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September 12, 2019

**VIA E-FILING and EMAIL**

The Honorable John H. Guthmann  
Ramsey County District Court  
15 W. Kellogg Blvd.  
St. Paul, MN 55102  
([2ndJudgeGuthmannChambers@courts.state.mn.us](mailto:2ndJudgeGuthmannChambers@courts.state.mn.us))

Re: Ramsey County District Court File No. 62-cv-19-4626

Dear Judge Guthmann:

Counsel for PolyMet respectfully submit this letter summarizing outstanding discovery issues. To resolve these issues, PolyMet seeks three things: (1) clear definition of Relators' alleged procedural irregularities, (2) reasonable limits on what PolyMet must produce, and (3) to discover what information Relators have about their alleged irregularities.

**Relators' Discovery Requests to PolyMet**

This Court recognized in its September 9 order that "[t]he scope of discovery is limited to information that relates to alleged procedural irregularities in the permitting process by the MPCA as alleged in briefing to the Minnesota Court of Appeals." At the August 7 hearing, Relators left the impression that their court of appeals briefs contained a neat list of those alleged irregularities. In fact, Relators' briefing does not specifically list the irregularities they allege, and the list they provided the Court does not accurately summarize their argument to the court of appeals.

Fortunately, the court of appeals itself summarized Relators' claims in its transfer order: "[WaterLegacy] moves to transfer this matter based on allegations that 'MPCA's Commissioner and political leaders at the United States Environmental Protection Agency (EPA) developed a plan to keep EPA criticism of the NorthMet permit out of the public record and the record for judicial review.'" Order at 3. The scope of discovery should be limited to those allegations.

Rather than focusing on the events surrounding the review of the "NorthMet permit"—a draft of which was first released in January 2018—Relators seek information dating back to 2010. Information from that long ago relates to the environmental review of PolyMet's project, not the NorthMet permit at issue in this certiorari proceeding. The outcome of that environmental review was a Final Environmental Impact Statement, which Relators did not challenge after MDNR deemed it adequate in March 2016. The public-comment period on the NorthMet permit occurred in 2018. Again, the draft NorthMet permit was released in January 2018.

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Relators' alleged procedural irregularity list also makes allegations about EPA's comments on PolyMet's 2016 permit application. But those allegations are moot. Relators ignore the fact that PolyMet submitted an updated permit application—which is in the administrative record (WATER\_0006375)—in October 2017. That 2017 application underpins the permit now at issue. PolyMet accordingly proposes that Relators' discovery of PolyMet be temporally limited to information and documents from January 1, 2018 (shortly before release of the draft "NorthMet permit") to December 20, 2018 (when final "NorthMet permit" issued).

Typically, this Court's September 9 order specifies that "[d]ocument requests directed to Polymet are limited to documents in Polymet's possession or control that the MPCA had in its possession or control at the time of MPCA's permitting decision." PolyMet will adhere to that limit. Relators' briefs to the court of appeals do not make any allegations against PolyMet. They should not be allowed to expand the scope of this proceeding to investigate PolyMet's activities.

Relators' discovery should not reach issues unrelated to MPCA's interactions with EPA. Nor should they have discovery into Clean Water Act merits questions like whether WQBELs were required. As the Court noted on August 7, this proceeding is not an investigation. Tr. 98. To the extent Relators are seeking documents unrelated to "a plan to keep EPA criticism of the NorthMet permit" out of the record, they are exceeding the scope of the court of appeals' transfer order. PolyMet specifically asks the Court to prohibit discovery into the new claims set out in Relators' alleged irregularities 18–21, which go beyond their court of appeals arguments.

PolyMet agreed, subject to its objections and reasonable temporal and topical limits, to produce everything it received from or gave to MPCA relating to MPCA–EPA procedures and interactions about the NorthMet permit. PolyMet objects to requests seeking wholly internal PolyMet information (RFP 2 and DWQ 1), fishing for material on the substantive merits (RFPs 10–11; DWQs 3, 5a, 5b, 6a, and 6b), or exploring irrelevant topics (DWQ 10a–c).

Finally, PolyMet and Relators disagree on how to interpret the Court's statements about "very limited written discovery." Tr. at 108. PolyMet understood the Court's instructions as intending written deposition questions to be answered in writing, consistent with the *Mampel* line of cases limiting "[i]nquiry of administrative executives [] to written query." *Ellingson & Assocs. v. Keefe*, 396 N.W.2d 694, 696 (Minn. Ct. App. 1986); see *In re Application of Lecy*, 304 N.W.2d 894, 900 (Minn. 1981) (limiting discovery to written questions and prohibiting depositions). Relators wish to have witnesses answer written questions orally in a deposition before a court reporter. While PolyMet believes that written discovery is more efficient, less burdensome, and what the Court intended, it will do whatever the Court instructs.

### **PolyMet's Discovery Requests to Relators**

At the August 7 hearing, this Court asked Relators to submit a list of "specific alleged irregularities." Tr. at 103. As PolyMet understood it, they were supposed to identify (1) a specific

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procedural requirement, (2) its legal underpinning, and (3) how MPCA may have violated it. Tr. at 95–96; *see also* Tr. at 24. None of Relators’ alleged irregularities included all these elements. Most of Relators’ alleged irregularities do not identify specific procedural requirements. Those that cite statutes or rules do so generically. It difficult to evaluate and contest Relators’ allegations without a clearer identification of the statutes and regulations that Relators believe have been violated.

PolyMet objected to Relators’ list of alleged irregularities, both by email on August 19 and in a formal document on August 28 (enclosed). Given the problems with Relators’ list of alleged irregularities, PolyMet’s discovery requests seek two things: First, more information on Relators’ alleged irregularities (DWQs 8–10) and second, information related to those allegations (RFPs 3–5; DWQs 1, 11–12). On the first point, Relators have argued that PolyMet’s questions would elicit protected attorney mental impressions, even though those questions are drawn almost verbatim from this Court’s statements. *Compare* PolyMet’s DWQs 8–10 *with* Tr. at 24, 95–96. A party’s legal allegations and the factual bases for the same are not privileged or confidential work product.

