

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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

Case No. 62-CV-19-4626

The Honorable John H. Guthmann

**POLY MET MINING, INC.'S
MEMORANDUM IN SUPPORT OF ITS
MOTION IN LIMINE TO EXCLUDE
CERTAIN EXHIBITS FOR WHICH NO
WITNESS HAS FOUNDATION TO
TESTIFY**

INTRODUCTION

Scattered throughout Relators' 23-page exhibit list are dozens of documents sent to and written by individuals whose names do not appear on any witness list. No witness will be competent to testify about these documents, since no witness has personal knowledge of the exhibits' contents. The Court should save itself and the parties wasted time at the evidentiary hearing by excluding these documents in their entirety.

RELATORS' EXHIBIT LIST

In October, this Court made the parties aware of their obligation to exchange exhibit lists. The Court's October 11, 2019 Order Setting Prehearing Conference contained a December 2, 2019 deadline for serving and filing complete exhibit lists.¹ When the Court issued an Amended Order pushing that deadline back a week, the Court added to

¹ Order Setting Prehearing Conference and Hearing at 2 (Oct. 11, 2019).

its order that the lists should contain *only* those exhibits that the parties “intend to *actually use*” at the evidentiary hearing.² Both orders directed that the exhibit lists “shall comply with Minn. Gen. R. Prac. Part H, § 12,”³ which requires that exhibit lists “briefly describe each exhibit anticipated to be offered in evidence,” Minn. R. Gen. Prac. Part H, § 12(a).

Relators’ voluminous exhibit list—which is 23 pages long and lists 760 exhibits—does not comply with this Court’s directives. The exhibit list lacks document descriptions, as ordered by this Court and required by Minnesota Rule of General Practice Part H, § 12. This lack of document descriptions prejudices PolyMet and wastes judicial resources. For but one example, the parties and Court are left guessing why an apparently identical sixty-page document is listed as seven separate exhibits.⁴ But beyond that failure to comply with this Court’s order, Relators’ exhibit list contains dozens of documents that

² Amended Order Setting Evidentiary Hearing at 2 (Nov. 19, 2019) (emphasis added).

³ *Id.*; Order Setting Prehearing Conference and Hearing at 2 (Oct. 11, 2019).

⁴ See Relators Ex. 724 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065396-0065455); Relators Ex. 729 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065475-0065534); Relators Ex. 732 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065542-0065601); Relators Ex. 736 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065610-0065669); Relators Ex. 738 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065676-0065735); Relators Ex. 739 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065736-0065795); Relators Ex. 744 (Water Legacy Freedom of Information Act Appeal Exs. at Relators_0065806-0065865). Relators’ exhibit list contains other examples of the same documents listed multiple times. *Compare* Ex. 24 *with* Exs. 307 and 406; *compare* Ex. 33 *with* Ex. 372; *compare* Ex. 301 *with* Exs. 315 and 500; *compare* Ex. 725 *with* Exs. 726, 731, 735 and 737.

are wholly inadmissible, since no individual on Relators' self-described "expansive" witness list has personal knowledge of the documented communications.⁵

These exhibits, as they appear on Relators' exhibit list, include:

