

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

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

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

**DECLARATION OF
PAULA G. MACCABEE**

State of Minnesota)
) ss.
County of Ramsey)

I, Paula G. Maccabee, hereby declare as follows:

1. I am an attorney licensed in Minnesota. I represent WaterLegacy in the above-captioned matter, the transfer proceedings ordered by the Minnesota Court of Appeals to determine alleged procedural irregularities in the Minnesota Pollution Control Agency's ("MPCA") issuance of a National Pollutant Discharge Elimination System ("NPDES") permit to Poly Met Mining Inc. ("PolyMet") for the Proposed NorthMet Project.

2. I contacted Kevin Pierard in mid-August 2019, shortly after he retired from the United States Environmental Protection Agency ("EPA").

3. At that time, and in several conversations since, Mr. Pierard stated that he would be willing to come to Minnesota to testify at the evidentiary hearing regarding the PolyMet NPDES permit issued by the MPCA and related matters.

4. On November 25, 2019, Mr. Pierard informed me that he had come to fear that if he were to testify in these proceedings regarding the PolyMet NPDES permit issuance he would be at risk of retribution and civil or criminal prosecution under the Ethics in Government Act.

5. Mr. Pierard was the EPA Region 5 NPDES permit branch chief responsible for review of the PolyMet NPDES permit. He has direct knowledge of critical facts supporting Relators' claims of procedural irregularities. Mr. Pierard was actively engaged in the calls and meetings between MPCA and EPA throughout the PolyMet permitting process. He told MPCA in March 2018 that EPA intended to submit written comments on the draft PolyMet NPDES permit; heard at least one discussion where MPCA asked EPA not to send EPA's written comments on the draft permit; read EPA's written comments aloud to MPCA staff on April 5, 2018; participated in meetings with MPCA and PolyMet in September 2018; and worked with his staff to summarize permit issues that were resolved or remained unresolved at the time the final PolyMet NPDES permit was issued. Mr. Pierard also has decades of experience in EPA Region 5 reviewing and approving NPDES permits issued by MPCA and has unique expertise to provide insight as to whether procedures in the PolyMet NPDES permit process were regular or irregular.

6. On information and belief and after extensive investigation, Mr. Pierard is the only witness with actual knowledge of the PolyMet NPDES permit process or expertise regarding recent Region 5 oversight of NPDES permit issuance by MPCA who has retired from EPA.

7. Although WaterLegacy and other Relators in this case made a *Touhy* request on September 9, 2019 that EPA permit current employee Krista McKim to testify in this matter, EPA has provided no response at all in writing and EPA counsel informed me over the phone that it is highly unlikely that EPA would grant a request to permit any current employee to testify.

8. Based on the investigations I've conducted on behalf of WaterLegacy for nearly two years and all the files, documents and records produced by EPA and MPCA to date, I strongly believe that Mr. Pierard's testimony is essential to prove alleged procedural irregularities in

MPCA's issuance of the PolyMet NPDES permit. WaterLegacy would be severely prejudiced if Mr. Pierard is unable to testify in these transfer proceedings.

9. Based on conversations with Mr. Pierard, I firmly believe that the Court's order to compel Mr. Pierard's testimony would protect him from retaliation and enable Mr. Pierard to provide the testimony that is so vital to these proceedings.

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

Dated: December 4, 2019

/s/ Paula G. Maccabee
PAULA G. MACCABEE