On the second topic, Relators believe that they need only produce documents they intend to introduce at the hearing, basically claiming that discovery is not designed to reach foundation and admissibility issues. Such one-sided discovery undermines the Court’s directive that the “parties be given due process,” Tr. at 59, and defeats the point of discovery. *Gebhard v. Niedzwiecki*, 122 N.W.2d 110, 111 (Minn. 1963) (explaining that the purpose of discovery is to “enable litigants to prepare for trial free from surprise.”). Relators are not entitled to conceal any exculpatory evidence. PolyMet must be able to discover and test the foundation, admissibility, authenticity, and credibility of Relators’ case.

Relators refused to expand the scope of their production, even when PolyMet offered to withdraw most of its deposition questions (DWQ Nos. 2–7) and allow Relators to redact all personally identifying information in documents they produce. All PolyMet asked in return was full production of all irregularity-related documents and a confidentiality log describing the factual and legal foundation for each redaction or withheld document. PolyMet requests that they be required to produce responsive documents under those conditions.

We appreciate the Court’s careful attention to these issues.

Very truly yours,



Monte A. Mills

Enclosure: PolyMet’s Objections

cc: All Counsel of Record

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
Case Type: Civil/Other Misc.  
Judge: John H. Guthmann

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

Case No. 62-CV-19-4626

**RESPONDENT  
POLY MET MINING, INC.'S  
OBJECTIONS TO RELATORS'  
REQUESTS FOR PRODUCTION AND  
WRITTEN DEPOSITION QUESTIONS**

Consistent with the Court's August 7, 2019 oral order (the "Order"), Respondent Poly Met Mining, Inc. ("PolyMet"), by its undersigned attorneys, object to Center for Biological Diversity, Friends of the Boundary Waters Wilderness, Minnesota Center for Environmental Advocacy, WaterLegacy, and the Fond du Lac Band of Lake Superior Chippewa's (collectively, "Relators") Alleged Procedural Irregularities ("APIs"), requests for production ("RFPs"), and written deposition questions ("DWQs") (collectively, the "Requests").

**ALLEGED PROCEDURAL IRREGULARITIES**

PolyMet objects to Relators' List of Alleged Procedural Irregularities ("APIs") as overly broad, vague, ambiguous, irrelevant, and beyond the scope of the Order. Relators' list fails to identify particular procedural requirements, statutory or

regulatory bases for each requirement, or how MPCA supposedly violated those statutes and rules. Relators' list of alleged procedural irregularities does not put MPCA, PolyMet, or the Court on notice as to the specific procedural requirements MPCA allegedly failed to follow. Moreover, Relators' list of alleged procedural irregularities fails to conform to, and exceeds the scope of, the list of alleged procedural irregularities Relators submitted to the court of appeals. PolyMet incorporates its objections to the APIs into its objections to the RFPs and DWQs.

**API No. 1:** MPCA sought to prevent and used irregular procedures to prevent creation of a record of United States Environmental Protection Agency ("EPA") concerns about NPDES Permit expectations, requirements, process, and conditions during NorthMet Project environmental review and throughout the NPDES Permit process.

**Objections to API No. 1:** PolyMet objects to this API as vague, ambiguous, and failing to identify the procedural requirement MPCA allegedly violated. The allegation that "MPCA sought to prevent and used irregular procedures to prevent creation of a record" is a legal conclusion, not a procedural irregularity. Relators do not identify a specific procedure MPCA had to follow, a statutory or regulatory source of that procedure, or how MPCA violated that procedure. PolyMet also objects to this API as irrelevant because only MPCA's actual conduct is at issue, not what MPCA "sought to" do.

**API No. 2:** MPCA and EPA departed from typical procedures in addressing the NPDES Permit, engaging in multiple telephone conferences and in-person meetings, some of which are not reflected in the administrative record.

**Objections to API No. 2:** PolyMet objects to this API as vague, ambiguous, and failing to identify the procedural requirement MPCA allegedly violated. The allegation that “MPCA and EPA departed from typical procedures in addressing the NPDES Permit” is a legal conclusion, not a procedural irregularity. Relators do not identify what statutory or regulatory rule set MPCA’s “typical procedures,” what those “typical procedures” are, the basis for claiming any “procedure” is “typical” if not required by law, or how MPCA failed to comply with those “typical procedures.” Relators also do not identify any statute or rule that prohibits telephonic or in-person meetings.

**API No. 3:** MPCA and EPA leadership acted in concert and used irregular and unusual procedures to prevent EPA staff from submitting written comments on the draft NPDES Permit, including, but not limited to: MPCA’s request that EPA not provide written comments, EPA leadership’s decision to withhold and conceal already prepared EPA written comments on the draft NPDES Permit from the public (“EPA Comments”), and EPA reading the EPA Comments to MPCA during an April 5, 2018 telephone call rather than submitting them in written form.

**Objections to API No. 3:** PolyMet objects to this API as vague, ambiguous, compound, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any statute or rule preventing MPCA from requesting oral comments from EPA or EPA from communicating orally with MPCA. Relators also fail to identify the basis for claiming any “procedure” was

“irregular and unusual” if not required by law, PolyMet further objects to Relators’ allegation as beyond the scope of the procedural irregularities identified in Relators’ court of appeals filings. Specifically, they never alleged that MPCA and EPA “acted in concert.” PolyMet also objects to this alleged procedural irregularity as compound because Relators combine several alleged irregularities.

**API No. 4:** MPCA improperly destroyed, discarded, and failed to retain portions of the written record of communications with EPA regarding the NPDES Permit, including, but not limited to, handwritten notes of the April 5, 2018 phone call where EPA staff read the EPA Comments over the phone to MPCA, and other records reflecting phone conferences, meetings, emails, and other communications with EPA pertaining to the NPDES Permit.

**Objections to API No. 4:** PolyMet objects to this API as vague, ambiguous, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any statute or rule requiring MPCA to retain every written record of communication with EPA. Further, Relators do not identify the legal basis of any such requirement or how MPCA did or did not comply with it. The allegation that MPCA acted “improperly” is a legal conclusion, not a procedural irregularity.

