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State of Minnesota
12/27/2019 4:26 PM

EXHIBIT 7

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

STATE OF MINNESOTA
IN COURT OF APPEALS

In the Matter of the Denial of Contested Case Hearing Requests and Issuance of National Pollutant Discharge Elimination System/ State Disposal System Permit No. MN0071013 for the Proposed NorthMet Project St. Louis County Hoyt Lakes and Babbitt Minnesota.	Case Nos. A19-0112, A19-0118, A19-0124 **DECLARATION OF JEFFRY FOWLEY**

I, JEFFRY FOWLEY, in accordance with section 38.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

Background

1 – I am acting as a citizen hereby presenting to this Court information about improper practices that I believe have occurred in connection with the recent issuance of a permit for the Poly Met mining project (I take no position on the project itself). I submit this Declaration based on my personal knowledge. My statements in this Declaration are based on written materials that are in the administrative record or have otherwise been presented to this Court, except in those instances where I note that I am referencing information that I have obtained from confidential sources. While I think that the information I have obtained from these sources is extremely troubling, and could be grounds for a court to order an investigation, I believe that there is proof of improper practices based solely on the written records before this Court. I have applied my expertise as a long-time Clean Water Act attorney (documented below) to explain how these records alone show serious improper conduct.

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

2 – I am a retired attorney who worked for the U.S. Environmental Protection Agency (EPA) in the Office of Regional Counsel in the Region I (Boston) office from 1980 – 2017. From 1982 – 1995, I specialized in Clean Water Act (CWA) matters and headed the office's water section. In that capacity, I provided legal advice regarding the issuance of many CWA National Pollutant Discharge Elimination System (NPDES) permits – Region I continues to directly issue such permits to dischargers in Massachusetts and New Hampshire, as those two states have not been authorized by EPA to administer the Clean Water Act program. Although I did not personally work on the reviews of state NPDES permits (conducted by Region I for the other New England States that have been authorized to administer the NPDES program), I have spoken on various occasions with EPA staff who conducted such reviews and am familiar with how such reviews are properly done. I am thoroughly familiar with the legal and technical requirements for NPDES permits – which must be followed whether a permit is being issued by an EPA Region or by an authorized State – and with the proper procedures that must be followed when issuing such permits. In addition to my experience within Region I, during my time at the EPA, I participated in many conference calls and meetings with managers and staff in the other EPA Regional offices, and thus also gained familiarity with how permits are issued and reviewed in the other Regions across the country.

3 – From 1996 – 2017, I worked as the senior Region I counseling attorney for Resource Conservation and Recovery Act (RCRA) – hazardous waste – matters. In this capacity, I principally worked on the reviews of state RCRA regulations that must be updated regularly by the States authorized to carry out the federal RCRA program. This

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

gave me further insights into how interactions between the EPA Regional offices and States generally are properly conducted, including how to ensure that such interactions are ethical and transparent. I am the principal author of the 2005 EPA national policy on State Equivalency (for RCRA), which sets guidelines for allowing the States more flexibility in *how* they carry out federal requirements, while still ensuring that there is meaningful federal oversight and the public health and environmental remain fully protected. I worked closely with senior officials in the Bush Administration, who supported the flexible but balanced approach that I had developed.

4 - In addition, during 1996 – 2017, I continued to be called upon by the EPA Region I management to advise on various NPDES permit matters (including handling NPDES permit appeals). This was in addition to my RCRA work. I thus maintained my expertise regarding the NPDES permits practice area. Since retiring, I have continued to keep up on developments in this area.

