

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

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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 ELISE L. LARSON  
IN SUPPORT OF INFORMAL MOTION  
TO AMEND RELATORS' EXHIBIT LIST**

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State of Minnesota     )  
  ) ss.  
County of Ramsey     )

I, Elise L. Larson, hereby declare as follows:

1. I am an attorney licensed in Minnesota and am employed by Minnesota Center for Environmental Advocacy (“MCEA”) as a Staff Attorney.

2. In the above-captioned matter, I represent Relators MCEA, Friends of the Boundary Waters Wilderness, and Center for Biological Diversity.

3. MCEA, Friends of the Boundary Waters Wilderness, Center for Biological Diversity, WaterLegacy and the Fond du Lac Band of Lake Superior Chippewa (collectively, “Relators”) are the Relators in the above-captioned matter.

4. During discovery in the above-captioned matter, Relators learned that Respondent Minnesota Pollution Control Agency (“MPCA”) had destroyed certain documents and that the timing for a litigation hold may be relevant to determining the procedural irregularities at issue.

5. During a November 11, 2019 Meet and Confer, Relators asked MPCA's counsel to provide information regarding the litigation hold. MPCA's counsel indicated he did not have the information.

6. Finding no other route to discovering the information, MCEA's paralegal Eric Lindberg submitted a Minnesota Government Data Practices Act Request ("DPA) to MPCA on November 14, 2019. A true and correct copy of MCEA's DPA request, as provided by MPCA on December 17, 2019, is attached as **Exhibit A**.

7. MCEA's DPA request stated:

I request, pursuant to the MGDPA, Minn. Stat. s. 13.03 that the Department make available the following: any and all litigation hold notices and subsequent documents (e.g. litigation hold letters, notices, emails, memoranda, and acknowledgment of litigation hold letters, notices, emails, memoranda by MPCA staff, etc.) related to the PolyMet Northmet project, and, in particular, all litigation holds and subsequent documents related to the PolyMet NPDES Permit MN0071013.

8. As the Court's December 16, 2019 Exhibit List deadline approached, MCEA had not received a response to MCEA's DPA request.

9. Relators supplemented their discovery with MCEA's DPA request and included MCEA's DPA request on Relators' Exhibit List on December 16, 2019. MCEA's DPA request can be found at Relators' Exhibit 760.

10. On December 17, 2019 at 9:39 a.m., MPCA responded to MCEA's DPA request. MPCA's email stated: "The above is what we have in response to your request." The response included a forwarded email from June 26, 2019 from Adonis Neblett to MPCA Staff. A true and correct copy of the correspondence responding to MCEA's DPA request is attached as **Exhibit B**.

11. MPCA also attached two PDF files. The first, the true and correct copy of MPCA's DPA request provided as **Exhibit A**. The second, a form dated November 27, 2019 indicating a

litigation hold needed to be placed on data from Rebecca Flood, Ann Foss, Shannon Lotthammer, and John L. Stine. A true and correct copy of that form is attached as **Exhibit C**.

12. After receiving the documents less than 24 hours after the Exhibit List deadline, Relators discussed making a motion to amend Relators' Exhibit List after a good faith showing that such documents could not have been included in Relators' Exhibit List submitted on December 16, 2019. Relators submit their motion less than two weeks after receiving the documents under the DPA, including holidays.

13. Relators would be prejudiced if **Exhibit A, Exhibit B, and Exhibit C** were not allowed as exhibits at hearing. These exhibits provide the only documentary evidence for when MPCA placed a litigation hold on information related to the above-captioned matter. Such evidence has become extremely relevant to Relators' irregular procedure claims.

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

Dated: 12/27/2019

/s/ Elise Larson  
ELISE LARSON



520 Lafayette Road North  
St. Paul, MN 55155-4194

# Information request form

## Records Management

Doc Type: Information Request Form

**Prior to submitting this form, please verify** that the information you are requesting is not already available through the following Minnesota Pollution Control Agency (MPCA) online link: <https://www.pca.state.mn.us/environmental-data>.

**Use this form with Internet Explorer Web browser or Adobe Acrobat Reader** to request information from the MPCA. If you have questions, please contact the MPCA Records Management Intake/Triage staff at [recordsmanagementintaketriage.pca@state.mn.us](mailto:recordsmanagementintaketriage.pca@state.mn.us) or call 651-757-2728 or 1-844-828-0942.

1. Please fill out **one form for each Information Request**. Up to 10 requests processed per day, per requestor.
2. To ensure you are using the most updated request form, please go to the MPCA website for every new request.
3. You will receive an email response with the name of your file manager once your request is assigned, and then again when it is completed.

### Requester information

(If a requester chooses not to give any identifying information, the MPCA will provide him/her with contact information so that he/she will be able to check on the status of his/her request. However, if the agency file manager handling the request has questions about it but is unable to contact the requester for clarification, this may result in a delay in processing the request.)

