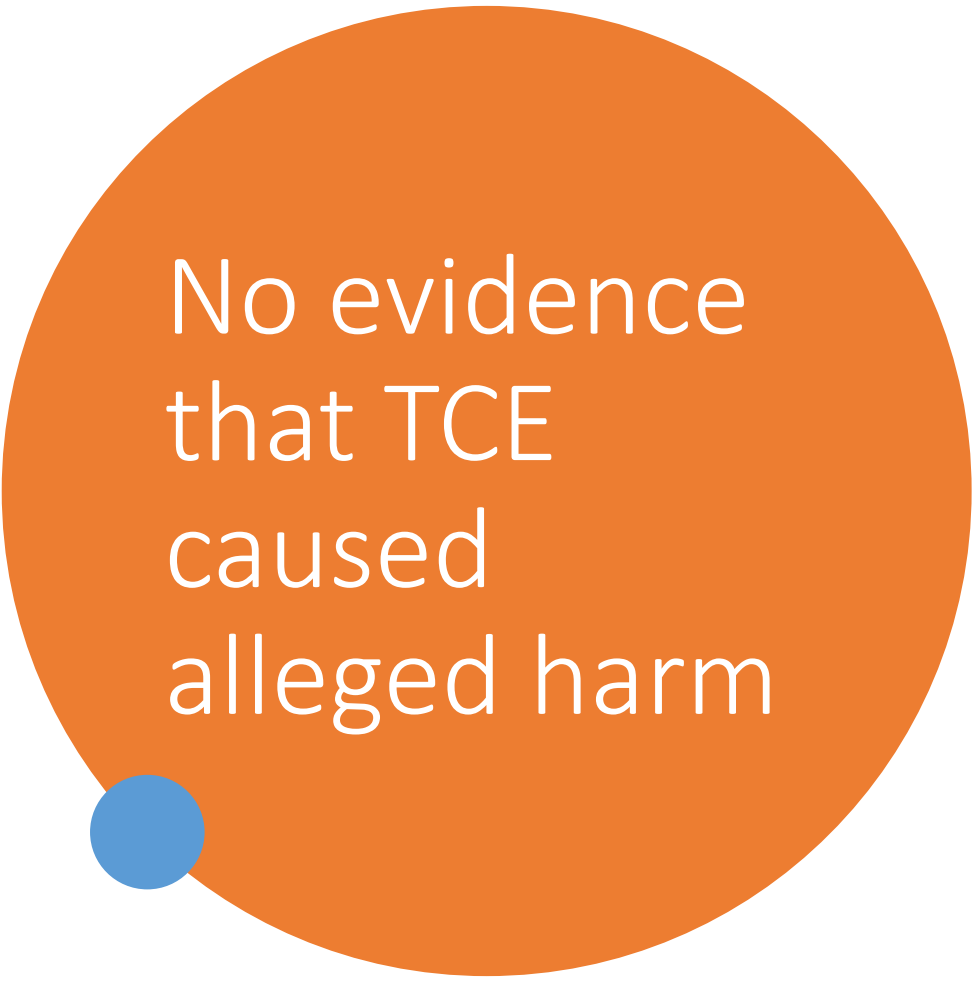
- Order denying contested case did not discuss factual issues.
- Order did not explain with specificity why the contested-case hearing would not be appropriate.
- Order was similar in nature to other agency decisions that have failed substantial-evidence test.

### Supreme Court

- Denied review

# Water Gremlin

Robert Sharot, individually and on behalf of all others similarly situated,  
Appellant, v. Water Gremlin Company, Respondent, No. A22-0035, Court  
of Appeals of Minnesota (September 19, 2022)



No evidence  
that TCE  
caused  
alleged harm

### Negligence

- Failed to prove property contaminated with TCE
- Stigma is not an injury recognized in tort in Minnesota.

### Statutory Nuisance

- Conduct causing the harm does not constitute a nuisance unless it is "wrongful."
- No evidence that the alleged harm connected to TCE contamination.



# Minnesota Environmental Caselaw from April to September

*In the Matter of V & J Farm, LLC and the Commissioner of North Fork Crow River Watershed District, Acting as Drainage Authority for Stearns County, No. A21-0847, Court of Appeals of Minnesota (April 18, 2022)*

*In the Matter of: Gedney Foods Company, No. A21-1156, Court of Appeals of Minnesota (April 25, 2022)\**

*In the Matter of the Application of Impact Power Solutions, LLC and MN CSG 2019- 29 LLC for a Conditional Use Permit, No. A21-0925, Court of Appeals of Minnesota (May 9, 2022)\**

*In re: Determination of Need for Environmental Impact Statement for Pavilion Estates Subdivision, No. A21-1276, Court of Appeals of Minnesota (June 6, 2022)\**

*In the Matter of Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc., City of Hoyt Lakes, St. Louis County, Minnesota, No. A22-0068, Court of Appeals of Minnesota (June 21, 2022)*

*In the Matter of the Contested Case Hearing Request by W. Lorentz & Sons Construction, No. A21-1359, Court of Appeals of Minnesota (July 11, 2022)\**

*In the Matter of Denial of a Contested Case Hearing Request and Reissuance of National Pollutant Discharge Elimination System/State Disposal System Permit No. MN0020228 for the City of Osakis Wastewater Treatment Facility, A21-0986, Minnesota Supreme Court (July 19, 2022)*

*Minnesota Deer Farmers Association, Petitioner, v. Minnesota Department of Natural Resources, Respondent, No. A21-1387 Court of Appeals of Minnesota August 15, 2022*

*Robert Sharot, individually and on behalf of all others similarly situated, Appellant, v. Water Gremlin Company, Respondent, No. A22-0035, Court of Appeals of Minnesota (September 19, 2022)\**

*In the Matter of the Application of USS Great River Solar LLC for an Interim Use Permit, No. A21-1504, Court of Appeals of Minnesota (September 19, 2022)\**

\*unpublished

# 2022 Legislative Session: Big Opportunities, Big Challenges

Historic \$9.3 billion surplus

Traditional year for big bonding bill

Infrastructure funding from the federal  
Infrastructure, Investment and Jobs Act (IIJA)

State had unspent ARPA money

Lots of resources to address needs across the  
state

- Constrained operations due to COVID-19
- Redistricting and election
- Ongoing political polarization
- Unfinished business from 2021 including hero pay and unemployment insurance fund

# Opportunities Squandered

- All the conditions present for a productive legislative session
- Legislators came close on many bills
- Yet, negotiations fell apart and the session ended in disappointment



# What did not happen?

- Water Infrastructure Funding (Bonding)
- Matching Funds for IIJA
- Air Permitting Study

- Wild Rice Sulfate Rulemaking
- PFAS
  - Water quality standards
  - Health risk limits
  - Multiple product source bans
- Environmental justice considerations
- Reforms to unadopted rules
- Reining in permit fee increases