

STATE OF MINNESOTA  
COUNTY OF RAMSEY

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DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Civil Other  
File No.: 62-CV-19-4626  
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, Babbitt, Minnesota.

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ORDER

The above-entitled matter came before the Honorable John H. Guthmann, Judge of District Court, on August 7, 2019, at the Ramsey County Courthouse, St. Paul, Minnesota on referral from the Minnesota Court of Appeals. Appearances were as noted on the record. Based upon all of the files, records, submissions and arguments, the court issues the following:

**PREAMBLE**

WHEREAS, the Minnesota Court of Appeals referred the above captioned matter to the Second Judicial District to conduct an evidentiary hearing “for the limited purpose of an evidentiary hearing and determination of the alleged irregularities in procedure.” The hearing must “be scheduled as soon as practicable.”

WHEREAS, this court noticed a Rule 16 Conference to identify the issues, identify the witnesses, determine the volume of exhibits, arrive at an estimate of the time needed for the hearing, and schedule the hearing.

WHEREAS, after the notice of hearing was issued, relators<sup>1</sup> filed two motions: a motion for a scheduling order and pretrial discovery and a Rule 7.2 motion for Findings of Fact, Conclusions of Law, and Order. Through their motions, relators sought leave to conduct all forms of discovery authorized by the Minnesota Rules of Civil Procedure, including witness depositions, and requested that the hearing be scheduled on or after May 11, 2020.

WHEREAS, the court made certain rulings from the bench during the hearing that are memorialized herein.

**THEREFORE, IT IS ORDERED:**

1. All motions filed prior to the August 7<sup>th</sup> hearing are denied to the extent relief is not provided in this Order. Similarly, all requests for discovery not expressly permitted in this Order are denied.

2. Relators shall file with the court, and serve on all other parties, a list of all alleged procedural irregularities with the MPCA/Polymet permitting process no later than August 14, 2019.

3. Relators as a group are permitted to serve no more than 25 written deposition questions to each of the following MPCA witnesses: Richard Clark; Stephanie Handeland; and, Jeff Udd.

4. Relators as a group may serve up to 25 written deposition questions and up to 25 document requests upon the MPCA. A representative acting on behalf of the MPCA shall respond to these requests. Document requests directed to the MPCA and its witnesses are limited to documents that the MPCA had in its possession or control at the time of its permitting decision.

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<sup>1</sup> Relators consist of the following organizations: Center for Biological Diversity, Friends of the Boundary Waters Wilderness, Minnesota Center for Environmental Advocacy, and Fond du Lac Band of Lake Superior Chippewa.

5. Relators as a group may serve up to 25 written deposition questions and 25 document requests upon Polymet. Document 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 the MPCA's permitting decision.

6. The MPCA may serve up to 25 written deposition questions and 25 document requests upon relators as a group.

7. The standard applicable to Rule 30.02(f) of the Minnesota Rules of Civil Procedure shall govern all discovery served on an organization.

8. The 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.

9. The question/document request limit includes all subparts regardless of whether the subparts are separately numbered.

10. If a party objects to disclosing a document that is arguably within the scope of discovery on the basis of a privilege, that party shall provide to the requesting party a privilege log describing what was withheld and stating the privilege being asserted.

11. The following timelines govern all discovery:

- a. All permitted discovery shall be served no later than August 28, 2019 at 4:30 p.m.
- b. If any party objects to discovery, the parties shall attempt to resolve their differences by September 4, 2019 at 4:30 p.m.
- c. If differences cannot be resolved, the parties may schedule an informal conference with the court as provided in Rule 115.04(d) of the Minnesota

General Rules of Practice. Any requested conference may take place after September 13, 2019 as long as it is scheduled no later than 4:00 p.m. on September 13, 2019. No later than 24 hours prior to a conference, each party (relators constitute a single party for this purpose) to the dispute shall file a letter no longer than three pages in length outlining the nature of the dispute.

- d. Discovery responses are due within 30 days of service or 30 days from the date disputes are resolved by the parties or the court, whichever date is later. A dispute over one question or request shall not delay the due date for responding to the other questions or requests.

12. Once discovery is completed, another pre-hearing conference shall be set. During the conference, the parties shall be prepared to exchange their final list of witnesses who will actually testify, set a deadline for the exchange of documents that actually will be introduced at the hearing, determine the number of days needed for the hearing, and schedule the hearing.

13. The rationale, factual basis, and legal basis for the court's ruling was stated in the record of the August 7, 2019 hearing, which record is incorporated herein by reference.

Dated: September 9, 2019

BY THE COURT:

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John H. Guthmann  
Judge of District Court