Date: 11/14/2019

\*Requester name: Eric Lindberg

\*Phone number: (651) 287-4868

\*Requester email address: [elindberg@mncenter.org](mailto:elindberg@mncenter.org)

\*Organization name: Minnesota Center for Environmental Advocacy

\*Organization or requester billing address: 1919 University Ave W #515, St Paul, MN 55104  
(Address, Street, City, State, Zip)

### Site/Facility information

(If you are requesting information about a specific site or facility, all the fields marked with an asterisk(\*) are required to be filled in before the form will submit. If no site/facility is associated with this request, then you may enter N/A. Please note that failure to include required information will delay your request and may increase your cost.)

\*Site/Facility name: NorthMet Project

Previous site/  
facility name: N/A

\*Site address/location: 6500 County Road 666

\*City: Hoyt Lakes

\*Zip code: 55750

\*County: St. Louis

Program(s): Water Quality

Agency Interest ID number: 226251 (Must also select one area of interest below)

\*MPCA Preferred ID or Site ID from WIMN (e.g., leak #, permit #, haz waste #): MN0071013

Current public notice item:  Yes  No

### \*Area of interest (check one box only per request form)

- |  |   |   |  |
|--|---|---|--|
| <input type="checkbox"/> Air quality     | <input type="checkbox"/> Rules, Standards | <input type="checkbox"/> Feedlots             | <input type="checkbox"/> Unpermitted Landfill                      |
| <input type="checkbox"/> Closed Landfill | <input type="checkbox"/> Site Assessment  | <input type="checkbox"/> Hazardous waste      | <input type="checkbox"/> Voluntary Investigation and Cleanup (VIC) |
| <input type="checkbox"/> Contracts       | <input type="checkbox"/> Solid Waste      | <input type="checkbox"/> Leaks, tanks, spills | <input type="checkbox"/> Wastewater                                |
| <input type="checkbox"/> Superfund       | <input type="checkbox"/> SSTS             | <input type="checkbox"/> Stormwater           | <input checked="" type="checkbox"/> Water Quality                  |

### Information requested - Describe the information that you need (be as specific as you can):

I request, pursuant to the MGDPA, Minn. Stat. s. 13.03 that the Department make available the following: any and all litigation hold notices and subsequent documents (e.g. litigation hold letters, notices, emails, memoranda, and acknowledgment of litigation hold letters, notices, emails, memoranda by MPCA staff, etc.) related to the PolyMet Northmet project, and, in particular, all litigation holds and subsequent documents related to the PolyMet NPDES Permit MN0071013.

If this request or any part of it is denied, please provide the specific authority for such a denial as required by Minn. Stat s. 13.03, subd. 3(f). I am requesting access to these documents as they are kept by the Department and will determine after such review which, if any, I would like copied. If some of the documents are only kept electronically (e.g., emails), I am willing to review the electronic versions.

**Yes - I acknowledge and agree by submitting this Information request form that I may be subject to costs as per the current costs schedule.** (The costs schedule can be found on the Estimate for copy services form. This form can be found on the MPCA Information Requests website at <https://www.pca.state.mn.us/about-mpca/information-requests>.)  
I also agree to pay all costs within 30 days of the invoice date.

Submit

Reset



Eric Lindberg &lt;elindberg@mncenter.org&gt;

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**PolyMet Legal Hold notice request**

1 message

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**Richards, Leonard (MPCA)** <leonard.richards@state.mn.us>  
To: Eric Lindberg <elindberg@mncenter.org>

Tue, Dec 17, 2019 at 9:39 AM

Hi Eric,

The above is what we have in response to your request.

Sincerely,

Lenny Richards

Minnesota Pollution Control Agency (MPCA)

520 Lafayette Road | St Paul, MN | 55155

Voice (651) 757-2667

[leonard.richards@state.mn.us](mailto:leonard.richards@state.mn.us)*Our mission is to protect and improve the environment and human health.*

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

----- Forwarded message -----

From: "Neblett, Adonis (MPCA)" &lt;adonis.neblett@state.mn.us&gt;

To: "#MPCA\_All Staff-MPCA Only" &lt;AllStaff-MPCAOnly.MPCA@state.mn.us&gt;

Cc: "Courneya, Celeste (MPCA)" &lt;celeste.courneya@state.mn.us&gt;, "Malec, Chris (MPCA)" &lt;chris.malec@state.mn.us&gt;, "Fredrickson, Leslie (MPCA)" &lt;leslie.fredrickson@state.mn.us&gt;, "Neblett, Adonis (MPCA)" &lt;adonis.neblett@state.mn.us&gt;

Bcc:

Date: Wed, 26 Jun 2019 01:03:50 +0000

Subject: Poly Met Mining, Inc.-- Legal Hold

Legal Hold  
Poly Met Mining, Inc.