**API No. 5:** Despite Relators’ numerous pertinent requests under the Minnesota Government Data Practices Act (“MGDPA”), MPCA failed to produce public data reflecting communications between MPCA and EPA during NorthMet Project environmental review and the NPDES Permit process, including emails between MPCA and EPA, handwritten notes, and other documentation of pertinent meetings and phone conversations between MPCA and EPA.

**Objections to API No. 5:** PolyMet objects to this API as vague, ambiguous, irrelevant, and failing to identify the procedural requirement MPCA allegedly

violated. Relators identify no statute or rule requiring MPCA to produce the documents Relators allegedly requested. While Relators generically cite to the Minnesota Government Data Practices Act (“MGDPA”), they identify no specific procedure requiring release of the documents they contend are being withheld. Relators also do not explain how MPCA violated any procedural requirement. PolyMet further objects that the MGDPA is irrelevant and are beyond the scope of this proceeding because Relators did not bring this action under the MGDPA. If Relators are unsatisfied with MPCA’s response to their MGDPA requests, Relators can bring a MGDPA claim in the appropriate forum. This limited proceeding does not allow Relators to bring new claims and add factual allegations based on MPCA’s post-permitting conduct.

**API No. 6:** EPA wrote to MPCA citing deficiencies in the PolyMet NPDES Permit application in November 2016. Neither the administrative record nor MPCA’s MGDPA responses include a subsequent letter from EPA stating that deficiencies in the application were resolved, although such a letter is required for MPCA to proceed with an NPDES permit under the Memorandum of Agreement establishing MPCA’s delegated authority to issue NPDES permits.

**Objections to API No. 6:** PolyMet objects that this API fails to identify a statutory or regulatory basis for the alleged procedural irregularity. PolyMet further objects that the allegations are irrelevant and go beyond the scope of this proceeding. This proceeding centers on MPCA’s procedural duties related to the draft NPDES Permit public comment period in early 2018. Conduct two years prior about the

application is irrelevant and threatens to expand the scope of this limited proceeding. In 2016, the draft NPDES Permit did not exist yet.

**API No. 7:** Although EPA was highly involved with NorthMet Project environmental review and the NPDES Permit process, and communicated substantive expectations and concerns to MPCA regarding the NorthMet NPDES application and NPDES Permit, the NPDES Permit procedures and final NPDES Permit conditions are inconsistent with EPA expectations, concerns, and communications, including but not limited to those in EPA Comments.

**Objections to API No. 7:** PolyMet objects to this API as vague, ambiguous, irrelevant, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any statute or rule requiring MPCA or NPDES Permit “consistency” with EPA “expectations, concerns, and communications.” Relators further fail to describe any applicable EPA “expectations, concerns, and communications” or explain how MPCA failed to adhere to them. PolyMet finally objects to this API as beyond the scope of the procedural irregularities identified in Relators’ court of appeals briefing and this Court’s order, and beyond the scope of this Court’s jurisdiction, which does not extend to a review of the substance of the NPDES Permit.

**API No. 8:** MPCA responses to comments improperly failed to mention or respond to any EPA comments on the draft NPDES Permit and affirmatively conveyed the false impression that the NPDES Permit complied with all EPA’s comments and concerns.

**Objections to API No. 8:** PolyMet objects to this API as vague, ambiguous, compound, and failing to identify the procedural requirement MPCA allegedly

violated. Relators fail to identify any procedural requirement that MPCA “mention or respond” to all or any EPA comments and cite no statute or rule mandating the same. Relators also do not identify any statute or rule requiring that MPCA and the NPDES Permit “comply” with “all EPA’s comments and concerns.”

**API No. 9:** MPCA’s extra-record claims that MPCA and EPA had fundamentally agreed on NPDES Permit terms after a meeting between MPCA and EPA in September 2018 are highly disputed, undocumented in the administrative record, and such “resolution” without a written confirmation by EPA would be irregular.<sup>11</sup> The absence of an EPA objection blocking the final NPDES Permit does not signify that EPA concerns were resolved.

**Objections to API No. 9:** PolyMet objects to this API as vague, ambiguous, irrelevant, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any statute or rule requiring that MPCA and EPA “fundamentally agree” on the NPDES Permit’s terms or that MPCA “resolve” EPA’s concerns to EPA’s satisfaction. Nor do Relators explain how MPCA allegedly violated any procedural requirement. Finally, PolyMet objects that any “agree[ment]” between EPA and MPCA is irrelevant to whether MPCA engaged in procedural irregularities. The effect of any EPA comments is a merits question reserved for—and raised by Relators to—the court of appeals. Relators cannot reframe substantive questions as procedural questions.

**API No. 10:** MPCA's and EPA's procedures related to the NPDES Permit were irregular and did not follow customary EPA and MPCA practices in comparable NPDES permitting cases.

**Objections to API No. 10:** PolyMet objects to this API as vague, ambiguous, irrelevant, and failing to identify the procedural requirement MPCA allegedly violated. Relators identify no statute or rule requiring MPCA to follow "customary" practices, or even defining relevant MPCA or EPA "customary" practices. Relators also fail to explain how MPCA failed to comply with any "customary" practice. Relators' suggestion that MPCA and EPA acted differently in "comparable NPDES permitting cases" is vague, ambiguous, and irrelevant to whether MPCA complied with statutes or rules requiring certain procedures. PolyMet also objects to this API as irrelevant because EPA's practices and procedures are irrelevant to MPCA's actions and regulatory procedures.

**API No. 11:** MPCA's procedural irregularities undermine EPA oversight under the Clean Water Act ("CWA") and affect Relators' substantive claims that the NPDES Permit did not comply with MAPA and the CWA.

**Objections to API No. 11:** PolyMet objects to this API as vague, irrelevant, ambiguous, and failing to identify the procedural requirement MPCA allegedly violated. Relators' claims that MPCA's actions "undermine EPA oversight" and "affect Relators' substantive claims" are legal conclusions, not procedural irregularities, that attempt to import merits questions into this limited fact-finding

proceeding. Relators fail to identify a particular procedure, its legal basis, or how MPCA violated it.

**API No. 12:** MPCA failed to act with truthfulness, accuracy, disclosure, and candor in connection with the NPDES Permit.

