

STATE OF MINNESOTA
IN COURT OF APPEALS

*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 and
Babbitt Minnesota*

**DECLARATION OF
STEPHANIE HANDELAND**

Appellate Case Nos.
A19-0112
A19-0118
A19-0124

I, STEPHANIE HANDELAND, in accordance with section 358.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

Background

1. My job title is Environmental Specialist 4, Permit Writer, for the Minnesota Pollution Control Agency (“MPCA”). I have been employed by MPCA since May 1995.
2. My job responsibilities have included developing and drafting National Pollutant Discharge Elimination System/State Disposal System Permit No. MN0071013 (“Water Permit”) for the Poly Met NorthMet Mine project.
3. I was involved in developing the Water Permit from the beginning of preliminary discussions in 2015 until issuance on December 20, 2018. I also participated in regular meetings and conference calls with EPA during the development of the Water Permit, including the April 5, 2018, telephone call with EPA referenced in WaterLegacy’s May 17, 2019, Motion for Transfer to the District Court or, in the Alternative, for Stay Due

to Irregular Procedures and Missing Documents (“Motion”) and in its June 7, 2019, Reply in support of the Motion.

4. I submit this Declaration to the Court based on my personal knowledge and in support of MPCA’s Sur-reply to WaterLegacy’s Motion.

Factual Issues Raised in WaterLegacy’s Reply

5. In its Reply, WaterLegacy raises several questions it alleges require transfer to the district court for additional fact finding. *See* WaterLegacy Reply, at 19–20. I have first-hand knowledge of the answers to some of the questions WaterLegacy raises.

6. WaterLegacy asks what actions MPCA took to prevent EPA from submitting written comments on the Poly Met Permit in March 2018. *See id.* ¶ 1. I worked on developing the Poly Met Permit throughout the entire permit-development process and had regular conversations with other members of the MPCA staff and management. I also participated in twice-monthly conference calls with EPA from August 2016 until August 2017, and thereafter in periodic calls and meetings with EPA. I have no knowledge of any efforts by MPCA to influence whether EPA would submit comments in written form to MPCA. I have no knowledge of any alleged telephone call between MPCA Commissioner John Linc Stine and EPA Regional Administrator Cathy Stepp about complaints with EPA’s draft written comments.

7. WaterLegacy asks whether the “purpose of these actions” was “to prevent the creation of a written record disclosing EPA’s criticism” of the Poly Met Permit. *See id.* ¶ 2. First, to my knowledge, MPCA did not take any “actions” to suppress EPA’s written comments. It is in EPA’s discretion whether to submit written comments. MPCA never

had any intention of concealing that EPA had concerns with the Poly Met Permit. I was involved in conversations with EPA throughout the permit-development process. Any time that MPCA took substantive notes on the twice-monthly calls or meetings with EPA, those notes are included in the administrative record. The issues that EPA raised on the April 5, 2018, call overlapped nearly entirely with those of other stakeholders who did submit written comments. MPCA's responses to stakeholders' written comments thus responded to the substantive concerns that EPA had with the January 2018 version of the draft Poly Met Permit. Both the concerns and MPCA's responses are included in the administrative record.

8. WaterLegacy asks about the content of the comments EPA read over the phone on the April 5, 2018, conference call. *See id.* ¶ 3. As I stated in my previous declaration in support of MPCA's Response, there was nothing new or surprising in EPA's comments, all of which had been discussed in previous meetings or conference calls, except for one small concern about domestic wastewater, which MPCA summarized and addressed in the fact sheet. In short, on the call, EPA just restated the major concerns it had with the January 2018 version of the draft Poly Met Permit. EPA had previously raised those same concerns with MPCA. In addition, EPA's comments overlapped with other stakeholders' comments, so in summarizing and responding to all of the other stakeholders who actually submitted written comments, MPCA was summarizing and responding to EPA's substantive comments as well.

