



Minnesota Center for Environmental Advocacy

March 21, 2022

TO: Senate Environment and Natural Resources Policy and Legacy Finance Committee
FROM: Aaron Klemz, Chief Strategy Officer, Minnesota Center for Environmental Advocacy
RE: SF 2797 – Mining projects permissions improvements

Chair Ruud and Members of the Committee:

Thank you for the opportunity to submit testimony on SF 2797. Minnesota Center for Environmental Advocacy is a statewide nonprofit organization with offices in Duluth and St. Paul and almost 50 years of experience using law and science to protect Minnesota's environment. MCEA has significant concerns about SF 2797, but there are several sections of the bill that we support.

Specifically, Section 3, establishing an environmental review and permitting dashboard is a good policy that we've already seen implemented for high profile proposals such as the PolyMet and Twin Metals proposals. Providing clear and accessible information is critical for public engagement, and the approach outlined in this section of the bill is something that the DNR and other state agencies should adopt, regardless of whether this bill advances. Indeed, they already have that authority and appear to be using it.

When the Senate Mining and Forestry Committee heard this bill, testifiers referenced the "Biden-Harris Administration Fundamental Principles for Domestic Mining Reform" in the discussion, specifically Principle 7 on Permitting Certainty. For your consideration, we'd also like to highlight several other principles in the document that are important to consider when making any changes in Minnesota's mining laws:

3. Prioritize Recycling, Reuse and Efficient Use of Critical Minerals: "The recycling, reuse and efficient use of existing mineral assets (wastes and recyclable materials) should be prioritized .. and relied upon, where possible, before developing new sources."

6. Conduct Comprehensive Planning: "...any legislative reforms must ensure that environmental safeguards, such as the National Environmental Policy Act, Clean Water Act, Clean Air Act, Endangered Species Act, and associated regulations, are not circumvented, repealed, or weakened for the purposes of mining, regardless of the importance of the targeted resource."

8. Protect Special Places: "Some areas must be off-limits to mining and protected from mining impacts. Our federal land managers, in consultation with other decision makers, must have discretion to reject projects that threaten sensitive ecosystems, tribal resources, and communities where pollution prevention and mitigation are not possible."

9. Solicit Community Input and Conduct Tribal Consultation: "There must be regular, meaningful and robust consultation with Tribal Nations. There must also be regular, robust, and meaningful project-level public engagement processes prior to any key decision-making."

SF 2797 does not address developing Minnesota's ability to reuse and recycle existing mineral assets. In addition, the bill seems to assume that all mining proposals are permissible under Minnesota and



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federal law, and that it is the job of state agencies to approve these proposals under a specific time frame. The bill also mentions tribal agency cooperation, but does not require the government to government consultation needed to protect tribal resources and ensure that tribal water quality standards are met. If this committee is using the Biden-Harris Principles to evaluate our approach, let's look at the whole of them, not just one part.

Minnesota agencies must maintain their ability to say no if a proposal does not meet the requirements of Minnesota and federal law. Establishing deadlines in statute compromises the agencies' ability to do their job. Often, an Environmental Review deadline needs to be adjusted for good reasons that are not in the agencies' control. For example, it could be because a proposal does not meet standards and must be redesigned, which is what happened to the PolyMet EIS in 2010. Sometimes project proposers make significant changes in the middle of an environmental review process, which can also delay environmental review. Placing deadlines in statute do no favors for agencies, mining companies, or other stakeholders.

MCEA supports the principle of agency coordination on these complex proposals. However, SF 2797 would make effective coordination more challenging, especially in joint federal/state environmental review. When there are different timelines for federal and state review, executing agreements across levels of government will be made more difficult. We've already seen this in the environmental review of the Twin Metals proposal, which recently ended in response to the revocation of federal mineral leases. Prior to that, the Minnesota DNR and federal regulatory agencies were not able to execute a joint environmental review process, in part because the federal government had placed unrealistic deadlines for final decisions on environmental review.

Lastly, while proposing changes to Minnesota's mining environmental review process focused on inter-agency cooperation, this is an important moment to incorporate what we have learned about the inter-agency review process in the PolyMet environmental review and permitting process. In this case, the EPA Inspector General found that the MPCA requested that the EPA prevent their staff from submitting written comments on the PolyMet water permit, thereby keeping their concerns about the permit out of public view. One way to strengthen SF 2757 would be to write into statute that Minnesota agencies should not ask federal officials to avoid commenting or submit their comments in ways that keep them out of the public record.

MCEA agrees that Minnesota's mining laws and regulations need to be updated. Our nonferrous mining rules were written in the early 90's and our experience with the PolyMet proposal shows that Minnesota rules allow mining and tailings storage practices that are not in line with 21st century mining standards. However, SF 2797 does not adequately address the kind of changes that are needed in statute, based on the issues with recent mining proposals.

Sincerely,

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