

Attachment 1

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-19-4626

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.

DEPOSITION OF

CHRIS KNOPF

BY WRITTEN QUESTIONS

Taken: October 16, 2019

By Mary Piehl, B.S.Ed, RPR

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2

1 APPEARANCES

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1 APPEARANCES - cont'g

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1 THE DEPOSITION BY WRITTEN QUESTIONS OF
2 CHRIS KNOPF is taken on this 16th day of October,
3 2019 at the offices of Minnesota Pollution Control
4 Agency, 520 Lafayette Road North, St. Paul,
5 Minnesota, commencing at the hour of approximately
6 11:30 a.m. pursuant to NOTICE:

7 * * *

8 CHRIS KNOPF,
9 called as a witness, being first
10 duly sworn, was examined and
11 testified on his oath as follows:

12
13 P R O C E E D I N G S

14
15 MR. EVAN: Before we begin, I'd like
16 to mention that we had discussed this with
17 MPCA counsel before this deposition. To the
18 extent that this deposition, these deposition
19 questions seek documents that are part of the
20 administrative record submitted by MPCA to the
21 Court of Appeals, Relators will note that we
22 produced and may refer to the itemized lives
23 that record, but we did not produce the
24 entirety of the record itself. And we've
25 discussed that with MPCA's counsel, and we

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1 have agreed in principal to a stipulation
2 regarding the extent and the admissibility of
3 those documents, including what documents may
4 not be in that record. We'll work the exact
5 details out later, but I wanted to note that
6 for today's deposition.

7 MR. SCHWARTZ: I can confirm that a
8 we had the discussion, and for my part, I'm
9 grateful they're not producing the entire
10 physical administrative record.

11
12 (The following instructions are read
13 to the witness by the court reporter.)

14
15 DEFINITIONS & DIRECTIONS.

16
17 1. If you have any question regarding the
18 interpretation of any part of any of the requests
19 for production or written deposition questions,
20 contact undersigned counsel immediately for
21 clarification. The language of these requests
22 should be construed in the broadest possible sense
23 so that full and complete discovery may be obtained
24 with regard to the matters requested.

25 2. The conjunctive includes disjunctive and

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1 vice versa, "all" includes "any" and vice versa, and
2 "each" includes "every" and vice versa, so that
3 these discovery requests shall be construed to
4 request the broadest scope of information.

5 3. If any request cannot be responded to in
6 full, respond to it to the fullest extent possible,
7 specifying the reasons for your inability to respond
8 fully.

9 4. If an objection is made with regard to
10 any information sought, state the nature of the
11 objection and the legal authority therefor.

12 5. In the event that any document is not
13 produced by you by reason of a claim of privilege,
14 please state the following: (a) date of the
15 document; (b) author of the document; (c) addressee
16 of the document; (d) type of document (e.g. record,
17 letter, statement, e-mail); (e) nature of the
18 privilege claimed; (f) identity of the person or
19 entity asserting the privilege; and (g) all persons
20 who have had access to or received copies of the
21 document.

22 6. "MPCA" means the Minnesota Pollution
23 Control Agency and any of its current and former
24 subparts, directors, officers, representatives,
25 employees, and agents thereof.

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1 7. "EPA" means the United States
2 Environmental Protection Agency and any of the
3 current and former subparts, directors, officers,
4 representatives, employees, and agents thereof.

5 8. "Relators" or "you" means the Center for
6 Biological Diversity, WaterLegacy, Friends of the
7 Boundary Waters Wilderness, Minnesota Center for
8 Environmental Advocacy, and the Fond du Lac Band of
9 Lake Superior Chippewa, acting separately or
10 collectively, and including all current and former
11 directors, officers, representatives, employees, and
12 agents thereof.

13 9. "NPDES Permit" means National Pollutant
14 Discharge Elimination Systems/State Disposal System
15 Permit No. MN0071013, including all draft and final
16 versions thereof, and the environmental review and
17 permitting processes relating thereto.

18 10. "Hearing" means the evidentiary hearing
19 ordered in this matter by the Minnesota Court of
20 Appeals in its June 25, 2019 Order in Consolidated
21 Case Nos. A19-0112, A19-0118, and A19-0124.

22 11. "Procedural Irregularities" means
23 irregularities to procedure as used in Minn.Stat.
24 14.68, as well as procedural irregularities as used
25 by Relators in their August 14, 2019 List of Alleged

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1 Procedural Irregularities.