Exhibit	Bates Beg Number	Bates End Number
127	MPCA(62-cv-19-4626)_016067	MPCA(62-cv-19-4626)_016068
171	MPCA(62-cv-19-4626)_017944	MPCA(62-cv-19-4626)_017945
176	MPCA(62-cv-19-4626)_018256	MPCA(62-cv-19-4626)_018257
180	MPCA(62-cv-19-4626)_018270	MPCA(62-cv-19-4626)_018273
181	MPCA(62-cv-19-4626)_018274	MPCA(62-cv-19-4626)_018286
182	MPCA(62-cv-19-4626)_018287	MPCA(62-cv-19-4626)_018288
183	MPCA(62-cv-19-4626)_018289	MPCA(62-cv-19-4626)_018290
184	MPCA(62-cv-19-4626)_018291	MPCA(62-cv-19-4626)_018292
194	MPCA(62-cv-19-4626)_018321	MPCA(62-cv-19-4626)_018323
205	MPCA(62-cv-19-4626)_018469	MPCA(62-cv-19-4626)_018469
207	MPCA(62-cv-19-4626)_018472	MPCA(62-cv-19-4626)_018473
209	MPCA(62-cv-19-4626)_018476	MPCA(62-cv-19-4626)_018480
215	MPCA(62-cv-19-4626)_018494	MPCA(62-cv-19-4626)_018497
216	MPCA(62-cv-19-4626)_018504	MPCA(62-cv-19-4626)_018506
224	MPCA(62-cv-19-4626)_018532	MPCA(62-cv-19-4626)_018533
226	MPCA(62-cv-19-4626)_018556	MPCA(62-cv-19-4626)_018560
227	MPCA(62-cv-19-4626)_018563	MPCA(62-cv-19-4626)_018563
353	RELATORS_0061754	RELATORS_0061759
443	RELATORS_0062652	RELATORS_0062652
444	RELATORS_0062653	RELATORS_0062653
445	RELATORS_0062654	RELATORS_0062655
446	RELATORS_0062658	RELATORS_0062658
447	RELATORS_0062659	RELATORS_0062659
448	RELATORS_0062660	RELATORS_0062660
449	RELATORS_0062661	RELATORS_0062668
450	RELATORS_0062677	RELATORS_0062678
451	RELATORS_0062680	RELATORS_0062680
452	RELATORS_0062681	RELATORS_0062681

⁵ Relators' Witness List at 1-2 (Dec. 9, 2019) (acknowledging that "the Witness List is expansive" and explaining that "Relators do not intend to necessarily call every witness on this list").

453	RELATORS_0062682	RELATORS_0062682
454	RELATORS_0062683	RELATORS_0062684
455	RELATORS_0062685	RELATORS_0062692
456	RELATORS_0062695	RELATORS_0062695
457	RELATORS_0062696	RELATORS_0062697
458	RELATORS_0062698	RELATORS_0062698
459	RELATORS_0062699	RELATORS_0062700
460	RELATORS_0062701	RELATORS_0062702
461	RELATORS_0062703	RELATORS_0062703
462	RELATORS_0062704	RELATORS_0062705
463	RELATORS_0062706	RELATORS_0062708
464	RELATORS_0062709	RELATORS_0062709
465	RELATORS_0062710	RELATORS_0062711
466	RELATORS_0062712	RELATORS_0062713
467	RELATORS_0062714	RELATORS_0062714
468	RELATORS_0062717	RELATORS_0062719
469	RELATORS_0062720	RELATORS_0062720
470	RELATORS_0062721	RELATORS_0062722
471	RELATORS_0062724	RELATORS_0062726
472	RELATORS_0062727	RELATORS_0062728
473	RELATORS_0062738	RELATORS_0062740
474	RELATORS_0062741	RELATORS_0062744
477	RELATORS_0062794	RELATORS_0062808
480	RELATORS_0062874	RELATORS_0062874
484	RELATORS_0062898	RELATORS_0062898
485	RELATORS_0062899	RELATORS_0062899
487	RELATORS_0062978	RELATORS_0062978
488	RELATORS_0062979	RELATORS_0062979
490	RELATORS_0062988	RELATORS_0062988
491	RELATORS_0062989	RELATORS_0062990
493	RELATORS_0063000	RELATORS_0063001
495	RELATORS_0063040	RELATORS_0063047
496	RELATORS_0063052	RELATORS_0063052
497	RELATORS_0063053	RELATORS_0063054
498	RELATORS_0063055	RELATORS_0063062
499	RELATORS_0063063	RELATORS_0063063
504	RELATORS_0063085	RELATORS_0063085
505	RELATORS_0063086	RELATORS_0063086
506	RELATORS_0063087	RELATORS_0063087
507	RELATORS_0063088	RELATORS_0063088
508	RELATORS_0063091	RELATORS_0063092