**Objections to API No. 12:** PolyMet objects to this API as vague and failing to identify the procedural requirement MPCA allegedly violated. Relators fail to identify which statute, rule, or regulation requires MPCA to “act with truthfulness, accuracy, disclosure, and candor,” and how MPCA failed to comply with that requirement.

**API No. 13:** MPCA’s procedural irregularities conflict with MGDPA, Minn. Stat. ch. 13.

**Objections to API No. 13:** PolyMet objects to this API as vague, irrelevant, and failing to identify the procedural requirement MPCA allegedly violated. Relators’ general citation to Chapter 13 of the MGDPA, which includes over 100 distinct sections, does not identify any specific procedural requirement or explain how MPCA violated that unidentified requirement. PolyMet further objects to this API as vague because Relators claim some unidentified procedural irregularity “conflicts with” an unidentified section of the MGDPA. PolyMet further objects that this API is not a procedural irregularity at all, but instead, an attempt to bring a MGDPA claim into this MAPA proceeding.

**API No. 14:** MPCA's procedural irregularities conflict with the Official Records Act, Minn. Stat. ch. 15.

**Objections to API No. 14:** PolyMet objects to this API as vague, irrelevant, and failing to identify the procedural requirement MPCA allegedly violated. Relators' general citation to Chapter 15 of the Official Records Act ("ORA"), which includes over 100 individual sections, does not identify any specific procedural requirement or how MPCA violated that unidentified requirement. PolyMet also objects to this API as vague and ambiguous because Relators claim some unidentified procedural irregularity "conflicts" with an unidentified section of the ORA. PolyMet also objects to Relators' efforts to import an ORA claim into this MAPA proceeding.

**API No. 15:** MPCA's procedural irregularities conflict with 40 C.F.R. § 124.17, which requires states to provide publicly available responses to all significant comments on an NPDES permit application or draft NPDES permit.

**Objections to API No. 15:** PolyMet objects to this API as vague, ambiguous, and irrelevant. Though Relators cite a federal regulation, they do not explain whether and how the federal regulation is applicable to MPCA, a state agency, or how MPCA violated the regulation. PolyMet also objects that this API is irrelevant because a vague and unidentified "conflict" with a rule does not establish violation of that rule or its procedures.

**API No. 16:** MPCA's procedural irregularities conflict with its duty of candor established in Minn. R. 7000.0300 in issuing the NPDES Permit and these irregularities continued after the NPDES Permit was issued.

**Objections to API No. 16:** PolyMet objects to this API as vague, ambiguous, irrelevant, and beyond the scope of this proceeding. Relators do not explain what the duty of candor requires or how MPCA violated the duty. PolyMet also objects that this API is duplicative of API No. 12, which appears to track, but not cite, the language of Minn. R. 7000.0300. PolyMet further objects to this alleged procedural irregularity as vague and ambiguous because Relators allege some undefined procedural irregularities "conflict[s]" with Minn. R. 7000.0300. PolyMet also objects to allegations regarding MPCA's post-permitting conduct as beyond the scope of this proceeding.

**API No. 17:** MPCA's and EPA's irregular, improper, and unlawful procedures preventing the creation of a complete administrative record of EPA's comments and concerns regarding the NPDES Permit prejudiced Relators in their appeals from issuance of the NPDES Permit.

**Objections to API No. 17:** PolyMet objects to this API as vague, ambiguous, irrelevant, beyond the scope of this proceeding, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any controlling statutory or regulatory procedural requirement or describe how MPCA ran afoul of the requirement. PolyMet also objects to this API as vague and ambiguous because it is not clear whether the allegation flows from "preventing creation of a complete administrative record" or some "prejudice" to Relators, or if

instead the “prejudice” is the effect of some other, unidentified irregular procedure. Finally, PolyMet objects to this API as reaching conduct and questions beyond the scope of this proceeding. EPA’s actions or inactions are irrelevant to whether MPCA complied with MPCA’s procedural requirements. And Relators improperly ask the Court to reach the merits issues—e.g., whether Relators were prejudiced or MPCA acted unlawfully—that are committed to the court of appeals.

**API No. 18:** Upon information and belief, MPCA sought to withhold documents and communications from the administrative record, upon which documents and communications MPCA relied in its decision to issue the NPDES Permit, so that such documents and communications could not be fully and fairly reviewed by the Court of Appeals in the event of a challenge to the issuance of the NPDES Permit before the Court of Appeals.

**Objections to API No. 18:** PolyMet objects to this API as vague, ambiguous, beyond the scope of this proceeding, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any statute or rule requiring MPCA to place every document and communication into the administrative record or how MPCA failed to comply with that unidentified statute or rule. PolyMet also objects to this request as irrelevant, because only MPCA’s actual conduct is at issue, not what MPCA “sought to” do.

**API No. 19:** Upon information and belief, MPCA improperly based its decision to issue the NPDES Permit on communications and or documents exchanged between MPCA, PolyMet, and/or EPA and other irregular procedures, which are not reflected in the administrative record.

**Objections to API No. 19:** PolyMet objects to this API as vague, ambiguous, beyond the scope of this proceeding, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify any particular procedural requirement, its statutory or regulatory basis, or how MPCA failed to follow that requirement. PolyMet further objects to this API as vague and ambiguous because it is unclear whether this constitutes an independent procedural irregularity or is, instead, the effect of some “other irregular procedures.” PolyMet also objects that this API goes beyond the scope of this proceeding, which does not include merits questions like whether MPCA’s permitting decision was “improper.”

**API No. 20:** Critical documents are missing from the administrative record as a result of procedural irregularities, including but not limited to documents pertaining to alleged violations of the MGDPA, the Official Records Act, and CWA regulations.

**Objections to API No. 20:** PolyMet objects to this API as vague, ambiguous, beyond the scope of this proceeding, and failing to identify the procedural requirement MPCA allegedly violated. Relators identify no specific procedural requirement and no specific statutory section governing MPCA’s procedures. Relators further fail to identify how MPCA did or did not comply with a particular

procedure. PolyMet also objects to the term “critical document” as vague and unrelated to any rule or statute identified by Relators. Finally, PolyMet objects to this API as vague and ambiguous because it is unclear whether this API is an independent alleged procedural irregularity or merely the effect of a different alleged procedural irregularity.