5 - During 2018, I worked part time as a consultant to the Environmental Integrity Project (EIP), a national environmental group. As one of my assignments, I drafted a letter which was sent to the EPA Deputy Administrator Henry Darwin, protesting about his plans to reduce the EPA's reviews of state permits. Mr. Darwin responded by asking if there were examples we could provide of recent state permits where more EPA involvement had been needed. In response, I interviewed people around the country regarding experiences with recent state permits. As a result of those discussions, I became aware of serious alleged problems with the NPDES permit being issued by the Minnesota Pollution Control Agency (MPCA) to Poly Met Mining, Inc. (Poly Met). While I uncovered concerns

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

regarding other permit reviews (or lack thereof) under the current federal administration, the Poly Met permit presented by far the most serious set of improper practices of all of the cases that I studied.

Irregularities Regarding Poly Met Permit Issuance

6 – After talking with various persons with knowledge of the situation, I filed a complaint on January 31, 2019 with the EPA Office of Inspector General (Inspector General) documenting what I had been told about the improper practices relating to the Poly Met permit (which by then had been issued). My contract with the EIP had expired, so I filed the complaint as an individual. As generally set out in my complaint, I have been told by various persons that (a) the EPA staff and career management had significant concerns about the planned permit which were not resolved in phone calls and meetings and thus they wrote comments in March 2018 which were finalized and ready to be sent; (b) the MPCA management then went over the heads of the career staff and got the EPA Regional Administrator (through her chief of staff) to direct that written comments not be sent; (c) the EPA and State then agreed to have the EPA staff read some of the key comments to State staff over the phone (in April 2018), in a manner that seemed designed to enable State staff to hear the comments but not to keep records of those comments, thus hiding them from the public and this Court; (d) the key problem with the permit – the lack of an adequate "reasonable potential" analysis and the resulting lack of pollutant specific and enforceable water quality based permit limits – was not fixed by the state in the final permit developed by the fall 2018 – yet the EPA again did not send any written comments to the State; and (e) When issuing the final permit, the MPCA created a record seemingly

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

designed to mislead the public and this Court by not mentioning or responding to the EPA comments which had been presented to them both in discussions during phone calls and meetings and by the April 2018 reading of the EPA comments. I acknowledge that parts of my complaint are based on information passed along from other persons. Moreover, to prevent possible retaliation against my sources, I have promised them confidentiality, so I cannot reveal their identities. However, the persons I have talked to all seem credible and I believe that the information provided in my Inspector General complaint is accurate. Certainly, I think that even the confidential information I have obtained is enough to justify investigations to determine the truth. The purpose of my complaint was not to finally settle the matters, but to alert the proper authorities of the need to investigate the matters.

7 – The Inspector General's Office has found my information to be sufficiently credible to justify a preliminary investigation. They have interviewed me and several persons within EPA Region V. I understand that the Inspector General currently is considering whether to broaden the inquiry into a full investigation. I also am alerting this Court about the situation, since one of my concerns is that by not including key information regarding what happened in the administrative record, the MPCA is misleading this Court. As noted below, I am not suggesting that this Court determine at this time that there have been "irregularities in procedure" based on the confidential information that I have obtained. Rather, I believe that this Court could determine that there are such "irregularities in procedure" based solely on the written record before it, and an analysis of what this means (see below). On the other hand, I do think that there is a compelling need for

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

someone to look into all of my allegations – e.g., by taking live testimony from state officials – which I understand could occur if this matter was sent to a district court.

8 - Applying my knowledge regarding the Clean Water Act and NPDES permits, I believe that there is clear evidence of "irregularities in procedure," based on the written record before this Court. I describe what I believe are violations of normal and proper procedures below.

