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November 22, 2019

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  
Request for Production of Redacted Documents

Dear Judge Guthmann:

On behalf of Respondent Minnesota Pollution Control Agency (“MPCA”), we write in regard to the Court’s directive at the November 13, 2019 hearing regarding confidential source documents on Relators’ privilege log that Relators’ have withheld entirely rather than produce with redactions.

On November 18, 2019, Relators produced an updated privilege and two documents that were previously withheld. While MPCA appreciates Relators’ supplemental production of two additional documents from their privilege log, it is insufficient. MPCA raised the issue of Relators’ insufficient production in a November 22, 2019 email, but has not yet received a response from Relators.

At the last hearing, the Court explained that protecting a confidential source “may speak to the size of the redaction, not whether to redact and disclose.” 11/13/19 Hr’g Tr. at 75. There are 16 remaining documents on Relators privilege log that have been fully withheld based on the confidential source. Additionally, the attachment referenced in one of the documents Relators produced is not logged on their privilege log, nor is it clear whether it has been produced.

This missing attachment from the redacted document Relators produced illustrates why further production of the remaining 16 documents, with appropriate redactions, is necessary. Relators’ claim that many of the documents are simply transmittal emails. If that is the case, then producing the emails with only the identifying information redacted should not be a problem. However, other documents that have been withheld appear to be more substantive and Relators have not explained why these documents have not been produced with redactions. For example, one email from February 5, 2019 apparently “describes process within EPA.” The substance of this entire email does not warrant redaction to protect the confidential source. Indeed, when it was convenient for Relators, they produced documents from the confidential source that addressed EPA’s process, among other things. *See* June 18, 2019 Memo (RELATORS\_0064143). Therefore, the February 5, 2019 email and other withheld emails with

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the confidential source should be produced with only personal identifying information of the confidential source redacted.

Finally, Relators have asserted new attorney work product claims as to 5 of the emails with the confidential source, who we understand is not Relators' client. Therefore, an attorney work product claim does not appear to justify withholding these documents or redacting anything in these documents other than personally identifying information of the confidential source.

MPCA requests that the Court order Relators to produce the 16 remaining documents on Relators privilege log that have been fully withheld based on the confidential source, with appropriate redactions protecting the identity of the confidential source. Once MPCA has an opportunity to review the redacted documents, MPCA will be in a better position to determine whether in camera review as to the scope of the redactions is necessary.

Sincerely,

/s/ John C. Martin

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/s/ Richard E. Schwartz

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