

MINNESOTA CASE LAW

Jeremy P. Greenhouse

jgreenhouse@envirolawgroup.com

612-623-2391

FOCUSED. RESPONSIVE. EXPERIENCED.

ENVIRONMENTAL LAW
GROUP

1. Court of Appeals Remands PolyMet's Air Permit to MPCA

Key Facts:

- MPCA issued “synthetic” minor air emissions permit to copper-nickel mining company.
- Project opponents alleged MPCA overlooked “sham permitting” during permitting process.

Procedural Background:

- In February 2021, MN Supreme Court held MPCA may but is not required to investigate sham permitting during permit application stage.
- Remanded remaining issues to the court of appeals (COA): (a) whether PolyMet will comply with all permit conditions, and (b) whether PolyMet submitted misleading information to MPCA.

Court of Appeals' Holding:

- MPCA failed to make reflective findings on the remanded issues; gave conclusory explanations on key questions.
- Remanded to MPCA for additional findings and a revised decision; emphasized that its holding was not that the record *couldn't* support a reasoned decision by MPCA to issue a permit, but just that the agency *so far* had failed to make such a reasoned decision

In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining Inc., Nos. A19-0115 and A19-0134, 2021 WL 710490 (Minn. July 19, 2021).

FOCUSED. RESPONSIVE. EXPERIENCED.

ENVIRONMENTAL LAW
GROUP

2. COA Affirms MPCA's Variance and CCH Denial for Minntac

Key Facts:

- In 2018 MPCA reissued NPDES/SDS permit for Minntac taconite company's tailings basin.
- Prior permit expired in 1992 but administratively continued; first of numerous expired mining NPDES/SDS permits up for reissuance.

Procedural Background:

- In 2020, MN Supreme Court reversed COA, held that Class 1 standards applied to groundwater.
- Remanded remaining issues to COA: whether MPCA wrongly denied Minntac's groundwater variance application and contested case hearing (CCH) request.

Court of Appeals' Holding:

- Affirmed MPCA on both issues. Gave deference to MPCA's expertise; found that MPCA had adequately supported and explained its decisions.

In re Reissuance of an NPDES/SD Permit to United States Steel Corp., 2021 Minn. App. Unpub. LEXIS 583, 2021 WL 2645505 (June 28, 2021).

FOCUSED. RESPONSIVE. EXPERIENCED.

ENVIRONMENTAL LAW
GROUP

3. COA Affirms PUC's Line 3 Need and Routing Decisions

Key Facts:

- Enbridge replacing 1960s Line 3 pipeline; transports crude oil across Minnesota.
- Proposed new route will cross over 200 streams; construction will impact wetlands.

Procedural Background:

- MN PUC determined the project was needed and selected new route; rejected “in-trench replacement” approach.

Court of Appeals' Holding:

- Affirmed PUC, noting deference to “expertise of the executive branch.”
- PUC had adequately supported decision to grant certificate of need; court will not second-guess PUCs findings on energy-demand forecasts.
- In granting routing permit, PUC adequately explained rejection of in-trench approach (including problems obtaining necessary easements on tribal lands past 2029).

*In re Enbridge Energy, Nos. A20-1071, A20-1072, A20-1074, A20-1075, A20-1077, 2021 Minn. App. LEXIS 232 *; 2021 WL 2407855 (June 14, 2021).*

FOCUSED. RESPONSIVE. EXPERIENCED.

ENVIRONMENTAL LAW
GROUP

4. COA Affirms MPCA's CWA 401 Certification for Line 3

Key Facts:

- Enbridge replacing 1960s Line 3 pipeline; transports crude oil across Minnesota.
- Proposed new route will cross over 200 streams; construction will impact wetlands.

Procedural Background:

- MPCA issued CWA 401 certification for Line 3, determining that federal CWA 404 permit from Army Corps of Engineers would comply with state water quality standards, including antidegradation.

Court of Appeals' Holding:

- Affirmed MPCA's 401 certification decision.
- MPCA reasonably determined in-trench route was not a "feasible" alternative for antidegradation purposes because PUC had rejected it.
- Rejected appellants' arguments concerning the project's compliance with other water quality standards, the avoidability of wetland impacts, and the adequacy of compensatory wetland mitigation.

In re Enbridge Line 3 Replacement Project, No. A20-1513, 2021 Minn. App. Unpub. LEXIS 727 (Aug. 30, 2021).

FOCUSED. RESPONSIVE. EXPERIENCED.

ENVIRONMENTAL LAW
GROUP

5. OAH Invalidates MPCA WET Policy as Unadopted Rule

Key Facts:

- MPCA longtime policy prohibited mixing zone for acute whole effluent toxicity (WET) outside of Lake Superior Basin (LSB).
- LSB rules allow limited acute WET mixing zone.

Procedural Background:

- American Crystal Sugar Company submitted petition to Office of Administrative Hearings (OAH) under Minn. Stat. 14.381, which allows any person to seek an ALJ order that an agency is enforcing a policy as if it were a duly adopted rule.

OAH Holding:

- Granted petition; declared MPCA's WET policy an unadopted rule as inconsistent with the relevant regulatory language.
- Ordered MPCA to stop enforcing WET policy: "Until such time as the agency is authorized by a statute or rule to prohibit the use of acute mixing zones outside of the drainage basin of Lake Superior, the agency shall not prohibit the use of mixing zones to demonstrate compliance with acute toxic unit standards."

*In the Matter of the Petition of American Crystal Sugar Company, OAH 8-2200-37302
(July 22, 2021).*

FOCUSED. RESPONSIVE. EXPERIENCED.

ENVIRONMENTAL LAW
GROUP