

The logo for MASLON, featuring the word "MASLON" in a serif font with a horizontal line underneath.

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February 12, 2020

Via E-filing and hand delivered

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:

Relators oppose Respondent Minnesota Pollution Control Agency's ("MPCA") February 7, 2020 request to add the document contained in the Administrative Record as WATER_0040784-893 to the transfer hearing record as "Exhibit 228A" and "Exhibit 230A." To support its request, MPCA reaches the unfounded conclusion that the stipulations seek to identify "similar" documents in the Administrative Record. To the contrary, the stipulations seek to identify whether a document appears or does not appear in the Administrative Record.

MPCA attached Exhibit 228 and the first two pages of WATER_0040784-893, which MPCA seeks to untimely introduce as "Exhibit 228A." Exhibit 228 contains an email from Christie Kearney, PolyMet's Environmental Site Director, which describes PolyMet's "priorities of changes" to a pre-public notice draft permit. MPCA's proposed "Exhibit 228A" does not contain this email from Ms. Kearney. Rather, "Exhibit 228A" includes a separate and unrelated string of responses from Ms. Kearney that appear in the Administrative Record. Whether "Exhibit 228A" is in the Administrative Record is not relevant to whether Exhibit 228 is, let alone whether Exhibit 228 should have been, included in the Administrative Record to document changes requested and made in the pre-public notice draft permit.

MPCA also proposed that the pages WATER_0040786-893 be introduced as "Exhibit 230A," because it is "related" to Exhibit 230 although the differences "are apparent on the face of the exhibits." These documents are over a hundred pages long, so comparisons are not obvious on the face of the exhibits, and would require a page-by-page substantive analysis. The time for adding this new "exhibit" is long past.

Relators made every effort to reach agreement with Respondents on stipulations that were intended to simply reflect whether a document was in the Administrative Record or a DPA response. MPCA has now insisted on admitting documents that are "similar" to exhibits already in evidence. MPCA

February 12, 2020

Page 2

does not explain the relevance of some other document that is “similar” to an exhibit in this proceeding. Further, no party included WATER_0040784-893 on its exhibit list.¹

At the end of the day, MPCA is attempting to admit a document not before the Court, long after the time a witness could explain to the Court the content and context of the document or how it is or is not similar to what is in the Administrative Record. The time to introduce documents is over. MPCA’s request should be denied.

On the basis of the foregoing, Relators respectfully request that the Court deny MPCA’s request to add new exhibits to the transfer hearing record at this late date.

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¹ Because MPCA is attempting to admit a document that was not on their exhibit list, it must demonstrate that “good cause existed for failing to disclose the exhibit” as of the December deadline to identify exhibits. (Am. Order Setting Evid. Hr’g ¶ 7 (Nov. 19, 2019).) The Administrative Record, gaps and all, preexisted this transfer hearing. MPCA could have, but did not, mark WATER_0040784-893 as an exhibit or exhibits in December 2019. Now it offers no explanation for why “good cause existed [in December 2019] for failing to disclose the exhibit.” MPCA’s request should be denied for failing to satisfy the Court’s prior order regarding identifying exhibits.

February 12, 2020

Page 3

Respectfully submitted,

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cc: Counsel of Record (via Odyssey)