



Reactive Mine Waste Rule

BACKGROUND

The [reactive mine waste rule](#) (Minn. Rules 6132.2200) is a **critically important state rule to prevent permanent water pollution from a copper-nickel mine. Since the federal government is rapidly undoing its water pollution laws, state standards are the last barrier to permanent pollution from a copper-nickel mine.** It has been in place since 1993, and was the basis for the Minnesota Supreme Court decision that overturned the PolyMet Permit to Mine. In 2023, an administrative law judge further recommended that the PolyMet Permit to Mine be rejected because it did not meet the reactive mine waste rule. **Passing the DE2 amendment to HF 3023 would effectively overturn these court decisions and allow copper-nickel mining to permanently pollute Minnesota waters after closure.**

On April 3 and 4, there were two attempts to graft repeal of the reactive mine waste rule to a needed extension of unemployment insurance benefits for laid off miners. This fact sheet is intended to inform of the impact if a similar amendment were proposed.

KEY POINTS

- The [reactive mine waste rule](#) currently requires a copper-nickel mine to **"permanently prevent substantially all water from moving through or over the mine waste** and provide for the collection and disposal of any remaining residual waters that drain from the mine waste in compliance with federal and state standards."
- [The amendment](#) would replace it with a statute that would only require that a facility to hold mine waste "must be designed by professional engineers who are registered in Minnesota and proficient in the design, construction, operation, and reclamation of facilities for storing reactive mine waste." In other words, **it would replace actual standards that prevent water pollution with a simple certification that an engineer design the site.**
- The reactive mine waste rule was the **subject of years of litigation by the Fond du Lac Band of Lake Superior Chippewa, the Minnesota Center for Environmental Advocacy, WaterLegacy and the State of Minnesota DNR.** The Minnesota Supreme Court reversed the permit to mine issued to PolyMet because there was no evidence in the record that their method of storing mine waste complied with this rule. It then sent the case to a contested case hearing, where an administrative law judge found that [PolyMet's plan did not comply with the reactive mine waste rule](#), **since 298 million gallons of water would move through mine waste every year, polluting that water and violating the rule.** This amendment would erase all of this.
 - From the contested case decision: "If a hauler wanted to transport 298 million gallons of water by truck ... it would take 27,091 trucks to carry the water. If those trucks were lined up

bumper-to-bumper, the convoy would stretch 271 miles — approximately the distance between St. Paul and Grand Marais.”

- Governor Tim Walz has stated publicly that if courts overturn the PolyMet permits that **the state would abide by that decision**. “At this point in time, I still feel that the highest best practices were followed, that the permits do what they’re supposed to do, protect our environment, protect Minnesotans and I think the courts will they make that determination. If the courts believes there’s gonna be a different determination, they ask for something different to happen, we of course will certainly honor that.” ([Minnpost. 8/12/19](#))
- This is an extremely important rule and this amendment would have significant implications for Minnesota environmental policy. At a bare minimum, this change should be fully vetted, testimony should be allowed from all sides, and the Attorney General should be consulted to determine the impact this change would have on existing and future litigation.
- The State of Minnesota and other litigants have spent thousands of hours and millions of dollars litigating the reactive mine waste rule and how that standard applies to the first copper-nickel mine proposal to go through permitting. This amendment would wipe away all of that work and make the millions of dollars that this Legislature has appropriated for legal costs on PolyMet completely wasted.
- This amendment would directly overturn a court decision that the Fond du Lac Band of Lake Superior Chippewa among others litigated for years at great expense. This is a matter for government-to-government consultation, not a back of the napkin surprise amendment to a budget bill.
- This amendment would repeal a rule and replace it with a statute. Rules are created through a detailed process culminating in an administrative law judge review, where all sides get to present evidence, and where public comment is taken. If adopted, this amendment would substitute this committee’s judgment for all of that work. In addition, the Senate State and Local Government committee has jurisdiction over rulemaking, and the Senate Judiciary Committee has jurisdiction over civil law matters. Neither of these committees have vetted this amendment.
- For years, advocates for copper-nickel mines have said that people “should trust the process” and “Minnesota has the highest environmental standards.” If adopted, this amendment would directly contradict both of these statements. **This amendment is not just changing the rules in the middle of a game, it’s changing the rules after you’ve already lost the game and demanding a do-over.**
- This amendment would reduce the environmental standards and **allow permanent water pollution at every copper-nickel mine proposal in the future**, including the Twin Metals proposal next to the Boundary Waters, the NewRange proposal (formerly PolyMet) near the St. Louis River and upstream of Lake Superior, and the Talon Tamarack proposal upstream of the Mississippi and St. Croix Rivers.



For additional information:

Aaron Klemz, Chief Strategy Officer,
Minnesota Center for Environmental Advocacy

aklemz@mncenter.org // (763) 788-0282