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January 9, 2020

Via E-filing and hand deliveredThe Honorable John H. Guthmann
Ramsey County District Court
1470 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102**Re: Ramsey County Court File No. 62-cv-19-4626**

Dear Judge Guthmann:

Relators write in opposition to Minnesota Pollution Control Agency's ("MPCA") January 8, 2020 informal motion for a protective order against Relators' requests for admission ("RFAs"). As noted in the RFAs' Preliminary Statement, (MPCA's Letter to Judge Guthmann (Jan. 8, 2020), Ex. A at 1), Relators served the RFAs pursuant to the Court's order that the "parties shall attempt to enter into stipulations regarding exhibits or other evidence before appearing at the hearing," (Am. Order Setting Evidentiary Hearing ¶ 4 (Nov. 19, 2019)). Pursuant to this goal, Relators' RFAs are meant to finalize previously promised (but unfinalized) stipulations and establish certain incontrovertible facts and the authenticity of certain documents.¹ In short, Relators intend for these RFAs to streamline the presentation of the case for the Court. We believe that many days of trial time and a great deal of tedious foundational testimony could be eliminated by agreement to the facts which are the subject of the RFAs and which we believe to be uncontroverted.

As to finalizing stipulations, previous communications between MPCA and Relators regarding stipulations have been fruitful, but thus far the parties have not been able to finalize any agreements as to exhibits or evidence. The RFAs are Relators' effort to resolve previously discussed

¹ Alternatively, the RFAs are plainly authorized and timely under rules governing hearings pursuant to the Minnesota Administrative Procedure Act. Minn. R. 1400.6800. This Court has ruled that the "Minnesota Administrative Procedure Act . . . governs what we're doing." (Rule 16 Conference Tr. at 34:14-18 (Aug. 7, 2019); *see also* Relators' Motion *in Limine* to Admit Evidence Pursuant to the Minnesota Administrative Pro[cedure] Act's Rules of Evidence at 3 (Dec. 27, 2019) ("As the Court, for purposes of the hearing, is 'an arm of the Court of Appeals' tasked with completing the evidentiary record, the evidentiary hearing should be conducted with all of [the Minnesota Administrative Procedure Act's] rules and requirements—evidentiary or otherwise." (citation omitted)).)

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stipulations with sufficient time for final hearing preparations, as the following examples demonstrate:

First, Relators and MPCA agreed in principle that, rather than tediously proving the entire contents of the administrative record before the Court of Appeals or MPCA's entire responses to Minnesota Government Data Practices Act ("DPA") requests, MPCA and Relators would stipulate that certain documents exchanged in discovery were *not* in either the administrative record or in MPCA's responses to DPA requests. This would surely be more economical than presenting an exhaustive set of documents to show that certain other documents were not included. However, as of the service of the RFAs, MPCA and Relators had not been able to finalize the agreement. Therefore, RFA Nos. 75-84 are meant to establish what was *not* in either the administrative record or the DPA responses. Establishing this through RFAs simply saves time at the hearing.

Second, MPCA indicated it would agree "that on no previous [occasion] has the EPA ever read its written comments aloud during an in-person or telephone conversation" (Telephone Conference to Discuss Discovery Disputes Tr. at 31:18-24 (Sept. 16, 2019).) This has not been formalized – again, likely due to the unique time constraints of this case. Relators wish to finalize this agreement prior to trial, and so include the promised agreement as RFA Nos. 85-91.

As to establishing certain incontrovertible facts and the authenticity of certain documents, the first 74 RFAs establish a chronology of facts that are central to this case, and include RFAs to establish the authenticity of certain documents cited in that chronology. The final RFA, No. 92, establishes that the final PolyMet permit does not establish Water Quality-based Effluent Limitations ("WQBELs"). The facts established by these RFAs would provide the general framework for the hearing. For example, it cannot be disputed that EPA and MPCA engaged in a telephone conference on April 5, 2018, during which EPA read aloud comments regarding the draft permit. Those are facts of the case, and Relators propose to establish them efficiently through RFAs. Establishing indisputable facts through RFAs will allow the parties and the Court to get directly to the heart of the matter quickly—the contents of the calls, the consequences of only receiving EPA's comments orally as opposed to in writing, etc. In short, these RFAs are meant to streamline the hearing and benefit all parties, which is what the Court envisioned in ordering the parties to "attempt to enter into stipulations regarding exhibits or other evidence before appearing at the hearing."

MPCA misses the point of the RFAs when it claims they are burdensome because they were served "at a time when MPCA is focused on preparing for the imminent evidentiary hearing." (MPCA's Letter to Judge Guthmann at 1 (Jan. 8, 2020).) The RFAs are intended to *lessen* the burden in preparing for the hearing, as establishing facts through the RFAs would mean there is no need to establish those facts at the hearing.

In the spirit of coming to an agreement, Relators are more than happy to meet and confer with MPCA so that MPCA can explain whether any of the RFAs are objectionable, partially denied, or wholly denied. In any event, MPCA does not need protection from the Court's order that the parties attempt to come to agreement regarding exhibits and evidence prior to the hearing.

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Respectfully submitted,

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Enclosures

cc: Counsel of Record (via Odyssey)