Suppression of EPA Comments

9 – First, the fact that EPA did not send written comments to the State on this permit, after preparing them in March 2018, is itself evidence of misconduct. In paragraph 22 of its Answer to the Freedom of Information Act (FOIA) complaint filed by the Water Legacy group, the EPA has admitted that such written comments were prepared, although it says they were not "final." Contrary to the MPCA's assertions about what they say is an unusual number of phone calls and meetings that occurred regarding the Poly Met permit, it actually is not unusual for an EPA Region and a State to have a series of meetings on complex permit or other complex matters. What is highly unusual is that no written comment in this highly significant and complex matter were ever sent. When the EPA reviews state permits, there can be telephone calls and meetings between federal and state personnel. However, for significant and complicated permits like the Poly Met permit, it has been the consistent EPA practice to send written comments (in cases where it has initiated a permit review). The sending of such comments is necessary to fully communicate EPA concerns, which is hard to do on complex matters in a meeting or over the phone, unaided by a written document. In any event, the sending of written comments is essential in order to carry out

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

the EPA's oversight responsibilities, if in phone calls and meetings, important issues are not resolved. I think that it can be fairly inferred that the EPA prepared written comments in March 2018 because it had been determined (at the staff and career management level) that interacting with the MPCA through meetings and phone calls was not proving sufficient to resolve the permit issues. No legitimate explanation has been offered for why no written comments were sent.

10 – As noted in my complaint to the Inspector General, this misconduct is certainly attributable to the EPA. However, the MPCA also bears responsibility if it sought to have the written comments suppressed. As shown by a series of emails obtained by Water Legacy from the MPCA (attached as Exhibit 1), it does appear that Shannon Lotthammer of the MPCA had been communicating with the EPA Regional Administrator's Chief of Staff Kurt Thiede in March 2018 to prevent EPA written comments from being sent at that time. While the resulting "agreement" provided that EPA could instead send comments later after a final draft permit had been prepared by the State, no such EPA comments were later sent.

Receiving EPA Comments Off the Record and Failing to Keep Notes of Such Comments

11 – Second, in its response to the current motion, the MPCA has acknowledged that in April 2018, EPA comments were read to MPCA staff over the telephone. The EPA also has acknowledged this in paragraph 23 of its Answer to the FOIA complaint. In my opinion, it was improper for the MPCA to in effect receive written comments from the EPA by having them read over the phone. In all of my years of experience, I have never

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

heard of a situation where EPA personnel have read written comments on a permit to State personnel over the phone. There is no legitimate reason why written comments which could be sent would instead be read over the phone. This clearly is a less effective way to communicate complicated matters than sending the written comments. The apparent purpose for only receiving such comments over the phone would be to obtain them off the record - to avoid the MPCA receiving written comments which it would then need to be put into the administrative record for the permit and to which it would then need to respond. In its response to the current motion, the MPCA has not pointed to any other reason why it participated in such a bizarre and unusual process.

12 – Third, in its response to the current motion, the MPCA has admitted that notes were taken of the April 2018 call. But it says that they were not retained. As a result, there are no notes of this call in the administrative record for the permit. Richard Clark states in his Declaration par. 15 that notes were taken by MPCA attorney Mike Schmidt and by an unnamed member of the Water Permit team. The MPCA's outside counsel Richard Schwartz states in his brief/Response to the current motion (p. 5) that, "[b]ecause MPCA staff found nothing new or surprising in EPA's comments, all of which had been covered and discussed in previous meeting and conference calls, … it did not retain notes from the call." It clearly was improper for the MPCA to not retain these records. In my experience, when there have been meetings or phone calls between the EPA and States on permit or other similar matters, it has been the routine practice across the country to take notes of such meetings or calls. Certainly, when such notes have been taken, it is generally understood that it is improper to destroy them – rather, they must be retained. Such notes

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

are considered to be official government records. When there is a permit or other proceeding, they must then also be included in the administrative record. But, in any event, they must always be retained.

