

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

Center for Biological Diversity, Friends of the
Boundary Waters Wilderness, Minnesota
Center for Environmental Advocacy,
WaterLegacy, and Fond du Lac Band of Lake
Superior Chippewa,

Court File No. 62-CV-19-4626
Judge John H. Guthmann

**NOTICE OF MOTION AND MOTION
FOR SCHEDULING ORDER**

Plaintiffs,

vs.

Minnesota Pollution Control Agency and
PolyMet Mining, Inc.,

Defendants.

TO: Minnesota Pollution Control Agency and its attorneys Sarah Koniewicz, Holland & Hart LLP, 1800 Broadway, Suite 300, Boulder, CO 80302, and Richard Schwartz, Crowell & Moring LLP, 1001 Pennsylvania Avenue, NW, Washington, D.C. 20004; and

PolyMet Mining, Inc. and its attorneys Monte A. Mills, Green Espel PLLP, 222 S. Ninth Street, Suite 2200, Minneapolis, MN 55402 and Jay C. Johnson, 600 Massachusetts Avenue, NW, Washington, D.C. 20001.

Plaintiffs Center for Biological Diversity, Friends of the Boundary Waters Wilderness, Minnesota Center for Environmental Advocacy, WaterLegacy, and Fond du Lac Band of Lake Superior Chippewa (“Band”) (collectively “Plaintiffs”) hereby move the Court for a Scheduling Order that includes pre-hearing discovery and a date certain for an evidentiary hearing.

The basis for this Motion is the Transfer Order issued by the Minnesota Court of Appeals on June 25, 2019, and Minn. Stat. § 14.68. As noted in the attached Memorandum in Support of Motion for Scheduling Order, a record must be developed to allow this Court to engage in fact-finding. There is substantial undisputed evidence that the Defendant Minnesota Pollution Control

Agency (“MPCA”) engaged in procedural irregularities in issuing the National Pollutant Discharge Elimination System/State Disposal System Permit (“NPDES Permit”) to Defendant PolyMet Mining, Inc. (“PolyMet”) for the NorthMet copper-nickel mine project (“Project”). Pre-hearing discovery of extra-record materials is necessary to allow the Court to determine whether there is evidence of unlawful procedure sufficient to require the Court to make findings of fact and conclusions of law determining the nature and extent of irregular and unlawful procedures affecting Defendant MPCA’s NPDES Permit to Defendant PolyMet and that MPCA’s issuance of the NPDES Permit was in excess of MPCA’s statutory authority, procedurally unlawful, affected by legal error, unsupported by substantial evidence, and arbitrary and capricious under the Minnesota Administrative Procedures Act (“MAPA”), Minn. Stat. § 14.69.

In support of this Motion, a proposed Scheduling Order is attached.

WHEREFORE, Plaintiffs hereby move the Court to approve the proposed Scheduling Order as set forth above.

Dated: August 1, 2019

**MINNESOTA CENTER FOR
ENVIRONMENTAL ADVOCACY**

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ACKNOWLEDGEMENT

Plaintiffs, by their attorneys, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211 (2018).

Dated: August 1, 2019

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