509	RELATORS_0063093	RELATORS_0063093
510	RELATORS_0063094	RELATORS_0063095
511	RELATORS_0063096	RELATORS_0063096
512	RELATORS_0063097	RELATORS_0063097
513	RELATORS_0063098	RELATORS_0063098
514	RELATORS_0063099	RELATORS_0063106
515	RELATORS_0063107	RELATORS_0063107
516	RELATORS_0063109	RELATORS_0063109
517	RELATORS_0063110	RELATORS_0063110
518	RELATORS_0063111	RELATORS_0063111
519	RELATORS_0063112	RELATORS_0063112
520	RELATORS_0063113	RELATORS_0063113
521	RELATORS_0063114	RELATORS_0063114
522	RELATORS_0063115	RELATORS_0063116
523	RELATORS_0063118	RELATORS_0063119
524	RELATORS_0063120	RELATORS_0063120
526	RELATORS_0063150	RELATORS_0063150
600	RELATORS_0064217	RELATORS_0064218
603	RELATORS_0064221	RELATORS_0064222
604	RELATORS_0064223	RELATORS_0064223
605	RELATORS_0064224	RELATORS_0064224
606	RELATORS_0064225	RELATORS_0064225
608	RELATORS_0064229	RELATORS_0064229
610	RELATORS_0064231	RELATORS_0064232
611	RELATORS_0064233	RELATORS_0064233
619	RELATORS_0064243	RELATORS_0064243
623	RELATORS_0064249	RELATORS_0064249
627	RELATORS_0064255	RELATORS_0064256
656	RELATORS_0064297	RELATORS_0064297
659	RELATORS_0064303	RELATORS_0064303
722	RELATORS_0065275	RELATORS_0065393
724	RELATORS_0065396	RELATORS_0065455
725	RELATORS_0065456	RELATORS_0065461
726	RELATORS_0065462	RELATORS_0065467
727	RELATORS_0065468	RELATORS_0065468
728	RELATORS_0065469	RELATORS_0065474
729	RELATORS_0065475	RELATORS_0065534
730	RELATORS_0065535	RELATORS_0065535
731	RELATORS_0065536	RELATORS_0065541
732	RELATORS_0065542	RELATORS_0065601
733	RELATORS_0065602	RELATORS_0065602

734	RELATORS_0065603	RELATORS_0065603
735	RELATORS_0065604	RELATORS_0065609
736	RELATORS_0065610	RELATORS_0065669
737	RELATORS_0065670	RELATORS_0065675
738	RELATORS_0065676	RELATORS_0065735
739	RELATORS_0065736	RELATORS_0065795
740	RELATORS_0065796	RELATORS_0065796
741	RELATORS_0065797	RELATORS_0065798
742	RELATORS_0065799	RELATORS_0065799
743	RELATORS_0065800	RELATORS_0065805
744	RELATORS_0065806	RELATORS_0065865
745	RELATORS_0065866	RELATORS_0065866
746	RELATORS_0065867	RELATORS_0065868
747	RELATORS_0065869	RELATORS_0065869
748	RELATORS_0065870	RELATORS_0065870
749	RELATORS_0065871	RELATORS_0065871
750	RELATORS_0065872	RELATORS_0065872
751	RELATORS_0065873	RELATORS_0065874
752	RELATORS_0065875	RELATORS_0065875
753	RELATORS_0065876	RELATORS_0065876
754	RELATORS_0065877	RELATORS_0065877
755	RELATORS_0065878	RELATORS_0065879
756	RELATORS_0065880	RELATORS_0065880
757	RELATORS_0065881	RELATORS_0065882
758	RELATORS_0065883	RELATORS_0065884

Relators have already wasted the parties' and this Court's time by listing far more exhibits than they reasonably can intend to "actually use" at the hearing, and by omitting the brief document description required by this Court's orders and the rules. The Court should not permit Relators to waste any more time at the hearing. This Court can and should shorten the length of the evidentiary hearing by excluding the dozens of exhibits

on Relators' exhibit lists for which no witness will be able to testify from personal knowledge or lay an adequate foundation.⁶

ARGUMENT

To be admissible, evidence must be both relevant and reliable. One specific application of the relevance requirement is that a fact witness may testify only from "personal knowledge." Minn. R. Evid. 602. With respect to the reliability of exhibits, there must be sufficient evidence to support a finding that the item is what the proponent claims it is. Minn. R. Evid. 901. Both these requirements go to the foundation for evidence's admissibility.

