

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

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.

**ORDER GRANTING IN PART
AND DENYING IN PART
RELATORS' MOTION TO
AMEND EXHIBIT LIST**

On December 27, 2019, relators moved to amend their exhibit list. MPCA and PolyMet filed responses objecting to the motion. Relators filed a reply. The court considered the motion on the written record without a hearing. Based on its consideration of the motion and all submissions, the court issues the following:

ORDER

1. Relators' Motion to Amend Relators' Exhibit List is **GRANTED in part and DENIED in part** in accordance with the following paragraphs.

2. With regard to the motion to amend relators' exhibit list to add documents requested from the EPA and MPCA over thirty days prior to December 16, 2019 and received after December 16, 2019, the court finds good cause to amend and the motion is GRANTED. The following exhibits are added to relators exhibit list:

Proposed Exhibit No.

Bates No.

Relators Ex. 764
Relators Ex. 765

RELATORS_0065950-0065951
RELATORS_0065952-0065954

Relators Ex. 766	RELATORS_0065955
Relators Ex. 767	RELATORS_0065956-0065960
Relators Ex. 768	RELATORS_0065961-0065980
Relators Ex. 769	RELATORS_0065981-0065988
Relators Ex. 770	RELATORS_0065989-0065992
Relators Ex. 771	RELATORS_0065993-0066002
Relators Ex. 772	RELATORS_0066003
Relators Ex. 773	RELATORS_0066004-0066008
Relators Ex. 774	RELATORS_0066009
Relators Ex. 775	RELATORS_0066010
Relators Ex. 776	RELATORS_0066011

3. The court does not find good cause to amend relators' exhibit list to include additional documents that were "inadvertently" left off of the filed list. Thus, the motion is DENIED as to the following documents:

<u>Proposed Exhibit No.</u>	<u>Bates No.</u>
Relators Ex. 761	RELATORS_0064227
Relators Ex. 762	RELATORS_0064228
Relators Ex. 763	RELATORS_0064181-0064185

4. The following memorandum shall be a part of this order.

Dated: January 17, 2020

BY THE COURT:

John H. Guthmann
Judge of District Court

MEMORANDUM

When the deadline for identifying hearing exhibits was set, realtors advised the court of pending requests for federal documents under the Freedom of information Act. On the record of the discovery conference, the court advised the parties that the court would consider permitting the admission of exhibits following the deadline for filing exhibits lists upon a showing of good cause.

To meet the good-cause requirement, the court expected relators to demonstrate that the request for documents from governmental agencies was timely, relators had no control over the documents, and relators received the document for the first time following the December 16, 2019 Exhibit List deadline. (Dec. 6, 2019 Disc. Conf. at 36.). The court's statement was guided by the fact that the parties are involved in an expedited hearing process, the goal is to arrive at the truth, the production of meeting notes to which MPCA was a party does not prejudice the MPCA, there is no other source of the EPA's contemporaneous notes of the meetings at issue, and relators have no control over the documents or the timing of the release of the documents. An allowance for post-deadline exhibits meeting a good-cause threshold was also memorialized in the court's amended order setting the hearing. *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*, File No. 62-CV-19-4626, ¶ 7 (Minn. Dist. Ct. Nov. 19, 2019) (amended order setting hearing).

The MPCA responded to the November 14, 2019 DPA request by the Minnesota Center for Environmental Advocacy (MCEA) on December 17, 2019. The MPCA had both control over the documents and the timing of its response. Relators request was made before the court set an exhibit deadline. It would be unfair to permit the MPCA to benefit from its decision to hold the documents until the day after the deadline.

An even stronger case of good cause exists for the EPA documents. FOIA request EPA-R5-2019-006658 was made before the Court of Appeals referral to this court. The request was denied and an appeal ensued. The appeal was successful and the EPA produced the documents on December 23, 2019. The documents at issue include EPA staff notes of telephone conferences

with MPCA regarding the subject permit. The documents are highly probative and there is no prejudice to the MPCA, as the agency participated in the meetings.

Relators made a similar request for meeting notes on November 15, 2019. EPA-R5-2020-001126. The EPA provided relators with a favorable disposition decision on December 27, 2019, the documents were downloaded and provided to all parties on December 29, 2019. (Dec. 31, 2019 Maccabee Decl. ¶¶ 4-6.) The court finds that relators met the court’s good-cause guidelines.

The documents identified in the motion as “inadvertently” omitted from the exhibit list must be distinguished. Relators made no showing of good cause. The court did not provide for “rebuttal” exhibit lists. The parties had an obligation to list any document that supported their legal position by the December 16, 2019 deadline. The fact that the documents were already provided in discovery does not establish good cause. If prior disclosure was the only threshold for showing good cause, the court might as well not fix an exhibit disclosure deadline. Infinitely more documents were exchanged between the parties than those that wound up on the exhibit lists. The motion to add “inadvertently” omitted documents to the exhibit list is denied.

J H G