

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 VANESSA L. RAY-
HODGE IN SUPPORT OF RELATORS'
RESPONSE TO MINNESOTA
POLLUTION CONTROL AGENCY AND
POLYMET MINING INC'S MOTIONS *IN
LIMINE* TO EXCLUDE CERTAIN
WITNESSES AND EVIDENCE BASED
ON RELEVANCE AND FOUNDATION**

I, Vanessa L. Ray-Hodge, hereby declare as follows:

1. I am an attorney licensed in New Mexico and am employed by Sonosky, Chambers, Sachse, Mielke & Brownell, LLP as an attorney. I make this declaration in support of Relators' Response to Respondents Minnesota Pollution Control Agency's and PolyMet Mining Inc's Motions in Limine to Exclude Certain Witnesses and Evidence Based on Relevance and Foundation. I have personal knowledge of the matters asserted herein. If called as a witness I could and would competently testify to the matters stated herein.

2. Attached as Attachment 1 is a true and correct copy of Letter to N. Leverett, Regional Counsel, U.S. Environmental Protection Agency, from P. Maccabee (Sept. 19, 2019) ("*Touhy* Request Ltr.").

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

Signed in Albuquerque, County of Bernalillo, State of New Mexico on January 10, 2020.

*s/Vanessa L. Ray-Hodge*_____

VANESSA L. RAY-HODGE

**Paula Goodman Maccabee, Esq.***Just Change Law Offices*

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September 19, 2019

SENT ELECTRONICALLY

Mr. Leverett Nelson (Nelson.levertt@EPA.gov)

Regional Counsel, U.S. EPA Region 5

77 West Jackson Blvd.

Chicago, IL 60604-3507

Re: *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-19-4262 (Minn. Dist. Ct., County of Ramsey, Second Judicial District)*

Dear Mr. Nelson:

This letter constitutes a request pursuant to 40 C.F.R. Part 2, Subpart C (“*Touhy*” regulations) for testimony of Krista McKim, Environmental Engineer, U.S. Environmental Protection Agency (“EPA”) in the above-referenced matter in a hearing to be scheduled in Minnesota District Court, County of Ramsey, Second Judicial District before Judge John H. Guthmann. The hearing date has not yet been set, but is anticipated within the next couple of months.

The underlying matter is a certiorari case transferred to the state district court pertaining to the issuance of a National Pollutant Discharge Elimination System/State Disposal System (“NPDES”) permit for the PolyMet NorthMet copper-nickel mine project. The relators in this case are several environmental groups and the Fond du Lac Band of Lake Superior Chippewa, and respondents are Minnesota Pollution Control Agency (“MPCA”) and PolyMet Mining, Inc. (PolyMet”).

The United States is not and will not be a party to this action.

The name, address and telephone numbers of counsel for all parties are provided in Attachment A to this letter.

The underlying certiorari cases challenge MPCA’s issuance of a NPDES permit to PolyMet under state law and Clean Water Act regulations applicable to the states. The case was transferred by the Minnesota Court of Appeals to the Ramsey County District Court on an order finding substantial evidence of irregularities in MPCA’s issuance of the NPDES permit for the PolyMet mine. Testimony sought from Krista McKim relates to interactions of MPCA with EPA and PolyMet during the PolyMet NPDES permitting process, including any efforts by MPCA to prevent, minimize, or defer written EPA comments on this permit, which was issued on terms

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inconsistent with EPA's comments and concerns.

Ms. McKim is a critical fact witness with extensive technical expertise with NPDES permitting and years of communications with MPCA regarding the development of the PolyMet NPDES permit. Documents secured under the Minnesota Government Data Practices Act demonstrate that Ms. McKim was present during critical phone meetings and in-person meeting with MPCA. Ms. McKim has also had extensive experience in oversight of other NPDES permits in the State of Minnesota and is uniquely familiar with the facts pertaining both to the PolyMet NPDES permitting process and the customary permitting processes for NPDES permits in Minnesota.

There is an exceptional need for Ms. McKim's testimony in this case to provide factual information as to the process followed for the PolyMet NPDES permit due to gaps in the administrative record and due to extra-record evidence affecting the permit decision. The Minnesota Court of Appeals has already determined that there is "substantial evidence of procedural irregularities not shown in the administrative record."¹ In addition, a second panel of the Minnesota Court of Appeals ordered a stay of the PolyMet NPDES permit, finding, "On the unique facts of this appeal, we conclude that staying the permit is warranted. A substantial issue has been raised as to the regularity of the MPCA's proceedings in granting the permit, and this court has ordered the exceptional remedy of a transfer to district court to hear and determine those irregularities."²

Production of Ms. McKim for testimony will be at no expense to the Government or to the witness, and travel expenses, lodging, meals, and similar reasonable expenses of the witness are and will be the responsibility of relators making the request. Relators agree to provide notice to the EPA determining authority of the time and date of testimony as soon as they have such information and to make every effort to provide a minimum of 10 days notice.

We understand that the United States reserves the right to have a representative at the hearing in this matter.

Please contact Paula Maccabee (651-646-8890) if you have any questions regarding this request. We look forward to your prompt response, since this matter may proceed on an accelerated schedule.

Sincerely yours,

¹ Order, *In re Denial of Contested Case Hearing Request 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*, A19-0112, A19-0118, A19-0124 (Minn. Ct. App. June 25, 2019) at 4.

² Order, *In re Denial of Contested Case Hearing Request 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*, A19-0112, A19-0118, A19-0124 (Minn. Ct. App. Aug. 6, 2019) at 3.

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ATTACHMENT A

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