

FILED

June 12, 2019

**OFFICE OF
APPELLATE COURTS**

Exhibit 1

**STATE OF MINNESOTA
IN COURT OF APPEALS**

*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*

**DECLARATION OF
MICHAEL SCHMIDT**

Appellate Case Nos.
A19-0112
A19-0118
A19-0124

I, MICHAEL SCHMIDT, in accordance with section 358.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

Background

1. I served as Staff Attorney, State Program Administrative Coordinator for the Minnesota Pollution Control Agency (“MPCA”) from March 2015 until February 1, 2019. My responsibilities included, among other things, legally advising MPCA leadership and staff on permit development, permit enforcement, administrative rulemaking, and general agency matters. My legal work covered industrial wastewater, industrial stormwater, mining, Clean Water Act section 401 certifications, septic systems, and underground storage tanks. My primary focus was on water-quality matters.

2. I was involved in legally advising MPCA throughout the permit-development and issuance process for the Poly Met NorthMet mining project NPDES/SDS Permit No. MN0071013 (the “Poly Met Permit”).

3. Before working at MPCA, I worked as a Water Quality Associate for the Minnesota Center for Environmental Advocacy (“MCEA”), one of the relators in this appeal.

4. I make this Declaration based on my personal knowledge and in support of MPCA’s sur-reply to WaterLegacy’s motion to transfer or stay this case.

MPCA-EPA Conference Calls Throughout the Permit-development Process

5. MPCA and EPA conducted twice-monthly conference calls about the Poly Met Permit from August 2016 until August 2017 and then conducted conference calls and meetings as necessary to resolve any concerns EPA had about different iterations of the draft permit.

6. Early on in the process, the conference calls were more conceptual than about specific permit language, problems, or solutions. At this early stage, MPCA permit-development staff would develop general permit approaches and ask EPA for feedback on a general approach. After those calls, MPCA staff members would use EPA’s feedback to draft permit language. As we approached the summer of 2017, the conference calls became less abstract and focused on particular permit language, specific concerns, and solutions to those concerns.

7. The purpose of these discussions through 2017 was to enable MPCA and EPA to collaborate effectively and efficiently to produce a good NPDES permit. From MPCA’s perspective, it would not have made sense to unilaterally develop a permit that

