

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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*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*

**DECLARATION OF  
JEFF UDD**

Appellate Case Nos.  
A19-0112  
A19-0118  
A19-0124

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I, JEFF UDD, 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. My job title is Manager of the Water and Mining Section for the Minnesota Pollution Control Agency (“MPCA”). I have been employed by MPCA since February 2002.
2. My job responsibilities have included oversight of developing and drafting National Pollutant Discharge Elimination System/State Disposal System Permit No. MN0071013 (“Water Permit”) for the Poly Met NorthMet Mine Project.
3. I was involved in oversight of the Water Permit from January 2018 until issuance on December 20, 2018. I also participated in regular meetings and conference calls with EPA during this time period, including the April 5, 2018, telephone call with EPA referenced in WaterLegacy’s May 17, 2019, Motion for Transfer to the District Court or, in the Alternative, for Stay Due to Irregular Procedures and Missing Documents (“Motion”).

4. I submit this Declaration to the Court based on my personal knowledge and in support of MPCA's Response to WaterLegacy's Motion.

**MPCA and EPA Process and Procedures to Arrive at the Terms of the Water Permit**

5. I participated in the April 5, 2018, conference call between MPCA and EPA in which EPA read from its written comments. EPA summarized all of the issues it had previously raised about the pre-public comment draft permit. My impression of this set of summary comments was that EPA was alerting MPCA to the issues it would be looking at most carefully when MPCA responded to the public comments. As of April 5, 2018, most of these issues had been discussed, but some had not been finally resolved.

6. After the April 5 call, MPCA focused on finishing all of its draft responses to significant public comments and EPA's concerns, so it could discuss all of the issues with EPA.

7. That comprehensive discussion, which was the culmination of the entire collaboration between MPCA and EPA on the Water Permit, took place at a two-day, in-person meeting with EPA on September 25 and 26, 2018, where MPCA explained to EPA how it was addressing all of the substantial public comments it had received during the public-comment period and how MPCA was addressing EPA's concerns with the draft permit that EPA had repeated in the April 5, 2018, conference call.

8. There was a lot of discussion during the two-day meeting. MPCA agreed to add new operating limits for cobalt and mercury. MPCA also agreed to add express language prohibiting discharges from violating water quality standards. EPA expressed

satisfaction with the results of the meeting. At the conclusion of the meeting, I believed that no unmanageable issues remained, and we were in a position to finalize the draft permit.

9. Under the Memorandum of Agreement (“MOA”) between MPCA and EPA, once MPCA has completed a “proposed” permit—which in this context refers to a post-public-comment draft permit—MPCA sends the proposed permit to EPA, and it is this version that EPA officially comments on. The MOA allows EPA 15 days to decide whether or not to veto the proposed permit.

10. On October 25, 2018—a month after the September 25-26 meeting—MPCA sent a pre-proposed version of the permit to EPA. The pre-proposed permit reflected all of the discussion points from the two-day, in-person meeting in September 2018. While the May 1974 Memorandum of Agreement (“MOA”) between MPCA and EPA provides for a 15-day period for EPA to object to (veto) the issuance of a proposed NPDES permit, EPA requested an extra 45 days from October 25, 2018, to review this pre-proposed version of the permit, and MPCA agreed to the extended review period.

11. It turned out that EPA did not need the entire 45 extra days. On December 4, 2018, EPA notified MPCA that it was ready to begin its 15-day review of the proposed permit. Thus, rather than the required 15-day review under the MOA, MPCA agreed to extend EPA’s review to 60 days total. During this 60-day review period, EPA did not veto or otherwise object to the permit.

12. MPCA issued the final Water Permit and fact sheet on December 20, 2018.

Dated: May 28, 2019  
Ramsey County  
St. Paul, Minnesota



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Jeff Udd  
Manager, Water and Mining Section  
Minnesota Pollution Control Agency