13 – Even if the MPCA staff thought that there was nothing new or surprising in the EPA comments read to them during the April 2018 call, this is not a legitimate reasons to destroy official government records. Experienced personnel like the state personnel who listened to the call should have understood this. Certainly any attorney like Mike Schmidt should have known better (assuming that he actually destroyed his notes). In addition, it is misleading for the MPCA to characterize the April 2018 call as covering nothing new. My confidential sources have told me that this was the key call designed to address the unresolved permit issues. Even if this confidential information is disregarded, I think it can be inferred that there is something new and different occurring when detailed written comments are actually being provided (albeit by being read) as opposed to the earlier discussions which were unaided by having the detailed comments. Moreover, in par. 17 of his Declaration, Richard Clark notes that some of the issues presented by EPA during the April 2018 call were not resolved at that time – he says (erroneously) that they were resolved later in September 2018. That the call was addressing unresolved issues would have been a particularly compelling reason for retaining the notes of the call, although it would have been improper to destroy them even if all issues had been resolved. It also is puzzling that the MPCA has provided notes of various prior meetings and calls – through early March 2018 – although some of those notes record discussions on issues that were

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

not new – but says that because the April call did not cover new issues, it has destroyed the notes of that call.

14 -It is also puzzling that in response to requests from Water Legacy, MPCA has provided notes of calls through early March 2018 and from the fall, but with a gap between early March and September. Presumably during that time period, the State and EPA were continuing to have calls (in addition to the April call discussed above). This raises a fact question whether the MPCA stopped taking notes of calls, or whether notes from other calls have also not been retained.

15 – In my opinion, the misconduct by the MPCA has been compounded in the papers filed with this Court in response to the current motion. There is no sworn statement from anyone that the notes have in fact been destroyed – this statement is only made in an unsworn statement by the MPCA's outside counsel. There is no Declaration at all from attorney Schmidt. In the Declaration from Richard Clark, he says that notes were taken by a member of the water permit team, but does not name the person. There are serious ethical violations that have occurred assuming that the notes actually have been destroyed (or worse, still exist but are not being produced), but the MPCA and its outside counsel seem to be making light of the situation. No information has been presented as to when and how the records were destroyed and at whose direction. There is no apparent effort underway to make sure that this kind of conduct does not continue to occur.

16 – The combination of the MPCA receiving written comments in an off the record manner over the phone, and then not retaining notes of the comments, together clearly presents very serious ethical violations. During my years of legal practice, I never before

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

have come across a situation where a government agency has behaved in this manner. In my opinion, this combination of facts alone would justify this Court finding that there have been "irregularities in procedure" even if this was the only problem with the permit proceeding.

Issuance of a Defective Permit that did not Address the key EPA Concern

17 – The final permit is defective. It is not backed by the federally required "reasonable potential" analysis used to determine whether strict water quality based limits are needed in a permit, and does not have the kind of federally required pollutant specific and enforceable water quality based limits that should have resulted from doing this right kind of analysis. My confidential sources have advised me that this was the key issue raised by the EPA (e.g., in the April 2018 call), and that it was never adequately addressed by the MPCA. My own analysis of the permit has confirmed that it is defective (see below). There also is other evidence that the permit did not resolve the key EPA concern. While the MPCA has submitted declarations in response to the current motion claiming that, in the declarants' views, all issues were resolved, it is noteworthy that there is nothing in the administrative record from the EPA confirming that all issues were resolved. In my experience, if the EPA had agreed that all issues were resolved, it would have sent MPCA an email or letter confirming such a key fact.

18 - Under the federal Clean Water Act, it is not sufficient for permits to contain only technology based limits based on what companies' treatment systems generally are capable of meeting. Rather, pursuant to section 301(b)(1)(C) of the Act, any permit also must contain "any more stringent limitation . . . necessary to meet water quality

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

standards." Water quality based permit limits typically are needed when there are planned significant discharges into waterways with limited flow such as the creeks and wetlands into which the Poly Met company plans to discharge. The EPA regulations (which authorized states must follow in their own regulations) specify that any permit issuer must examine whether any pollutants planned to be discharged have the "reasonable potential" to cause water quality violations, and then must include water quality based permit limits for each pollutant for which there is such a reasonable potential. 40 C.F.R. § 122.44.