**API No. 21:** Because MPCA used irregular procedures, additional information may be uncovered during transfer proceedings which disclose the nature of the NPDES Permit process, the content of documents not present in the administrative record, and the degree to which MPCA and EPA leadership went to prevent public and judicial scrutiny of the NPDES Permit.

**Objections to API No. 21:** PolyMet objects to this API as vague, ambiguous, beyond the scope of this proceeding, irrelevant, and failing to identify the procedural requirement MPCA allegedly violated. Relators do not identify a specific procedure, or a statute or regulation creating that procedure, and also fail to allege how MPCA failed to comply with that unidentified procedure. PolyMet also objects to this API as vague and ambiguous because it is unclear whether this API is an independent alleged procedural irregularity or the result of some other alleged procedural irregularity. PolyMet further objects that MPCA’s and EPA’s *motives* are irrelevant to whether a particular *procedure* was followed. Finally, PolyMet objects to this API as beyond the scope of this proceeding because it is a legal conclusion, not a procedural requirement.

## REQUESTS FOR PRODUCTION

PolyMet objects to Relators' Requests for Production as follows and will produce responsive, non-privileged documents, if any, within 30 days of the Court's resolution of these objections:

**RFP No. 1:** All documents identified in your responses to Relators' Deposition On Written Questions to Respondent Poly Met Mining, Inc. served herewith.

**Objections to RFP No. 1:** PolyMet objects to RFP No. 1 as overly broad, unduly burdensome, and seeking irrelevant, privileged, and confidential information. PolyMet incorporates its objections to Relators' DWQs here. PolyMet will produce the documents specifically identified in PolyMet's responses to the DWQs.

**RFP No. 2:** All documents regarding any document retention or destruction policy, guidelines, custom, or practice applicable to MPCA permitting matters which you had in place at any time from January 1, 2015 to present.

**Objections to RFP No. 2:** PolyMet objects to RFP No. 2 as unduly burdensome and seeking privileged, confidential, and irrelevant information. PolyMet's conduct is not the subject of this proceeding and the Order requires PolyMet to produce only those documents, communications, or other information that MPCA and PolyMet exchanged in limited circumstances. PolyMet will not produce internal documents, including privileged or confidential communications or corporate governance and policy documents.

**RFP No. 3:** All documents you received from the MPCA regarding the MPCA's permit review procedure applicable to the PolyMet NPDES Permit.

**Objections to RFP No. 3:** PolyMet objects to RFP No. 3 as overly broad, unduly burdensome, ambiguous, vague, and seeking documents already in the administrative record. In particular, the phrase "MPCA's permit review procedure" is vague, ambiguous, and undefined. PolyMet will interpret that phrase in light of the court-ordered limits on discovery. This proceeding focuses on alleged procedural irregularities. The Court directed that discovery from PolyMet must be "limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency," and "documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision."

Further, PolyMet objects to the unlimited temporal scope of RFP No. 3 as overbroad and unduly burdensome. Relators allege that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet also objects to RFP No. 3 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of

business and that would require extraordinary measures to collect, review, and produce, including “erased, fragmented or damaged data.” PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 4:** All documents you provided to the MPCA regarding the MPCA’s permit review procedure applicable to the PolyMet NPDES Permit.

**Objections to RFP No. 4:** PolyMet objects to RFP No. 4 as overly broad, unduly burdensome, ambiguous, vague, and seeking documents already in the administrative record. In particular, the phrase “MPCA’s permit review procedure” is vague, ambiguous, and undefined. PolyMet will interpret that phrase in light of the court-ordered limits on discovery. This proceeding focuses on alleged procedural irregularities. The Court directed that discovery from PolyMet must be “limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency,” and “documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision.”

Further, PolyMet objects to the unlimited temporal scope of RFP No. 4 as overbroad and unduly burdensome. Relators allege that MPCA engaged in

procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet also objects to RFP No. 4 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including "erased, fragmented or damaged data." PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 5:** All documents you received from the MPCA regarding the EPA's permit review procedure applicable to the PolyMet NPDES Permit.

**Objections to RFP No. 5:** PolyMet objects to RFP No. 5 as overly broad, unduly burdensome, ambiguous, vague, and seeking documents already in the administrative record. In particular, the phrase "EPA's permit review procedure" is vague, ambiguous, and undefined. PolyMet will interpret that phrase in light of the court-ordered limits on discovery. This proceeding focuses on alleged procedural

irregularities. The Court directed that discovery from PolyMet must be “limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency,” and “documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision.”

Further, PolyMet objects to the unlimited temporal scope of RFP No. 5 as overbroad and unduly burdensome. Relators allege that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet’s response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet also objects to RFP No. 5 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including “erased, fragmented or damaged data.” PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 6:** All documents you provided to the MPCA regarding the EPA's permit review procedure applicable to the PolyMet NPDES Permit.

**Objections to RFP No. 6:** PolyMet objects to RFP No. 6 as overly broad, unduly burdensome, ambiguous, vague, and seeking documents already in the administrative record. In particular, the phrase "EPA's permit review procedure" is vague, ambiguous, and undefined. PolyMet will interpret that phrase in light of the court-ordered limits on discovery. This proceeding focuses on alleged procedural irregularities. The Court directed that discovery from PolyMet must be "limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency," and "documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision."

Further, PolyMet objects to the unlimited temporal scope of RFP No. 6 as overbroad and unduly burdensome. Relators allege that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release

of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet also objects to RFP No. 6 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including “erased, fragmented or damaged data.” PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 7:** All documents you received from the MPCA which, in any way, suggest that the procedure to be followed for the PolyMet NPDES Permit deviated in any manner from the MPCA’s customary procedures.

