

Summary

On February 10, 2021, the Minnesota Supreme Court issued [a ruling](#) related to the 2018 NPDES/SDS Permit for U. S. Steel's Minntac tailings basin. The Supreme Court concluded that groundwater is a Class 1 water under Minnesota rules and that the Minnesota Pollution Control Agency (MPCA) correctly exercised its authority by applying the Class 1 secondary drinking water standards to the 2018 permit.

The Supreme Court's ruling reversed an [earlier decision by the Court of Appeals](#) and ruled that the MPCA properly imposed a 250 mg/L sulfate standard to groundwater in the 2018 permit. They remanded the Court of Appeals to analyze U. S. Steel's request for a permit-related contested case hearing and a variance from certain groundwater standards included in the 2018 permit. They also instructed the Court of Appeals to remand to the MPCA to complete a functional equivalence analysis of the discharges to groundwater, per the standards set forth in the Supreme Court of the United States' (SCOTUS) recent [Maui decision](#).

Background

The MPCA first issued an NPDES/SDS permit covering the Minntac tailings basin in 1987, which U. S. Steel continued to operate under until the 2018 permit was issued. U. S. Steel challenged certain groundwater pollutant limits imposed by the 2018 permit in the Court of Appeals.

The Court of Appeals ruled the MPCA improperly imposed the Class 1 standards, including the 250 mg/L sulfate standard, to groundwater. They also ruled that the Clean Water Act (CWA) does not govern discharges of pollutants to groundwater. Other findings by the Court of Appeals were not considered by the Supreme Court.

U. S. Steel challenged the Court of Appeals decision regarding the MPCA's authority to impose the 250 mg/L sulfate standard in the 2018 Permit. In response, the MPCA and appellants WaterLegacy and Fond du Lac Band of Lake Superior Chippewa argued that the standards do apply.

What does this ruling mean?

The Minnesota Supreme Court ruling clearly establishes that groundwater is a Class 1 water, intended for drinking, culinary or food processing use, and other domestic uses. Thus, U.S. Environmental Protection Agency's secondary drinking water standards, which includes the 250 mg/L sulfate standard, are applicable to all groundwater in the state.

Since the Court of Appeals ruling, the SCOTUS issued the Maui ruling. The Minnesota Supreme Court concluded that MPCA improperly determined that the CWA is not applicable to discharges to groundwater in the 2018 Permit. In their ruling, the Minnesota Supreme Court instructed the Court of Appeals to remand the issue back to the MPCA with instructions to complete a functional equivalence analysis of the discharges to groundwater, per the standards set forth in the SCOTUS' recent Maui decision. One plausible outcome is for the MPCA to determine, consistent with its original determination, that seepage to groundwater from the Minntac tailings basin is not a point source, and further analysis is unnecessary. This would be consistent with the Maui decision, that only point sources discharging to groundwater may be the functional equivalent to a direct discharge to navigable waters.



For Minnesota facilities, it is clear that seepage from the tailings basin to groundwater will be regulated by a State Disposal System (SDS) permit, including the 250 mg/L sulfate standard. Coupled with the recent Maui decision, the MPCA has the authority to regulate groundwater through its SDS permit program, including seepage to groundwater from tailings basins. MPCA must still determine how it will regulate seepage to groundwater under Maui from tailings basins, landfills, ponds, or other impoundments under the National Pollution Discharge Elimination System (NPDES) permit system where a structure is designated as a point source.

Barr is following developments on this case and related issues. If you have related questions, please contact Nick Nelson at (952) 832-2701 or nbnelson@barr.com.

This update is based on Barr's review and analysis of the decision; previous cases; and knowledge of issues applying to industry. Actual interpretation will be decided by courts and state and federal regulatory agencies.