Relators have listed more than 125 documents as exhibits that do not appear to be within the personal knowledge of their witnesses. PolyMet presumes that Relators intend to attempt to introduce those exhibits using witnesses with no personal knowledge of them. If they are allowed to do so, PolyMet (and MPCA) will be unable to explore the content of those documents through cross-examination. That is not how trials are supposed to work. Relators should not be allowed to substitute witnesses with no personal knowledge of numerous out-of-court statements in place of in-court testimony from witnesses with personal knowledge.

⁶ Included in this list are emails to or from EPA's Krista McKim, but no other person on the witness lists. McKim is currently listed on Relators' witness list, but PolyMet Mining, Inc. ("PolyMet") has reason to doubt that she will testify. See Section I, *infra*. Federal law precludes McKim, a current EPA employee, from testifying about EPA's official positions in this state court proceeding. 40 C.F.R. §§ 2.401, 2.402.

Further, based on the breadth of documents listed on Relators' exhibit list, Relators surely know "that it would be impossible to present that many exhibits" in a five-to-ten-day trial, and Relators "are essentially playing 'hide the ball' at this stage" in the proceedings, leaving PolyMet to try to figure out what exhibits actually constitute the core of Relators' case. *See Agile Sky Alliance Fund LP v. RBS Citizens, N.A.*, 847 F. Supp. 2d 1288, 1292 (D. Colo. 2012) (ordering parties with exhibit lists containing 600 exhibits "to substantially pare[] down" the lists to "those relatively few critical exhibits that they truly expect to offer at trial").

This Court should not permit Relators to waste the parties' and Court's time trying to figure out what exhibits Relators actually intend to, and will be able to, introduce at the evidentiary hearing. Relators should be prohibited from introducing the numerous exhibits—memorandums, presentations, and emails—that contain untestable, out-of-court statements to which no witness on Relators' witness list was a party.

I. CORRESPONDENCE TO AND FROM INDIVIDUALS THAT ARE NOT ON RELATORS' WITNESS LIST SHOULD BE EXCLUDED.

Relators' exhibit list contains letters and emails written by and sent to individuals who are not going to testify at the upcoming evidentiary hearing. These include United States Environmental Protection Agency ("EPA") internal communications, communications to and from counsel for Relators, and communications between EPA and Minnesota Pollution Control Agency ("MPCA") employees. This Court should exclude these exhibits because no fact witness will be able to testify as to their contents from personal knowledge, as required by Minnesota Rule of Evidence 602. Nor can Relators introduce such evidence through the back door via expert testimony. Relators

“should not be permitted to launder inadmissible hearsay evidence, turning it into admissible evidence by the simple expedient of passing it through the conduit of purportedly ‘expert opinion.’” *State v. DeShay*, 669 N.W.2d 878, 886 (Minn. 2003).

Personal knowledge forms the “foundation for admissibility” of evidence. *State v. Ferguson*, 581 N.W.2d 824, 832 (Minn. 1998). Rule 602 reflects “a fundamental principle of evidence law” that a witness’ “[t]estimony simply is not relevant unless the witness testifies from firsthand knowledge.” Minn. R. Evid. 602, 1977 committee comment. This rule applies equally to hearsay statements—a witness must have heard the statement to be qualified to testify as to the statement’s assertion (and even then lacks personal knowledge to testify as to the statement’s contents). *Id.* In the case of letters and emails, personal knowledge is acquired by sending or receiving the correspondence. *See, e.g., SDS Korea Co. v. DSD USA, Inc.*, 732 F. Supp. 2d 1062, 1073-74 (S.D. Cal. 2010) (explaining that individual who did not send or receive email “lack[ed] personal knowledge” of its contents). Personal knowledge is not acquired by reading materials “prepared by others.” *Kemp v. Balboa*, 23 F.3d 211, 213 (8th Cir. 1994).