**Objections to RFP No. 7:** PolyMet objects to RFP No. 7 as overly broad, unduly burdensome, and vague. This proceeding focuses on alleged procedural irregularities, not MPCA’s “customary procedures.” Asking PolyMet to search for, collect, and produce “all documents” regarding MPCA’s “customary procedures” is unduly burdensome. PolyMet also objects to the term “customary procedures” as vague, ambiguous, and undefined. Further, PolyMet objects to the unlimited temporal scope of RFP No. 7 as overbroad and unduly burdensome. Relators allege

that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet objects to RFP No. 7 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including "erased, fragmented or damaged data." PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 8:** All documents you provided to the MPCA which, in any way, suggest that the procedure to be followed for the PolyMet NPDES Permit should deviate in any manner from the MPCA's customary procedures.

**Objections to RFP No. 8:** PolyMet objects to RFP No. 8 as overly broad, unduly burdensome, and vague. This proceeding focuses on alleged procedural irregularities, not MPCA's "customary procedures." Asking PolyMet to search for, collect, and produce "all documents" regarding MPCA's "customary procedures" is

unduly burdensome. PolyMet also objects to the term “customary procedures” as vague, ambiguous, and undefined. Further, PolyMet objects to the unlimited temporal scope of RFP No. 8 as overbroad and unduly burdensome. Relators allege that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet’s response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet also objects to RFP No. 8 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including “erased, fragmented or damaged data.” PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 9:** All documents which you received from, or provided to, the MPCA regarding any meetings, telephone conferences, or web ex meetings regarding the PolyMet Project involving the EPA, including but not limited to the September 25, 2018 meeting between you, the MPCA, and the EPA.

**Objections to RFP No. 9:** PolyMet objects to the unlimited temporal scope of RFP No. 9 as overbroad and unduly burdensome. Relators allege that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

Further, PolyMet objects to RFP No. 9 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including "erased, fragmented or damaged data." PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving these objections, PolyMet will produce non-privileged documents, if any, within its possession, custody, or control that were received from, or provided to, MPCA regarding meetings, telephone conferences, or web ex meetings between PolyMet, MPCA, and EPA.

**RFP No. 10:** All documents you received from the MPCA regarding the use of operating limits in lieu of the inclusion of WQBELs in the PolyMet NPDES Permit, including any documents reflecting EPA's concerns that the PolyMet NPDES Permit should include WQBELs.

**Objections to RFP No. 10:** PolyMet objects to RFP No. 10 as irrelevant, vague, assuming facts not in evidence, and exceeding the scope of court-ordered limits on discovery. The details of the permit conditions relating to "operating limits" and whether WQBELs were required for the NPDES Permit is a substantive merits question about the permit and irrelevant to whether MPCA complied with its procedural obligations. The Court directed that discovery from PolyMet must be "limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency," and "documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision." PolyMet also objects to the phrase "EPA's concerns" as vague, ambiguous, and undefined and because it is not established that "EPA" had "concerns" about the NPDES Permit.

**RFP No. 11** All documents you received from the MPCA which indicate that the deficiencies in your NPDES application for the PolyMet Project, identified by the EPA in a letter of November 3, 2016, were corrected or that the EPA concurred that the deficiencies in your NPDES application had been resolved.

**Objections to RFP No. 11:** PolyMet objects to RFP No. 11 as overly broad, unduly burdensome, vague, ambiguous, irrelevant, and exceeding the scope of court-ordered limits on discovery. This proceeding is limited to alleged procedural

irregularities occurring around the draft NPDES Permit public comment period, which did not begin until January 18, 2018. Conduct occurring more than a year before that time period, and which does not relate to draft permit procedures, is irrelevant. The Court directed that discovery from PolyMet must be “limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency,” and “documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision.” PolyMet further objects that MPCA’s communications regarding EPA’s views on the completeness of PolyMet’s NPDES Permit application in 2016 are not probative of any alleged procedural irregularities in 2018. PolyMet’s application for a permit is distinct from the draft NPDES Permit itself. Events in 2016 are irrelevant to any alleged procedural irregularities occurring around the draft NPDES Permit public comment period, which did not begin until January 18, 2018.

**RFP No. 12:** All documents you received from the MPCA regarding the procedure by which EPA would not send written comments during the public notice period for the draft PolyMet NPDES Permit.

**Objections to RFP No. 12:** PolyMet objects to RFP No. 12 as vague and ambiguous. In particular, the phrase “procedure by which EPA would not send written comments” is vague, ambiguous, and undefined. PolyMet will interpret that phrase in light of the court-ordered limits on discovery. PolyMet also objects

to the unlimited temporal scope of RFP No. 12 as overbroad and unduly burdensome. PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

Further, PolyMet objects to RFP No. 12 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including "erased, fragmented or damaged data." PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

**RFP No. 13:** All documents you received from the MPCA regarding the procedure by which EPA would read its written comments on the draft PolyMet NPDES Permit to MPCA over the phone.

**Objections to RFP No. 13:** PolyMet objects to RFP No. 13 as vague and ambiguous. PolyMet objects to the phrase "written comments" as vague and ambiguous because, to PolyMet's knowledge, EPA did not submit written comments on the NPDES Permit. PolyMet also objects to this request as irrelevant because procedures, practices, or policies governing EPA's conduct are irrelevant

to whether MPCA abided by its procedural duties. Further, the phrase “procedure by which EPA would read its written comments” is vague, ambiguous, and undefined. PolyMet will interpret that phrase in light of the court-ordered limits on discovery. PolyMet also objects to the unlimited temporal scope of RFP No. 13 as overbroad and unduly burdensome. PolyMet’s response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

PolyMet also objects to RFP No. 13 to the extent it seeks forms of electronically stored information that are not utilized in the ordinary course of business and that would require extraordinary measures to collect, review, and produce, including “erased, fragmented or damaged data.” PolyMet will not search for or produce electronically stored information that is not reasonably accessible because of undue burden or cost, including erased, fragmented or damaged data.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, within its possession, custody, or control.

## DEPOSITION QUESTIONS

PolyMet objects to Relators' proposed deposition questions as follows and will answer these questions within 30 days of the Court's resolution of these objections:

**DWQ No. 1(a):** Identify every meeting, call, or web ex meeting with MPCA and EPA in which you participated regarding the PolyMet NPDES Permit.