9. WaterLegacy asks what happened to the notes from the April 5, 2018, conference call "created by MPCA attorney Mike Schmidt and the unnamed member of

MPCA's water permitting team." *Id.* ¶ 4. I have no first-hand knowledge of what happened to Mike Schmidt's notes. I am, however, the "unnamed member of MPCA's water permitting team." *See id.* I expected the April 5, 2018, call to be similar to all of the other calls and meetings we had with EPA—conversational and deliberative. But it was clear from the beginning of the call that EPA was reading from a document. I did not know whether the document was a formal comment letter, a draft, or some other format. But EPA read from the document, and we listened.

10. EPA read the document very rapidly. For the first one or two minutes, I attempted to take notes on what EPA was saying, but because EPA was reading so quickly, I could not keep up accurate notetaking. I noticed that Mike Schmidt was also taking notes, so I stopped. I discarded the notes (recycled the paper) right after the call because my brief note taking was worthless. No one directed me to discard my brief notes. I did so on my own because the notes had no value. I discarded them directly after the call. I did not initially retain the notes and then discard them after WaterLegacy filed its subsequent Data Practices Act request.

11. WaterLegacy asks whether there are other notes of phone conversations or meetings with EPA that MPCA created but did not retain. *See id.* ¶ 6. I am not aware of any other notes that are not included in the administrative record for this appeal. The administrative record has many sets of notes, including my notes from the September 2018 two-day, in-person meeting with EPA. No one directed me to destroy or otherwise conceal any notes, and all of the substantive notes I took during the permit-development process are included in the administrative record.

12. WaterLegacy asks whether MPCA staff were directed at any time not to create or retain notes of telephone conversations or meetings with EPA. *See id.* at 20, ¶ 7. At no time was I ever directed or encouraged to not take notes or to destroy any notes that I did take.

13. WaterLegacy asks whether MPCA at any time after November 3, 2016, received any letters or emails from EPA memorializing conversations or meetings and describing the resolution of EPA's concerns or the failure to resolve EPA's concerns. *See id.* ¶ 8. The only written confirmation that we received was a response that EPA had reviewed Poly Met's permit application. We never received anything else in writing from EPA about resolution of its concerns throughout the entire permit-development process. The only other written communications we received from EPA (in addition to those already in the administrative record) were routine communications scheduling calls or meetings. We would send documents to EPA in advance of our twice-monthly calls so EPA could use them to prepare for discussions, but EPA never responded in writing. In fact, if EPA raised concerns on a conference call about something in the Poly Met Permit, I would sometimes ask EPA staff to please provide examples of solutions in other permits that we could use to get model language, but they never followed up by sending us that information.

14. Jeffrey Fowley's declaration states, "In my experience, if the EPA had agreed that all issues were resolved, it would have sent MPCA an email or letter confirming such a key fact." Fowley Decl. ¶ 17. In my experience, only once did EPA send a letter stating that all issues with a permit had been resolved to its satisfaction, and only then because I


personally requested the letter. In my experience it is not common practice for EPA Region 5 to send those types of communications.

15. WaterLegacy asks whether MPCA received a letter from EPA stating that any deficiencies in Poly Met's permit application had been cured and that the application was complete. *See id.* ¶ 9. To my knowledge, we did not receive any EPA correspondence subsequent to the November 3, 2016 letter from EPA (WL Motion Exh. H, page 19) stating that Poly Met's permit application was complete.

16. WaterLegacy asks whether MPCA discussed internally what its obligations were with respect to responding to EPA's oral comments from the April 5, 2018, conference call. *See id.* ¶ 10. I do not recall any internal conversations about how to address EPA's oral comments. Because EPA's comments were not written, we did not think to identify them separately in our responses to comments. We knew we had addressed the substance of EPA's comments in the responses-to-comments document because (except for EPA's comment about domestic wastewater) EPA's comments fully overlapped with other stakeholders' written comments, so we knew that when we responded in writing to those written comments, we would also have responded in writing to EPA's oral comments.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: June 12, 2019
Ramsey County
St. Paul, Minnesota


Stephanie Handeland
Environmental Specialist 4, Permit Writer
Minnesota Pollution Control Agency