

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

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