Numerous emails on Relators’ exhibit list impermissibly contain correspondence for which no witness “is []either the sender, []or the recipient.” *See Juneau v. Kenner*, No. CV 08-08284, 2009 WL 10673374, at *1 (C.D. Cal. May 14, 2009). There are over a dozen emails between EPA and MPCA discussing an entirely separate permit application. To take one example, Exhibit 205 is a May 2016 email from Jodie Opie of EPA to Nicole Blasing of MPCA, copying Shauna Aronen, Stephanie Lyons, and John Colletti, regarding a “Stabilization Pond General Permit.” None of the individuals that sent or received the

email are listed on Relators' exhibit list. No one with personal knowledge of the Exhibit will accordingly be able to testify as to its contents or provide a foundation for its admission.

The same is true of exhibits containing EPA-internal communications. Many of these exhibits contain no one on Relators' witness list, such as Relators' Exhibit 353, which is a 2019 Memorandum from Jeffrey Fowley, a retired EPA attorney, to Kathleen Butler, of the EPA Office of Inspector General.⁷ The memorandum is admittedly based entirely on hearsay. The author writes, among other things: "the information I have received is second-hand – I am not myself a witness to any misconduct."⁸ Hearsay issues aside, neither Fowley nor Butler are on Relators' witness list, meaning no one with personal knowledge will be able to testify about the contents of the memorandum.⁹

Similarly, Exhibit 619 is an internal email from EPA's Nelson Leverett to EPA's Linda Holst, copying EPA's Debra Klassman, and concerning how Linda would "like to

⁷ January 31, 2019 Fowley Memorandum at RELATORS_0061754-0061759 (Relators Ex. 353).

⁸ *Id.* at RELATORS_0061754.

⁹ This exhibit, like many other documents on Relators' exhibit list, is also objectionable on hearsay grounds. PolyMet reserves its right to make hearsay objections to any document that the Court determines has adequate foundation at the evidentiary hearing. PolyMet notes, however, that any hearsay statements containing opinions as to the ultimate issues in this case, such as Exhibit 353, are inadmissible. The Minnesota Court of Appeals has held that a business record "containing an opinion on an ultimate issue is admissible *only if* the witness offering the opinion is available to permit the factfinder to test the weight and credibility of the opinion through cross-examination." *In re Child of Simon*, 662 N.W.2d 155, 161-62 (Minn. Ct. App. 2003) (emphasis added).

proceed” with an issue related to the “the PolyMet project.”¹⁰ For each of these exhibits, like the others that are similarly deficient, no witness will have the necessary personal knowledge to testify as to the exhibit’s contents.

As to the EPA-internal documents, Relators cannot cure this personal-knowledge defect at the hearing through the testimony of current or former EPA employees. Under federal law, “no EPA employee may provide testimony or produce documents in any proceeding . . . concerning information acquired in the course of performing official duties or because of the employee’s official relationship with EPA,” unless approved by the agency. 40 C.F.R. § 2.402; *id.* § 2.401. To PolyMet’s knowledge, Relators have not obtained approval for their sole current-EPA-employee witness, Krista McKim, or former-EPA-employee witnesses Kevin Pierard and Catherine Kuhlman,¹¹ to testify in this proceeding as to official EPA positions. Nor is it likely that Relators would receive such approval, since EPA is currently defending a lawsuit brought by Relator Fond du Lac Band of Lake Superior Chippewa in September 2019, which alleges that EPA’s conduct related to PolyMet’s NPDES Permit violated the Clean Water Act.¹² Without an EPA employee to testify in an official capacity as to the contents of the EPA-internal communications, there will be no foundation for admitting these EPA-internal exhibits under Rule 602.

¹⁰ Leverett email to Holst dated July 20, 2018 at RELATORS_064243 (Relators Ex. 619).

¹¹ As explained in PolyMet’s Motion in Limine to Exclude Testimony of Catherine Kuhlman, Kuhlman’s testimony should be excluded in its entirety.

¹² *See generally* Complaint for Declaratory and Injunctive Relief, *Fond du Lac Band of Lake Superior Chippewa v. Stepp*, No. 19-cv-02489 (D. Minn. Sept. 10, 2019) (Evidentiary Hearing Ex. 2029).