19 – There is a supposed "reasonable potential" analysis in the permit's fact sheet. But my analysis of the fact sheet has confirmed that it does not contain the kind of mathematical calculations for each pollutant of concern needed to determine whether water quality standards potentially could be violated by the planned discharges (and thus whether additional controls are needed). These mathematical calculations are supposed to be done pollutant by pollutant to determine whether particular discharges (if not more strictly controlled) will cause violations of standards that have been set for the surrounding waters. If the surrounding waters are small creeks and wetlands (as here), there may be little dilution offered by the waters – thus meaning that even small amounts of pollutant discharges may cause exceedances of the water quality standards. Thus, a good reasonable potential analysis often results in the imposition of standards that are far more stringent than the otherwise applicable technology based standards. No such good reasonable potential analysis was done here.

20 - My analysis of the permit also has confirmed that it does not contain any pollutant specific water quality based permit limits. Instead, the permit according to the

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

fact sheet relies in part on so-called operating limits to help prevent reasonable potential, which are limits on internal flows "voluntarily" agreed to by the company, which do not necessarily ensure the protection of water quality. They also might not be federally enforceable, since they govern internal flows rather than the federally regulated discharges into surface waters. With respect to the federally regulated discharges, the permit has only technology based limits for the specific pollutants planned to be discharged.

21 - In MPCA's brief (p. 6) and in the Declaration of Jeff Udd (par. 8), the MPCA indicates that it resolved the EPA concern about the lack of water quality based permit limits by adding a requirement to the permit "prohibiting discharges from violating water quality standards." This is misleading. There are provisions that were included in the permit stating in general terms only that water quality standards should not be violated – see, e.g., conditions 5.1191 at p. 65, and 5.120.31 at p. 68. Such general provisions typically are included in NPDES permits in addition to having any required water quality based limits for particular pollutants (e.g., mercury, copper). In this permit, the MPCA included this general language *instead of* having the required specific limits, rather than *in addition to* the specific limits. This is insufficient to meet federal requirements and significantly weaker than what I have seen in permits issued by the EPA itself and other states.

22 - Also, the specific effluent limits that are in the permit for various pollutants to be discharged are technology based limits, which typically are far less stringent than what would be required by water quality based permit limits. It will be difficult to take

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

enforcement action against the company for violating general conditions, if it is complying with the technology based permit limits, even if meeting the water quality standards would require the company to do more. In the specific provisions, this permit seems to be telling the company that it is sufficient to meet technology based limits. The MPCA failed in this permit to tell the company what are the more stringent limits that must be complied with to meet the permit's general language and the water quality standards. Putting only general requirements into the permit was rather like telling people not to drive too fast rather than setting specific speed limits for each road.

23 - The permit also has a general prohibition against discharging toxic pollutants in violation of federal requirements at 5.183.251 (at p. 111). It states that "[w]hether or not this permit includes effluent limitations for toxic pollutants, the Permittee shall not discharge a toxic pollutant except according to Code of Federal Regulations, Title 40, sections 400 to 460 and …[various state requirements]." However, like the provisions discussed above, this provision again contains only general and difficult to enforce language. In addition, the federal requirements referred to state only technology-based requirements. These general terms do not resolve the need for water quality based effluent limits and an enforceable permit.

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

Producing a Misleading Administrative Record

24 – The administrative record filed by the MPCA with this Court is misleading. In addition to not containing any record of the key April 2018 EPA – State call, it contains no responses to any of the EPA comments that the State received – in various other telephone calls and meetings as well as in the April call. I have personally examined the MPCA's response to comments document – it reads as if there had been no EPA involvement in this permit at all.

25 – In its brief (p.13), the MPCA asserts that it adequately responded to comments made by the EPA in its responses to other commenters. However, the MPCA never said that it was responding to concerns shared by the EPA. Since the EPA has special expertise, I think it is misleading to produce an administrative record that does not mention that the EPA shared some of the other commenters' concerns. Also, while the various responses to comments cited in the brief do seem to address some of the issues raised by the EPA, in the absence of any record of the key April 2018 call, I am unable to conclude that they address all of the EPA comments that were made. For example, response to comment Water-729 says that the MPCA conducted a reasonable potential analysis, but does not address what I understand were specific EPA concerns that the State's analysis was not done correctly.

