



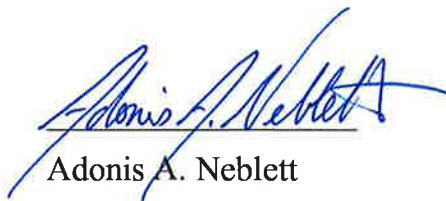
3. Although I anticipated litigation on the PolyMet NPDES permit, I did not impose a “litigation hold order” because the type of litigation that I anticipated was judicial review on an administrative record. In this type of case, it has been MPCA’s longstanding practice not to impose a litigation hold since the case will be based upon an administrative record and traditional discovery is not required. In addition, a sufficient legal obligation to preserve documents relevant to that litigation is already required by the Minnesota Official Records Act, Minn. Stat. §15.17.
4. Because the case is based upon an administrative record and because Official Records Act requires preservation of the documents that would be included in the administrative record in a judicial review case, I do not recall ever imposing a litigation hold order due to anticipated litigation to be decided on an administrative record.
5. Rather, for litigation decided on the administrative record, MPCA’s duties to compile and preserve the administrative record are guided by the Minnesota Administrative Procedure Act, Minn. Rule 7000.0750, Subpart 4, and MPCA’s Records and Data Management Manual (which was adopted to comply with the Official Records Act). MPCA has complied with these duties.
6. Although I have never counted the number of potential judicial review cases on an administrative record that could potentially be filed against MPCA each year, I know they are numerous. They would include all rulemaking, permitting, and administrative enforcement actions under the environmental statutes that we

administer. I expect that these sorts of actions number at least well into the hundreds of decisions each year. All such actions would have to be separately identified and affected employees would have to receive a hold order. The volume of documents that MPCA would have to maintain would be immense. And, of course, this would likely require preservation of a large volume of documents even for departed employees.

7. Maintaining and managing documents for hundreds of matters each year would be very burdensome. Such an effort would consume a large amount of this Agency's scarce resources. This expenditure of public resources would serve no useful purpose.
8. On June 25, 2019, I circulated a legal hold for documents related to the NorthMet permitting decision. This is the same day that the Court of Appeals issued its order referring this matter to the Second Judicial District. This legal hold was, at the outset, in response to an inquiry from the Office of the Legislative Auditor but it also served the purpose of preserving records that might be subject to this litigation. To the best of my knowledge, MPCA employees have abided by my instruction to preserve documents responsive to this legal hold.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: January 10, 2020



Adonis A. Neblett