**Objections to DWQ No. 1(a):** PolyMet objects to the unlimited temporal scope of DWQ No. 1(a) as overbroad and unduly burdensome. Relators allege that MPCA engaged in procedural irregularities during and around the draft NPDES Permit public comment period, which began in January 2018. Therefore, PolyMet's response is limited to information and documents from January 1, 2018 (shortly before release of the draft permit and start of the public comment period) to December 20, 2018 (issuance of the final NPDES Permit).

Subject to and without waiving its objections, PolyMet's representative will be reasonably prepared to answer this question and will produce responsive, non-privileged documents, if any, sufficient to identify calls and meetings between PolyMet, MPCA, and EPA that occurred between January 1 and December 20, 2018.

**DWQ No. 1(b):** Identify every document regarding every meeting, telephone call, or web ex meeting with MPCA and EPA in which you participated regarding the PolyMet NPDES Permit.

**Objections to DWQ No. 1(b):** PolyMet incorporates by reference its objections to DWQ No. 1(a). PolyMet objects to having a representative “identify” documents. The benefit of such identification is far outweighed by the burden and cost of educating a representative on each responsive document. PolyMet is willing to stipulate to the authenticity of documents it produces. PolyMet also objects to DWQ No. 1(b) as overbroad, unduly burdensome, and exceeding the scope of court-ordered limits on discovery. PolyMet’s conduct is not the subject of this proceeding. Yet DWQ No. 1 apparently seeks internal PolyMet documents, including privileged and confidential documents, “regarding” discussions, meetings, and calls PolyMet had with MPCA and EPA. The Court specifically instructed that it did not allow “any general discovery of PolyMet.” PolyMet will not produce any documents beyond those specifically identified herein. PolyMet will not produce its internal documents, all of which are confidential, irrelevant, and beyond the scope of this proceeding.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, sufficient to identify all calls and in-person meetings between PolyMet, MPCA, and EPA that occurred between January 1 and December 20, 2018.

**DWQ No. 2(a):** What did MPCA inform, suggest, or indicate to you would be PolyMet's role in participating in the September 25, 2018 meeting with MPCA and EPA regarding the PolyMet NPDES Permit?

**Objections to DWQ No. 2(a):** PolyMet objects to DWQ No. 2(a) as irrelevant, lacking foundation, and assuming facts not in evidence.

Subject to and without waiving its objections, PolyMet's representative will be reasonably prepared to answer this question.

**DWQ No. 2(b):** Identify all documents regarding MPCA's communication about your role in the September 25, 2018 meeting with MPCA and EPA regarding the PolyMet NPDES Permit.

**Objections to DWQ No. 2(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 2(a). PolyMet further objects that requiring PolyMet to identify "all documents" generally referring to the September 25, 2018 meeting is unduly burdensome.

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any, sufficient to identify communications from MPCA to PolyMet regarding PolyMet's role in the September 25, 2018 meeting with MPCA and EPA.

**DWQ No. 2(c):** Who presented information on behalf of PolyMet at the September 25, 2018 meeting?

**Objections to DWQ No. 2(c):** PolyMet objects to DWQ No. 2(c) as irrelevant. Any presentation by PolyMet is irrelevant to MPCA's procedural requirements.

The Court specifically instructed that it did not allow “any general discovery of PolyMet.”

**DWQ No. 3:** In your September 25, 2018 meeting with MPCA and EPA regarding the PolyMet NPDES Permit what grounds for your opposition to including WQBELs in the NPDES Permit did you communicate to MPCA and EPA?

**Objections to DWQ No. 3:** PolyMet objects to DWQ No. 3 as irrelevant, lacking foundation, and assuming facts not in evidence. What PolyMet said about WQBELs at the September 25, 2018 meeting, if anything, is irrelevant to whether MPCA engaged in alleged procedural irregularities. PolyMet’s conduct is not the subject of this proceeding. PolyMet further objects to DWQ No.3 as beyond the scope of this proceeding, because whether WQBELs were appropriate for the NPDES Permit is a substantive merits question for the court of appeals.

**DWQ No. 4(a):** Did MPCA inform, suggest, or indicate to you that a meeting between a permit applicant, the MPCA, and the EPA regarding the PolyMet NPDES Permit was an unusual or a customary procedure?

**Objections to DWQ No. 4(a):** PolyMet objects to DWQ No. 4(a) as irrelevant, vague, compound, and lacking foundation. Whether MPCA informed, suggested, or indicated to PolyMet that a particular meeting was “unusual” or “customary” is irrelevant to whether MPCA complied with all procedural requirements. PolyMet also objects to the terms “unusual” and “customary” as vague, ambiguous, and undefined.

Subject to and without waiving its objections, PolyMet's representative will be reasonably prepared to answer this question.

**DWQ No. 4(b):** Identify all documents regarding MPCA's communication that a meeting between a permit applicant, the MPCA, and the EPA regarding the PolyMet NPDES Permit was either unusual or was a customary procedure.

**Objections to DWQ No. 4(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 4(a).

Subject to and without waiving its objections, PolyMet will produce responsive, non-privileged documents, if any.

**DWQ No. 5(a):** Describe every communication with MPCA in which MPCA discussed with you EPA's position that the PolyMet NPDES Permit should contain WQBELs.

**Objections to DWQ No. 5(a):** PolyMet objects to DWQ No. 5(a) as irrelevant, lacking foundation, assuming facts not in evidence, unduly burdensome, and exceeding the scope of court-ordered limits on discovery. It is not established that "EPA's position" was that "the PolyMet NPDES Permit should contain WQBELs." Moreover, even if EPA had such a "position," it is irrelevant to whether MPCA complied with statutes or regulations defining certain procedural requirements. Whether WQBELs were appropriate for the NPDES Permit is a substantive merits question reserved for the court of appeals. PolyMet further objects that requiring a representative to search for, identify, and educate themselves on "every communication" regarding a topic is unduly burdensome.

**DWQ No. 5(b):** Identify all documents regarding MPCA’s communication to you discussing EPA’s position that the PolyMet NPDES Permit should contain WQBELs.

**Objections to DWQ No. 5(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 5(a).

**DWQ No. 6(a):** Describe every communication with MPCA in which you discussed PolyMet’s opposition to EPA’s position that the PolyMet NPDES Permit should contain WQBELs.

