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Karen Olson Provides Insight on Air Permit Case

Spencer Fane attorney Karen Olson recently analyzed a Minnesota Court of Appeals case involving the Minnesota Pollution Control Agency (MPCA) and PolyMet Mining Corporation in the *Minnesota Lawyer*.

Titled "PolyMet matter back in hands of Court of Appeals," the article covers the Court of Appeals' ruling that the MPCA's "issuance of a 'synthetic minor' air emissions permit failed to address contentions raised by environmental groups that the mine might not comply with the permit's output restrictions." The contentions were based largely on a public securities filing provided to the agency after the public comment period closed that the Court of Appeals earlier ruled should supplement the record.

This case "illustrates the challenge to permittees in meeting the 'substantial evidence' test that administrative laws often require to support permit decisions, when facing highly charged factual contentions that the administrative agency deems outside the permitting process." To meet the "substantial evidence" test the MPCA must both "adequately explain how it derived its conclusion" and its conclusion must also be "reasonable on the basis of the record." The Court of Appeals found that while the MPCA concluded that the mine intended to comply with the permit the MPCA "did not explain *why* this was so."

"The contents of these supplemented documents and its impact on the permitting decision were at issue in all three appellate court decisions and demonstrate the delay that can happen when an agency does not consider all of the information it has available to it prior to making a decision," Karen explained in the article.

To read the full article, please click here. Please note, a subscription may be required.