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January 8, 2020

The 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:

On behalf of the Minnesota Pollution Control Agency (“MPCA”), we write to object to Relators’ service of requests for admission (“RFAs”) on MPCA and to request a protective order against the same.

On January 6, 2020, just 15 days before the commencement of the evidentiary hearing, Relators served 92 RFAs on MPCA. Ex. A. These RFAs are improper, as they go well beyond the limited discovery authorized by the Court in this narrow proceeding.

At the August 7, 2019 hearing, this Court explained that this proceeding is subject to “limited discovery” that falls short of that which is provided by the Rules of Civil Procedure. Aug. 7, 2019 Hr’g Tr. at 102:16-17. Specifically, the Court authorized Relators to take limited discovery consisting of 25 requests for production to MPCA and PolyMet, as well as depositions on written questions of a PolyMet designee, an MPCA designee, and three current MPCA officials. Sept. 9, 2019 Order at ¶¶ 3-5. The Court did not authorize any RFAs.

Relators’ reliance on Minnesota Rule 1400.6800 is misplaced. First, that provision applies only to contested cases, which this action is not. Minn. R. 1400.5010 (“The procedures in parts 1400.5010 to 1400.8400 govern all contested cases . . .”). Second, the preceding section, Minnesota Rule 1400.6700, states that “[a]ny means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota is allowed.” Yet this Court has already held that the Rules of Civil Procedure do not apply here, as this is a narrow transfer proceeding instead of a civil action or contested case hearing. Aug. 7, 2019 Hr’g Tr. at 92:10-13, 93:11-14.

Not only do Relators’ RFAs—served without warning at the eleventh hour—run contrary to this Court’s instructions. They are also unduly burdensome in that they seek responses to nearly a hundred separate requests at a time when MPCA is focused on preparing for the imminent evidentiary hearing. Moreover, the inapplicable rule invoked by Relators—Minn. R. 1400.6800—provides for only 10 days to respond, a particularly onerous time constraint.



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Because Relators' RFAs are improper and unduly burdensome, MPCA respectfully requests that this Court enter a protective order in favor of MPCA.

Sincerely,

/s/ John C. Martin

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/s/ Richard E. Schwartz

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cc: All Attorneys of Record