RELATORS\_0065952

All staff:

The Office of Legislative Audits has informed Commissioner Bishop that it is initiating a review to examine concerns related to the approval of the NPDES permit issued to Poly Met Mining, Inc. ("PolyMet") for its NorthMet Project. The MPCA has also received a number of data requests seeking data related to the NPDES permit for the NorthMet Project. In order to properly assist with the review and respond to these data requests, all MPCA employees must immediately preserve all agency data associated with the NPDES permit for PolyMet's NorthMet Project. This hold encompasses all data from any agency program that are related to the company's NPDES permit and to the property located at 6500 County Road 666 in Hoyt Lakes, Minnesota 55750 (with Tempo agency interest identification number 213111).

The preservation of data includes all documentation existing in both paper and electronic form. This includes: calendar entries, databases, e-mails/attachments, facsimiles, letters, maps, memoranda, meeting minutes, photographs, reports, spreadsheets, telephone logs, voice mails, work processing documents, etc., whether stored on a C-drive, D-drive, H-drive, X-drive, camera, cell phone, compact disc, digital versatile, laptop, microfiche, microfilm, mobile storage devices, OnBase, Outlook, slide, video tape, voice mail, etc.

Staff members must not delete any related data from this moment forward. Data should be preserved in their existing state. If you are in doubt as to whether certain data should be preserved, retain these data.

It is not necessary to print copies of data that are stored electronically, but it is necessary to preserve such data.

If you have deleted PolyMet-related e-mails within the last 30 days, you must recover them. If these e-mails are still contained in your "Deleted Items" folder, retrieve them and place them back in your "Inbox" or in a folder within your "Inbox" that you create to hold PolyMet-related e-mails. If your "Deleted Items" folder is empty, you must recover your deleted e-mails and retrieve the ones related to the Poly Met Mining, Inc. legal hold. To do this, click on "Deleted Items" in your Microsoft Outlook account. Once in the "Deleted Items" folder, click on "Recover Deleted Items

from Server.” Doing this will recover the last thirty days of deleted e-mails. Retrieve the Poly Met Mining, Inc. legal hold-related e-mails and store them in your “Inbox” or in a folder within your “Inbox” that you create to hold these Poly Met Mining, Inc. legal hold-related e-mails.

If you know of staff members who have or are likely to have documents and data relevant to this matter, please provide their names to Chris Malec. Staff members who are identified will receive further information regarding how to manage the data related to this legal hold in a future communication.

If you have any questions or concerns regarding the preservation of these Poly Met Mining, Inc.-related data, please contact the agency’s Records Management supervisor, Celeste Courneya at 651-757-2197.

Thank you,

Adonis A. Neblett

General Counsel

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you

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**3 attachments**

 **PENDING-Information Request Form - 11-19-2019.pdf**  
104K

 **Poly Met Mining, Inc.-- Legal Hold.eml**  
16K

 **1440\_001.pdf**  
45K

**General Information**

**Request Status:** Completed (Successful)  
**ID:** REQ000001082841  
**Title:** Agency Data and Legal Request  
**Submit Date:** 11/27/2019 3:11:59 PM  
**Actual Completion Date:** 12/10/2019 12:03:06 PM  
**Requested By:** Adonis Neblett  
**Requested For:** Adonis Neblett  
**Company:** Pollution Control Agency  
**Phone:** 651 757-2791  
**Email:** adonis.neblett@state.mn.us

**Question Responses**

**What is the urgency of this request?:** Low

**Check all that apply**

:

- (A) E-mail Box:
- (B) Telecom (voicemail):
- (C) Telecom (call records):
- (D) Access to a drive:
- (E) Access to an e-mail box:
- (F) E-mail legal hold: Yes
- (G) Out of Office Message:
- (H) Other Electronic Legal Hold: Yes
- List what you would like preserved: computer drives
- (I) Investigation:
- (J) Ongoing Journaling:
- (K) Implement or Remove an E-mail Retention Policy:
- (L) International Travel Notification:
- (M) Mobile Device Records:
- (X) Request for something else: Yes

**Additional details that MNIT should know in order to process this request:** We need to get a legal hold in place for data contained in the outlook accounts, computer/hard-drives, and backups for the following 4 individuals: Rebecca Flood, Ann Foss, Shannon Lotthammer, and John L. Stine. There may not be data for one or more of these individuals in all data storage sources but if we have stored data for them we want to preserve that. Andre Champagne has knowledge of the nature of this hold request and the form of data storage.

**I authorize MNIT to provide the above requested data to a specific individual:**

*Once MNIT has provided the requested data to an authorized employee or the requested delegate of the requesting agency, the requesting agency assumes all responsibility for the data.*

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