

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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, Babbitt, Minnesota.

Case Type: Civil Other
File No.: 62-CV-19-4626
Judge: John H. Guthmann

**AMENDED ORDER SETTING
EVIDENTIARY HEARING**

The above-captioned matter came before the undersigned Judge of District Court on **November 13, 2019** for a prehearing conference. All appearances were noted on the record. Based on discussions at the prehearing conference, the court made certain decisions on the hearing record that are memorialized in the following:

ORDER

1. **Hearing:** The day certain evidentiary hearing was reset. The new hearing date before the undersigned is **January 21, 2020** at 9:00 a.m. in Courtroom 1480 of the Ramsey County Courthouse. The hearing is expected to last **5-10 trial days**.
2. The issues to be heard are limited to the alleged procedural irregularities listed in relators' September 14, 2019 list of alleged procedural irregularities.
4. The parties shall attempt to enter into stipulations regarding exhibits or other evidence before appearing at the hearing.
5. The parties shall serve and file complete and final lists of all witnesses who will actually testify no later than **December 9, 2019**. Any party may offer the testimony of a witness listed by another party. **Unlisted witnesses INCLUDING IMPEACHMENT WITNESSES shall not testify unless the court determines that good cause existed for failing to disclose the witness.**

7. The parties shall serve and file a complete and final list of exhibits they intend to actually use no later than **December 9, 2019.**¹ Prior to the commencement of the hearing, the proponent shall allow any other party to examine and copy all documents on the proponent's exhibit list. Unless a different directive is provided herein, the parties shall comply with Minn. Gen. R. Prac. Part H, § 12. Any party may use any exhibit that has been listed by another party. **Unlisted exhibits shall not be admitted unless the court determines that good cause existed for failing to disclose the exhibit.**

8. If any party discloses more than 25 exhibits, counsel shall prepare a sufficient number of exhibit books in tabbed three-ring binders for use of the Judge and each represented party.

9. The parties shall meet, confer, and agree upon a consecutive numbering system for all exhibits. The system shall include consideration of any documents generated as a result of the forensic search provided for in paragraph 10 of this Order.

10. **FORENSIC SEARCH**

a. During the November 13, 2019 Pre-Hearing Conference, the court granted relator's motion to conduct a forensic search of certain MPCA desktop hard drives and servers.

b. The forensic search shall encompass all desktop/laptop hard drives and all servers that stored information generated by John Linc Stine, Shannon Lotthammer, and Ann Foss.

c. The time frame of the forensic search is July 11, 2016 through the date that John Linc Stine, Shannon Lotthammer, and Ann Foss left their MPCA employment.

d. The forensic search shall be conducted by an expert that is jointly retained by the parties. The cost shall be split equally between all of the relators and the MPCA. If the parties cannot agree on an expert by **November 22, 2019** at 4:30 p.m., the court will choose

¹ The results of the forensic search addressed in paragraph 10 are exempt from the deadline set forth in this paragraph.

the expert based upon the written submissions of the parties. The written submission shall be filed no later than **November 22, 2019** at 4:30 p.m.

e. If the MPCA asserts that it already conducted a forensic search of one or more hard drives and/or servers as part of its discovery response, it shall, no later than **November 22, 2019** at 4:30 p.m., advise relators of the scope of the forensic search, how was it done, what software tools were used to do it, what hard drives and servers were the subject of that search, what the search terms were, and whether there is an existing forensic image of the hard drives and servers searched. With this information, the parties shall confer on the issue of whether a further forensic search is needed or whether they may rely on the existing forensic images. If the parties cannot agree on the next step in the forensic search process, they shall so advise the court in a letter no greater than three pages in length that is submitted by **November 29, 2019** at 4:30 p.m. Based solely on the written submissions, the court will decide the next step in the forensic search process.

f. The parties shall agree on the desktop/laptops and servers to be searched, all search terms, whether to make a forensic copy of the devices to be searched, and a procedure to identify and protect privileged documents no later than **November 29, 2019** at 4:30 p.m. If the parties cannot agree on these issues, the court will decide the issues based upon the written submissions of the parties. *See* paragraph 10(e), *supra*.

g. The forensic search shall be completed, all documents discovered as a result of the search exchanged, and all privilege logs updated and provided no later than December 16, 2019 at 4:30 p.m. (the court said mid-December at the hearing, which date falls on a Sunday so the court picked the next day). Documents generated and disclosed as a result of the forensic search that the parties intend to introduce at the evidentiary hearing shall be added to the parties' exhibit lists no later than **December 23, 2019**.

h. Polymet need not participate in the forensic search or its cost, although it is entitled to a copy of all documents produced by any party as a result of the search.

11. All motions including those *in limine* shall be served and filed with the Court Administrator, with paper courtesy copies sent directly to the court in Chambers 1470, so it is received no later than **December 27, 2019** or the motion shall be barred. All responses to motions shall be served and filed with the Court Administrator, with paper courtesy copies sent directly to the court in Chambers 1470, so it is received no later than **January 10, 2020** or the response shall be barred.

12. No later than **January 10, 2020**, counsel shall arrange for the pre-marking of exhibits. Exhibits shall not be marked during the hearing.

13. Counsel shall serve and file with the Court Administrator any pre-hearing brief to be considered by the Court no later than **January 10, 2020**. A paper courtesy copy of all pre-hearing briefs shall be sent directly to the court in Chambers 1470, so it is received no later than **January 13, 2020**. The parties shall agree on a page limit for their pre-hearing briefs no later than **January 3, 2020**.

14. All objections to the admissibility of documentary evidence based on foundation shall be served and filed no later than **December 27, 2019** or they shall be deemed waived. If there is no objection, the custodians of such records need not appear at trial.

15. All proposed orders shall be submitted to the Court **in writing and by email in Word format to: 2ndJudgeGuthmannChambers@courts.state.mn.us**.

16. Counsel should be prepared to offer evidence in a timely manner, and the court will not grant a continuance to produce witnesses or evidence except in the most extraordinary

circumstances. In the event that counsel has questions regarding the availability of witnesses at the hearing, preservation depositions shall be taken for use at the hearing.

17. NO CONTINUANCES WILL BE GRANTED WITHOUT WRITTEN COURT PERMISSION.

18. Failure to comply with the provisions of this Order may result in the imposition of sanctions.

Dated: November 19, 2019

BY THE COURT:

John H. Guthmann
Judge of District Court