



LEGISLATIVE MEMORANDUM - HF 8 and Permitting Efficiency

Minnesota Center for Environmental Advocacy (MCEA) is a St. Paul and Duluth based nonprofit advocacy organization with a 50-year history of using science and the law to defend Minnesota's environment and the health of its people. We write to express concerns with several sections of HF 8 and respond to the Chamber of Commerce report that is being discussed.

Chamber of Commerce Report

Many of the [examples cited by the Chamber of Commerce](#) were not caused by onerous requirements or agency delays, but permits or environmental reviews that were then struck down by the courts. One issue not mentioned is that agencies are giving permits to proposals that don't meet the standards in our laws and rules. **This is the real issue, and one we don't talk about enough - why are agencies issuing permits that don't pass muster in the courts?** MCEA encourages the Legislature to investigate this issue as it considers permitting.

Many times, changes in a project initiated by a proposer create delay. For example, the PolyMet mine proposal was issued permits by the Minnesota Department of Natural Resources and Minnesota Pollution Control Agency in 2018, when environmental review began in 2006. But the company changed its proposal significantly at least twice, forcing a complete reset. Permits that were issued (permit to mine, water pollution permit, air pollution permit) were all struck down by the Court of Appeals and/or Minnesota Supreme Court. More recently, in December 2024, the Talon Tamarack nickel mine completely revised its proposal and resubmitted the new proposal for environmental review.

Including certain permit categories in its analysis distorts the average length of permitting in the report. It includes 339 "non priority" Type 2 air permits in the analysis, noting that it took an average of 1,295 days to issue a permit of this type. "Non priority" permits of this type do not require construction, and a facility can continue to operate while the permit is being issued, assuming it applied for a renewal in a timely fashion. In this case, the impact of a delay is on the surrounding community awaiting pollution reductions in an updated permit.

One specific example needs context and an update. The Minnesota Chamber of Commerce has previously highlighted Epitome Energy's decision to move a proposed soybean crushing plant from Crookston to Grand Forks, North Dakota as an example of a business relocating due to slow permitting. However, Epitome's experience in North Dakota is worth examining. On June 2, 2023, Epitome applied for a Title V air permit in North Dakota, then revised its application on August 25, 2023. The air permit was issued by North Dakota on May 29, 2024, 361 days after Epitome initially applied. This is more than twice as long as the 150 day target for "priority Tier 2 permits" in Minnesota law, and longer than Minnesota's median time (351 days) for issuing "priority Tier 2 permits" according to the Chamber.

Comments on HF 8

Doesn't reflect the current state of permitting or address the practical reasons some permitting decisions are delayed: According to the [most recent permitting efficiency report](#) to the Legislature, in 2023 the Minnesota Pollution Control Agency met statutory deadlines for priority (requiring construction) permit decisions 98% of the time. When it did not meet deadlines, the reason was nearly always lack of staff. We encourage the Legislature to fund Governor Walz's proposal for additional permitting staff to address this.

Sets unrealistic and arbitrary deadlines for reconsideration of incomplete permit applications:

[Section 116.03 subd. 2b](#) already requires a commissioner to notify an applicant of an incomplete permit application within 30 days and to enumerate how to cure that application. HF 8 would require immediate notification of an incomplete application, and give no additional time to evaluate an application after receiving complete information unless the submission is “30 percent larger...” However, “larger” is not defined, nor is “30 percent” justified.

Making delay a “final decision” for judicial review is counterproductive: Lines 4.16 - 4.18 would make delay in issuing certain permits “a final decision of the agency for purposes of section 115.05, subdivision 11.” This provision would create confusion, since there is no action a court could take to reverse a delay by an agency.

Risk of permitting construction of an unpermittable operation: Lines 6.21 - 6.24 require an agency to issue separate permits for the construction of a facility and for its operation. It would result in two separate applications for two separate permits, both of which could be appealed, adding complexity and uncertainty to the permitting process. This also risks a situation where an applicant receives a construction permit but cannot secure an operation permit from the agency, or where a fully constructed facility has its operation permit reversed by a court. This creates regulatory uncertainty. Section 8 of the legislation acknowledges that this would also require a change in Minnesota’s state implementation plan for federal air permits.

Restricts the ability of Minnesotans to petition for environmental review: Lines 11.26 - 11.27 would limit citizen petitions for environmental review in Chapter 116D.04 from 100 people across Minnesota to 100 or more people who “reside or own property in a county where the proposed action will be undertaken or in one or more adjoining counties.” Not all citizen petitions result in environmental review - current law requires the submission of “material evidence” that “demonstrates ... potential for significant environmental effects.” Air and water pollution does not respect county boundaries, and all residents of Minnesota should be eligible to petition for environmental review of a proposal. This change is antithetical to good government, which should encourage public participation. When people have a say in decisions that will impact them, their homes, their businesses, and their welfare, the government makes better decisions.

Eliminates scoping studies for projects that require an EIS: Section 7 would eliminate scoping studies for projects that require an environmental impact statement (EIS) under Minnesota Rules. It would mean that some EISs would require scoping, and others would not, adding complexity to the process. This change would not save time and would eliminate a process that surfaces potential problems with proposals early. By eliminating scoping for some projects, applicants may find out later in the environmental review and permitting process of reasons why their proposal may not comply with the law, which increases regulatory uncertainty.