26 – The MPCA's brief misunderstands how the EPA actually conducts most permit reviews. It is true that the EPA has special rights under subsection 402(d)(2) of the Clean Water Act to "object[] in writing" to a proposed state NPDES permit, in which case the state may not issue the permit until the EPA objection is resolved. This is known as the

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

EPA's "veto" authority. If the EPA objection is not resolved, the EPA has the right to take over issuance of the permit. CWA subsection 402(d)(4). But the EPA seldom goes so far as to start this formal objection process. Rather, when it reviews a state permit, the EPA generally sends written comments to the State, expressing its concerns without saying that it is posing a formal objection. Typically, this results in the EPA and State reaching agreement on the issues of concern, without the need for any formal EPA objection.

27 – However, this kind of process only works if the EPA concerns are included by the State in the permit's administrative record and responded to by the State. In that way, the public and a reviewing court (if the permit is appealed) can see if and how the EPA concerns were resolved. As happened here, a state sometimes can proceed to issue a permit with which the EPA is not in agreement, but which the EPA has chosen not to block by issuing a formal objection. In that circumstance, people count on the fact that the EPA comments – and the state's response – are in the state's administrative record and can be reviewed by a state court. It is left to the reviewing court to determine whether the EPA's unresolved concerns mean that a permit is defective, or if the State has produced an adequate explanation showing why it did not need to follow the EPA's views.

28 – Of course, this kind of transparent process was circumvented here when the MPCA received EPA's written comments by having them read over the phone, and then did not retain the notes showing what those comments were, and also did not respond to those comments.

29 – In its brief (p. 15), the MPCA also misinterprets 40 C.F.R. § 124.17, the federal requirement mandating that authorized states must respond to comments. When the EPA

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

files written comments on state permits or other matters (such as the state RCRA regulations that I reviewed), the typical and correct process is for the states to respond to those comments along with any other comments. To interpret section 124.17 as not requiring this is absurd. This would give EPA fewer rights than other commenters, and undercut the ability of EPA to work cooperatively with States without always needing to file formal permit objections.

30 – Finally, the MPCA in its brief misunderstands the nature of a key EPA document that Water Legacy is trying to obtain and then get included in the administrative record for the permit. In paragraph 23 of its Answer to the FOIA complaint filed by Water Legacy, the EPA has admitted that its staff verbally shared portions of its written comments with State personnel during the April 2018 phone call, and that the EPA has retained a copy of a document "that memorializes what was shared verbally with MPCA staff." This EPA document does not contain internal comments not shared with the State – rather the marked up document is a record of comments that were actually made to the State. Since MPCA (through its outside counsel) has stated that the MPCA records of the April 2018 call were not retained, the EPA document may be the only record of that call.

31 - In my opinion, such a document – if and when obtained from the EPA – should be included in the administrative record for this permit. This would at least partially rectify the ethical violations that have occurred and enable this Court to fully consider the EPA's concerns. It also would level the playing field since when EPA comments are made on permits in other states, they are included in their administrative records. The many state

Filed in District Court
State of Minnesota
12/27/2019 4:26 PM

environmental agencies that act honorably retain records of their various interactions with the EPA.

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

Dated: June 5, 2019
Essex County
Marblehead, MA

JEFFRY FOWLEY

Subject: RE: Polymet Draft Permit Discussion
Date: Friday, March 16, 2018 at 2:39:32 PM Central Daylight Time
From: Udd, Jeff (MPCA) (sent by FYDIBOHF23SPDLT </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP /CN=RECIPIENTS/CN=E2EA3D7349CD4899865CE8C41466294E-JUDD>)
To: Clark, Richard (MPCA), Handeland, Stephanie (MPCA)

And I just got off the phone with Kevin. He would like to continue with the routine check-in meetings every few weeks as we go through the comments and any permit revisions. He would like to have one the first week of April to walk through what the comment letter would have said if it were sent.....

