

Union of Concerned Scientists

Science for a Healthy Planet and Safer World

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Minnesota Mine Approved Over the Objections of EPA Scientists



What happened: In 2018, scientists at the Environmental Protection Agency (EPA) wrote but were not allowed to submit comments expressing serious concerns about the ability of a copper-nickel mine in Minnesota to meet state and federal water standards, as required by the Clean Water Act. These comments were written in response to an issued water permit by the Minnesota Pollution Control Agency and were only made public under a Freedom of Information Act request.

Why it matters: The EPA scientists raised evidence-based concerns that heavy metals from the mining operations could leach into the nearby waterways, thereby affecting the environment, and potentially public health. These comments should have been made publicly available so that expert scientific opinion could have been taken under consideration during the policymaking process, and so that everyone would have had access to the best available science.

When federal scientists raise scientific concerns about the potential environmental consequences of a regulatory action, their words should not be hidden from the public and should not be sidelined during the decision-making process. But this recently happened when Environmental Protection Agency (EPA) scientists expressed [serious concerns](#) about the granting of a water quality permit for a planned copper-nickel mine in northeastern Minnesota by the company PolyMet that were not used to inform a policy decision. The EPA scientists had written out a set of detailed comments voicing their concerns that were due to be submitted to the Minnesota Pollution Control Agency during the public comment period. However, these comments were never submitted, and therefore they were not publicly available and were not part of the administrative record. The state agency granted the water permit for the PolyMet mine in December 2018, giving the company the ability to build what would be Minnesota's first copper-nickel mine.

One of the reasons this issue has come to light is because, in January 2019, a retired EPA attorney filed a complaint with the agency's inspector general. The former EPA attorney, who had specialized in Clean Water Act compliance at EPA's Boston office for 37 years, stated that officials at the EPA's Chicago office had "suppressed" the comments from EPA scientists critical of the PolyMet water quality permit. According to a brief submitted by the Minnesota Pollution Control Agency (MPCA) for an appeals court case in June 2019, a deal had been struck with the EPA such that the "EPA would provide oral [rather than written] comments to MPCA." Staff at both agencies had agreed to read these detailed comments over the phone. The former EPA attorney who filed the complaint remarked on how unusual this decision was, "In all of my years of experience, I have never heard of a situation where EPA personnel have read written comments on a permit to state personnel [over the phone](#)."

The water quality permit that EPA staff scientists had concerns about is particularly important because it sets limits on the pollutants that can be released into lakes, streams, and groundwater. Copper-nickel mining is at risk of causing water pollution because the process used to extract minerals from sulfide rock can lead to [acid mine drainage](#), potentially leaching heavy metals and other pollutants into groundwater and surface water. Among the significant concerns raised by EPA scientists was the fact that the PolyMet mine had failed to include "water quality-based effluent limits," which are specific limits on the amount of pollutants that a mine can discharge, a measure designed to ensure that projects can meet federal environmental standards.

Issuing public comments on proposed state and federal regulations are a vital part of the American democratic system. One of the major ways that courts hold agencies accountable is to make sure that they have properly considered all evidence brought up by the public and thereby make the rule the most evidence-based rule possible. With state officials actively denying EPA scientists the chance to submit a public comment, the appeals court reviewing this decision lacked the evidence and expertise that these scientists could have added to the judicial process. Censoring the voices of scientists who raise science-based concerns not only denies that information from the public, but also compromises the ability for the judicial branch to ensure that government agencies are using the best available science during the decision-making process.

Last Revised Date: July 17, 2019

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