2 12. The word "documents," "records," or
3 "writings" or words of similar import is used in the
4 broadest sense possible and includes, without
5 limitation, any written, printed, typed, graphic or
6 electronic material of any kind, and any physical
7 means whatsoever of recording or storing
8 information, data or knowledge, including any
9 mechanical, electronic or sound recording, by
10 whatever means made, including, but not limited to,
11 papers, books, records, letters, photographs,
12 tangible things, correspondence, communications,
13 telegrams, cables, facsimile or telecopy messages,
14 email, text messages, social media posts, messages
15 or other electronically stored data, memoranda,
16 notes, notations, work papers, transcripts, minutes,
17 reports, records of telephone or other
18 conversations, statements, summaries, opinions,
19 studies, analyses, evaluations, contracts,
20 agreements, jottings, agendas, bulletins, notices,
21 announcements, instructions, guidelines, charts,
22 manuals, brochures, publications, schedules,
23 journals, books of account, diaries, lists,
24 tabulations, newsletters, drafts, proofs, or other
25 pre-publication forms or materials, telephone lists

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1 or indexes (written or electronic), Rolodexes,
2 records or invoices reflecting business operations,
3 canceled checks, vouchers, ledger sheets, statements
4 of witnesses, findings of investigation, minutes of
5 any corporate meetings, minutes of board of
6 directors of corporations, records of negotiations,
7 reports of experts, reports of consultants, any
8 notes or drafts relating to any of the foregoing,
9 and all things similar to the foregoing. It shall
10 also mean all notes, outlines, drafts and
11 non-identical copies of documents by whatever means
12 made.

13 13. The term "communication" or
14 "communications" means the transmittal of
15 information in the form of facts, ideas, inquiries,
16 discussions, conversations, negotiations,
17 agreements, undertakings, meetings, telephone
18 conversations, letters, notes, telegrams,
19 facsimiles, telexes, emails, text messages, social
20 media messages, advertisements or other form of
21 interchange whether oral or written.

22 14. Each of the following requests for
23 production are continuing in nature, such that
24 supplemental responses are required for any new
25 information you receive that reveals an original

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1 response or answer was incorrect when made, or is no
2 longer true or complete in light of such new
3 information. This duty to supplement shall be
4 continuing up until the Hearing, and such
5 supplementary responses are hereby requested to be
6 served immediately upon discovery or identification
7 of such information.

8 15. "Describe" when used with respect to a
9 communication, act or conduct, means to give, state
10 or identify the following: the date of
11 communication, act or conduct, where it took place,
12 and the person or persons present;

13 a. If a communication, the words or
14 substance of the communication, the
15 person making each of the particular
16 statements so listed, the mode of the
17 communication (e.g., in writing,
18 telephone, via computer, in person), and
19 the location of each of the participants;

20 b. If an act or conduct, the
21 details of the act or conduct being
22 described and what each participant in
23 such act or conduct did; and

24 c. Any document evidencing or
25 reflecting any communication, act or

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1 conduct described in response to, or
2 called for by, the question requesting
3 you to describe that communication, act
4 or conduct.

5 16. Some of the following requests and
6 questions were drafted in light of Relators' List of
7 Alleged Procedural Irregularities filed on August
8 14, 2019. By propounding the following requests and
9 questions, MPCA fully reserves, and in no way
10 waives, its rights to object to the scope of
11 Relators' List of Alleged Procedural Irregularities,
12 as well as Relators' requests for production or
13 written deposition questions.

14 17. MPCA fully reserves the right to amend,
15 modify, or propound new requests for production or
16 written deposition questions if the Court strikes,
17 sustains objections to all or part of, or otherwise
18 limits some or all of these requests for production
19 or written deposition questions.

20
21 (The following written questions were
22 read to the witness by the court reporter.)

23

24

WRITTEN DEPOSITION QUESTIONS

25

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1 **1. Describe with particularity any Procedural**
2 **Irregularities that Relators allege occurred**
3 **regarding the NPDES Permit.**

4 THE WITNESS: Based on the information
5 Relators currently possess and considering
6 that discovery and investigation are ongoing,
7 Relators have prepared a list of by Bates
8 Numbers that are responsive to this question.

9 MR. NELSON: And I'll have the court
10 reporter mark this as Exhibit 1.

11 (Exhibit No. 1 was marked for
12 identification.)

13 MR. EVAN: I want the record to reflect
14 I've shared a copy of that list with Counsel
15 for MPCA and also for PolyMet.

16 MR. SCHWARTZ: Just for clarification,
17 these are Bates numbers prepared internally by
18 the Relators?

19 MR. EVAN: Yeah, and for clarification of
20 the record, we will make our production later
21 this afternoon. These Bates numbers will be
22 on that production. That will be forthcoming.
23 It has been prepared, just not yet been
24 served.

25 **2. Describe with particularity the basis for**

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14

1 **Relators' allegation that MPCA and/or EPA**
2 **sought to prevent EPA's comments from becoming**
3 **part of the administrative record for the**
4 **NPDES Permit.**

5 THE WITNESS: Based on the information
6 Relators currently possess, and considering
7 that discovery and investigation are ongoing,
8 Relators have prepared a list of documents by
9 Bates number that are responsive to this
10 question.