From: Udd, Jeff (MPCA)
Sent: Friday, March 16, 2018 2:06 PM
To: Clark, Richard (MPCA) <richard.clark@state.mn.us>; Handeland, Stephanie (MPCA) <stephanie.handeland@state.mn.us>
Subject: FW: Polymet Draft Permit Discussion

Here's the plan.....

From: Lotthammer, Shannon (MPCA)
Sent: Friday, March 16, 2018 2:00 PM
To: Thiede, Kurt <thiede.kurt@epa.gov>
Cc: Korleski, Christopher <korleski.christopher@epa.gov>; Pierard, Kevin <pierard.kevin@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>; Holst, Linda <holst.linda@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>; Stine, John (MPCA) <john.stine@state.mn.us>; Smith, Jeff J (MPCA) <jeff.j.smith@state.mn.us>; Udd, Jeff (MPCA) <jeff.udd@state.mn.us>; Schmidt, Michael R (MPCA) <michael.r.schmidt@state.mn.us>
Subject: RE: Polymet Draft Permit Discussion

Hi Kurt –

Thank you for your message. We concur with your characterization below of what we have agreed to for the Polymet draft permit next steps.

Thank you also for your demonstrated commitment to continued dialogue and cooperation, which we share. I have made a note of the suggestion for a face-to-face meeting, and will work with our team to determine when we've reached a good point to get that set up. In the meantime, if you have any questions, please let me know.

Kind regards,
Shannon

Shannon Lotthammer
Assistant Commissioner
Minnesota Pollution Control Agency
Shannon.lotthammer@state.mn.us
651/757-2537

Working to protect and improve the environment and human health.

From: Thiede, Kurt [mailto:thiede.kurt@epa.gov]
Sent: Friday, March 16, 2018 12:44 PM
To: Lotthammer, Shannon (MPCA) <shannon.lotthammer@state.mn.us>
Cc: Korleski, Christopher <korleski.christopher@epa.gov>; Pierard, Kevin <pierard.kevin@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>; Holst, Linda <holst.linda@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>
Subject: Polymet Draft Permit Discussion

Shannon,

Thanks once again for working with us to find a solution to this matter. Here is our understanding of what EPA and MPCA have agreed to.

Once MPCA completes their response to public comments, it will develop a pre-proposed permit (PPP) and provide the PPP to EPA Region 5. Region 5 EPA will have up to 45 days to review the PPP and MPCA's responses to public comments and provide written comments on the PPP to MPCA. This would occur prior to MPCA submitting a proposed permit to EPA, which, according to the current MOA, would continue to give EPA 15 days to comment upon, generally object to, or make recommendations with respect to the proposed permit. In accordance with the current MOA and as specified in CWA Section 402(d)(2)(B) and 40 C.F.R. 123.44(b)(2), EPA still may raise specific objections within the 90 day period from receipt of the "final" proposed permit, but we are hopeful our discussions and the additional review will allow us to come to an agreement and avoid objections.

Again, it is our hope and intent to continue a dialog between MPCA staff and R5 EPA WD staff prior to receipt of the PPP and during EPA's review of the PPP as we work toward a NPDES permit that both parties

can support. In fact, I would like to suggest setting up a face-to-face meeting when appropriate to discuss the draft permit and EPA observations. It is also our intent to turn around our review and comments on the PPP as soon as possible.

Please let me know if you have any questions.

Sincerely,

Kurt A. Thiede
Chief of Staff
U.S. EPA, Region 5
Office of the Regional Administrator
77 W Jackson Blvd
Chicago, IL 60604
Email: thiede.kurt@epa.gov
Office: (312) 886-6620