**Objections to DWQ No. 6(a):** PolyMet objects to DWQ No. 6(a) as irrelevant, lacking foundation, assuming facts not in evidence, unduly burdensome, and exceeding the scope of court-ordered limits on discovery. It is not established that “EPA’s position” was that “the PolyMet NPDES Permit should contain WQBELs.” Moreover, even if EPA had such a “position,” it is irrelevant to whether MPCA complied with statutes or regulations defining certain procedural requirements. Whether WQBELs were appropriate for the NPDES Permit is a substantive merits question reserved for the court of appeals. PolyMet further objects that requiring a representative to educate themselves on “every communication” regarding a topic is unduly burdensome.

**DWQ No. 6(b):** Identify all documents regarding your communication to MPCA discussing EPA’s position that the PolyMet NPDES Permit should contain WQBELs.

**Objections to DWQ No. 6(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 6(a).

**DWQ No. 7(a):** Did you communicate to MPCA at any time that you preferred that EPA's comments regarding the PolyMet NPDES Permit not be provided in written form or that such EPA writing should be deferred to some future time?

**Objections to DWQ No. 7(a):** PolyMet objects to DWQ No. 7(a) as compound, irrelevant, and exceeding the scope of court-ordered limits on discovery. PolyMet's conduct is not at issue—PolyMet's preferences or lack thereof are irrelevant to whether MPCA followed its procedural duties. EPA's decision-making about how and when to submit written comments is irrelevant to whether MPCA complied with procedural requirements. Even if EPA's internal commenting decisions were relevant to MPCA's procedural duties, PolyMet's preferences about those EPA decisions are not. The Court directed that discovery from PolyMet must be "limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency," and "documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision." PolyMet is not required to answer questions about its preferences, strategies, goals, or conduct and is not required to turn over internal documents that were not received from or given to MPCA.

**DWQ No. 7(b):** Identify all documents regarding your communication to MPCA that EPA's comments regarding the PolyMet NPDES Permit should not be provided in written form or that they should be deferred.

**Objections to DWQ No. 7(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 7(a).

**DWQ No. 8(a):** Did you communicate to MPCA that you preferred that EPA's comments on the draft PolyMet NPDES Permit not be provided in written form during the public comment period?

**Objections to DWQ No. 8(a):** PolyMet objects to DWQ No. 8(a) as irrelevant and exceeding the scope of court-ordered limits on discovery. PolyMet's conduct is not at issue—PolyMet's preferences or lack thereof are irrelevant to whether MPCA followed its procedural duties. EPA's decision-making about how and when to submit written comments is irrelevant to whether MPCA complied with procedural requirements. Even if EPA's internal commenting decisions were relevant to MPCA's procedural duties, PolyMet's preferences about those EPA decisions are not. The Court directed that discovery from PolyMet must be "limited to information that PolyMet may have that relates to the alleged procedural irregularities involving the Pollution Control Agency," and "documents that PolyMet may have in its possession that the MPCA had in its possession at the time of its decision." PolyMet is not required to answer questions about its preferences, strategies, goals, or conduct and is not required to turn over internal documents that were not received from or given to MPCA.

**DWQ No. 8(b):** Identify all documents regarding your communication to MPCA that you preferred that EPA's comments on the draft PolyMet NPDES Permit not be provided in written form during the public comment period.

**Objections to DWQ No. 8(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 8(a).

**DWQ No. 9(a):** When and how did you learn that MPCA had asked EPA on or about March 13, 2018 not to provide EPA's written comments on the draft PolyMet NPDES Permit during the public comment period?

**Objections to DWQ No. 9(a):** PolyMet objects to DWQ No. 9(a) as irrelevant, compound, lacking foundation, assuming facts not in evidence, and exceeding the scope of court-ordered limits on discovery. When and how PolyMet learned of an alleged MPCA communication to EPA is irrelevant to whether MPCA complied with all applicable procedures. DWQ No. 9(a) also assumes facts not in evidence because it is not established that MPCA asked EPA on or about March 13, 2018 not to provide EPA's written comments on the draft PolyMet NPDES Permit during the public comment period.

**DWQ No. 9(b):** Identify all documents regarding the way you learned that MPCA had asked EPA on or about March 13, 2018 not to provide EPA's written comments on the draft PolyMet NPDES Permit.

**Objections to DWQ No. 9(b):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 9(a).

**DWQ No. 10(a):** After EPA's November 3, 2016 letter stating that there were deficiencies in your application for the PolyMet NPDES Permit, what did MPCA communicate about the need for you to correct the deficiencies identified by EPA?

**Objections to DWQ No. 10(a):** PolyMet objects to DWQ No. 10(a) as overly broad, unduly burdensome, irrelevant, and exceeding the scope of court-ordered limits on discovery. This proceeding focuses on alleged procedural irregularities occurring around the draft NPDES Permit public comment period, which did not

begin until January 18, 2018. Conduct occurring more than a year before that time period, and which does not relate to draft permit procedures, is irrelevant. MPCA's communications regarding EPA's views on the completeness of PolyMet's NPDES Permit application in 2016 are not probative of any alleged procedural irregularities in 2018. PolyMet's application for a permit is distinct from the draft NPDES Permit itself. Events in 2016 are irrelevant to any alleged procedural irregularities occurring around the draft NPDES Permit public comment period, which did not begin until January 18, 2018.

**DWQ No. 10(b):** After EPA's November 3, 2016 letter stating that there were deficiencies in your application for the PolyMet NPDES Permit, did MPCA communicate at any time that EPA considered those deficiencies to have been resolved?

**Objections to DWQ No. 10(b):** PolyMet incorporates by reference its objections to DWQ No. 10(a).

**DWQ No. 10(c):** Identify all documents regarding MPCA's communication to you regarding EPA's November 3, 2016 letter or the deficiencies in your application for the PolyMet NPDES Permit stated by EPA in that letter.

**Objections to DWQ No. 10(c):** PolyMet incorporates by reference its objections to DWQ Nos. 1(b) and 10(a).

Dated: August 28, 2019

**GREENE ESPEL PLLP**

/s/ Monte A. Mills

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