11 MR. NELSON: And I'll mark Exhibit 2.

12 (Exhibit No. 2 was marked for
13 identification.)

14 MR. NELSON: And I want the record to
15 reflect that I'm sharing this list with
16 counsel for MPCA and also PolyMet.

17 MR. SCHWARTZ: And I note that the
18 witness is reading from notes and would
19 request a copy of those notes at the end of
20 the deposition.

21 MR. NELSON: We'll provide that list --
22 or those notes, excuse me.

23 MR. MILLS: And I will just chime in, why
24 don't we mark it as an exhibit at some point
25 before the end.

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15

1 MR. NELSON: We can do that.

2 MR. MILLS: Thank you.

3 **3. Describe with particularity the basis for**
4 **Relators' allegation that MPCA's issuance of**
5 **the NPDES Permit was based on communications**
6 **or documents that are not reflected in the**
7 **administrative record.**

8 THE WITNESS: Based on the information
9 Relators currently possess and considering
10 that discovery and investigation are ongoing,
11 Relators have prepared list of documents by
12 Bates number that are responsive to this
13 question.

14 MR. NELSON: And I will mark this exhibit
15 as Exhibit No. 3. Let the record reflect I'm
16 sharing this list with counsel for MPCA and
17 also counsel for PolyMet.

18 (Exhibit No. 3 was marked for
19 identification.)

20 MR. NELSON: This is Exhibit 1.

21 MR. SCHWARTZ: Yes.

22 MR. NELSON: This is Exhibit 2, this is
23 Exhibit 3.

24 **4. Describe with particularity the basis for**
25 **Relators' allegation that MPCA sought to**

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1 **prevent documents or communications from being**
2 **fully and fairly reviewed by the Court of**
3 **Appeals.**

4 THE WITNESS: Based on the information
5 Relators currently possess and considering
6 that discovery and investigation are ongoing,
7 Relators have prepared a list of documents by
8 Bates number that are responsive to this
9 question.

10 MR. NELSON: I will mark this as Exhibit
11 4.

12 (Exhibit No. 4 was marked for
13 identification.)

14 MR. NELSON: Please let the record
15 reflect I'm sharing a copy of this exhibit
16 with MPCA counsel and also PolyMet's counsel.
17 **5. Describe with particularity each instance in**
18 **which Relators allege that MPCA failed to act**
19 **with truthfulness, accuracy, disclosure, or**
20 **candor in connection with the NPDES Permit.**

21 THE WITNESS: Based on the information
22 Relators currently possess and considering
23 that discovery and investigation are ongoing,
24 Relators have prepared a list of documents by
25 Bates number that are responsive to this

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17

1 question.

2 MR. NELSON: I would direct counsel to
3 the Exhibit No. 4, which includes a list of
4 documents responsive to Question No. 4 and
5 also Question No. 5.

6 **6. Describe with particularity each instance in**
7 **which Relators allege that MPCA improperly**
8 **destroyed, discarded, or failed to retain**
9 **written records of communications with EPA**
10 **regarding the NPDES Permit.**

11 THE WITNESS: Based on the information
12 Relators currently possess and considering
13 that discovery and investigation are ongoing,
14 Relators have prepared a list of documents by
15 Bates number that are responsive to this
16 question.

17 MR. NELSON: I'll have this marked as
18 Exhibit No. 5. Please let the record reflect
19 that I'm sharing a copy of this exhibit with
20 counsel for MPCA and also with counsel for
21 PolyMet.

22 (Exhibit No. 5 was marked for
23 identification.)

24 **7. Describe with particularity how Relators**
25 **allege that they were prejudiced by the**

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1 **alleged Procedural Irregularities associated**
2 **with the NPDES Permit.**

3 MR. NELSON: Consistent with the court's
4 September 16th ruling, Relators note an
5 objection to this questions to the extent that
6 it calls for a legal conclusion. Subject to
7 that objection, the witness may answer the
8 question.

9 THE WITNESS: Based on the information
10 Relators currently possess and considering
11 that discovery and investigation are ongoing,
12 Relators have prepared a list of documents by
13 Bates number that are responsive to this
14 question.

15 MR. NELSON: I'd like to mark this as
16 Exhibit No. 6.

17 (Exhibit No. 6 was marked for
18 identification.)

19 MR. NELSON: Please let the record
20 reflect that I'm sharing a copy of this
21 exhibit with counsel for MPCA and also counsel
22 for PolyMet.

23 **8. For each document that Relators allege was**
24 **improperly excluded from the administrative**
25 **record for the NPDES Permit, describe with**

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1 **particularity why Relators allege the document**
2 **should be included in the administrative**
3 **record.**

4 MR. NELSON: Relators note an objection
5 consistent with the court's September 16th
6 ruling to the extent that question seeks a
7 legal conclusion. Subject to that objection,
8 the witness may answer the question.