In sum, there are many potential objections to the numerous exhibits on Relators' exhibit list with correspondence to and from individuals who are not witnesses in this proceeding. Notably, as the excerpts above demonstrate, these exhibits contain layer-upon-layer of hearsay. But the documents suffer from the even more fundamental flaw that no witness will be able to testify about their contents from personal knowledge. Relators should not be permitted to introduce these exhibits through testimony that will be based "upon hearsay and speculation and not of personal knowledge." See *United States v. Snodgrass*, 635 F.3d 324, 329 (7th Cir. 2011). The correspondence on Relators' exhibit list for which no listed witness was either the sender or recipient should be excluded in their entirety under Minnesota Rule of Evidence 602.

II. THE MEMORANDUMS AND POWERPOINT PREPARED BY WITNESSES NOT ON THE WITNESS LIST ARE NOT, AND CANNOT BE, AUTHENTICATED.

In addition to being excluded on Rule 602 grounds, four of Relators' exhibits should be excluded on authenticity grounds: three memorandums and a PowerPoint presentation.¹³ Authenticity—or evidence that the exhibit "in question is what its proponent claims"—is a "condition precedent to admissibility." Minn. R. Evid. 901(a). Rule 901's authenticity requirement is distinct from Rule 602's personal knowledge requirement, although the two inquiries often overlap. That is because the "most

¹³ EPA Review of the MPCA Request for Approval of a Variance (Dec. 27, 2012) at MPCA(62-cv-19-4626)_017944-017965 (Relators Ex. 171) (document without identified author); Pelligrini Memorandum re: EPA permit comments at MPCA(62-cv-19-4626)_018504-018506 (Relators Ex. 216); January 31, 2019 Fowley Memorandum at RELATORS_0061754-0061759 (Relators Ex. 353); Kyser & Peck PowerPoint re: A History of 'Conventional Wastewater Treatment' at RELATORS_0065275-0065393 (Relators Ex. 722).

common method of authentication is the use of testimony by a witness with knowledge that the offer of evidence is what it is represented to be.” Minn. R. Evid. 901, 1977 committee comment. PolyMet challenges the authenticity of documents written by and sent to individuals that do not appear on Relators’ witness list.

Returning to Exhibit 353 (the memorandum from Fowley to Butler), for example, without Fowley’s testimony, there is no way to know that the memorandum is what it purports to be. The memorandum does not appear on letterhead. Nor does it appear to be signed. The document also lacks the other indicia of reliability that may satisfy Rule 901’s authenticity requirement. It is not handwritten. Minn. R. Evid. 901(b)(2). It does not contain distinctive characteristics. *See* Minn. R. Evid. 901(b)(4). And it is not a public record. Minn. R. Evid. 901(b)(7). To be authenticated as a public record, there must be evidence “that a writing authorized by law to be recorded or filed” is “in fact recorded or filed in a public office.” *Id.* There is no evidence that Exhibit 353 was authorized to be, or actually was, filed in a public office. Exhibits 171, 216, and 722 suffer from the same defects as Exhibit 353.

Exhibits 171, 216, 353, and 722 are not, and cannot be, authenticated, since no person on Relators’ witness list will be able to testify as to their contents from personal knowledge. These Exhibits should be excluded for evidence for lack of foundation.

CONCLUSION

This Court should exclude the dozens of exhibits listed on Relators’ exhibit list for which no witness will be able to testify from personal knowledge under Minnesota Rules of Evidence 601 and 901.

Dated: December 27, 2019

GREENE ESPEL PLLP

s/ Monte A. Mills

Monte A. Mills, Reg. No. 030458X
Caitlinrose H. Fisher, Reg. No. 0398358
Davida S. McGhee, Reg. No. 0400175
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
mmills@greeneespel.com
cfisher@greeneespel.com
dwilliams@greeneespel.com
(612) 373-0830

VENABLE LLP

Kathryn A. Kusske Floyd, DC Reg. No.
411027
(admitted pro hac vice)
Jay C. Johnson, VA Reg. No. 47009
(admitted pro hac vice)
Kyle W. Robisch, DC Reg. No. 1046856
(admitted pro hac vice)
600 Massachusetts Avenue, NW
Washington, DC 20001
kkfloyd@venable.com
jcjohnson@venable.com
kwrobisch@venable.com
(202) 344-4000

Attorneys for Poly Met Mining, Inc.