9 THE WITNESS: Based on the information
10 Relators currently possess and considering
11 that discovery and investigation are ongoing,
12 Relators have prepared a list of documents by
13 Bates number that are responsive to this
14 question.

15 MR. NELSON: I will mark Exhibit No. 7.
16 Please let the record reflect that I shared a
17 copy of this with MPCA counsel and also
18 counsel for PolyMet.

19 (Exhibit No. 7 was marked for
20 identification.)

21 MR. NELSON: Pursuant to the earlier
22 agreement made on the record, I will submit
23 this as Exhibit No. 8. This is a copy of the
24 notes that Relators' designee was using during
25 this deposition.

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1 (Exhibit No. 8 was marked for
2 identification.)

3 MR. NELSON: We don't have copies. Would
4 you like us to make copies of this?

5 MR. MILLS: You can email one later.
6 Thank you.

7 MR. NELSON: Is that okay with you?

8 MR. SCHWARTZ: That's fine.

9 MR. NELSON: I'll represent there's no
10 handwriting on this document.

11 MR. MILLS: I just want to note an
12 objection for the record. These questions all
13 ask the witness to describe with particularity
14 various things. For example, No. 1 says
15 describe with particularity any procedural
16 irregularity that Relators allege occurred
17 regarding the NPDES permit.

18 I could go on through every
19 question, but none of them called for the
20 identification of documents, and all the
21 answers given simply handed over a list of
22 Bates numbers that, you know, some of them are
23 I don't know how many pages long. Looking at
24 Exhibit 4, one, two, three, four, five, six,
25 seven, eight, nine, ten, eleven, twelve,

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1 thirteen, fourteen, fifteen, sixteen,
2 seventeen, eighteen, nineteen, twenty,
3 twenty-one, twenty-two, twenty-three,
4 twenty-four, twenty-five, twenty-six,
5 twenty-seven, twenty-eight, twenty-nine,
6 thirty, each page has three columns of Bates
7 numbers on it. I don't think that Exhibit 4
8 properly responds to Question No. 4, which
9 asked to describe with particularity the basis
10 for Relators' allegations that MPCA sought to
11 prevent documents or communications from being
12 fully and fairly reviewed by the Court of
13 Appeals. I just want to note that objection
14 for the record for now.

15 MR. SCHWARTZ: Yes, and on behalf of
16 MPCA, I wanted to note exactly the same
17 objection. We did not know that the response
18 this morning would be multiple pages of
19 innumerable documents, as opposed to an actual
20 description. The question calls for a
21 description and the instructions define what
22 we meant by description. And we don't believe
23 that long list of documents with Bates numbers
24 satisfies that question.

25 MR. NELSON: Relators would note for the

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1 record that, first, we do not believe PolyMet
2 has the standing to make an objection, because
3 these are not PolyMet's questions.

4 Second, we would also note the court in
5 its September 16th ruling stated that describe
6 in particularity the basis for these
7 allegations, and our response to that question
8 would be these documents are the basis that
9 would be it. We were simply following the
10 court's order in preparing our answers to
11 today's deposition questions.

12 MR. SCHWARTZ: We don't believe that the
13 judge ruled that a question -- answers like
14 these, that were exclusively list of documents
15 without any explanation whatever, would
16 satisfy the questions that we submitted, given
17 the fact that the judge recognized that, as a
18 matter of due process, MPCA had a right to
19 know what the allegations were against it so
20 we could respond. And we don't believe that
21 long, long list of documents without any
22 explanation whatever satisfies that concern
23 for due process.

24 MR. NELSON: We disagree with that
25 objection, and we think that the court was

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1 clear that providing documents would form --
2 that form the basis of our allegations would
3 be responsive, and in fact, on the record
4 Mr. Schwartz said if documents are the basis,
5 then that's what we'll get. I'm paraphrasing,
6 not directly quoting.

7 We have prepared the responses that
8 we've prepared, and Relators' designee has
9 testified that those documents are responsive.
10 We believe that settles the matter.

11 MS. MACCABEE: One more matter for the
12 record. In addition to the documents,
13 Relators have provided in its discovery not
14 only the list of our alleged procedural
15 irregularities, but a copy of our Rules of
16 Motion which sets forth very clearly and in
17 great deal of detail the claims made by
18 Relators are based on information that we've
19 secured to date. And that was of course prior
20 to the deposition that we had today and prior
21 to the discovery that we're going to be able
22 to read as a result of this process.

23 So in addition to a set of
24 documents, there's not only the narrative that
25 was provided at the Court of Appeals by

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1 WaterLegacy, but narratives that were provided
2 by the Relators collectively in that Rule 7.02
3 motion.

4 MR. SCHWARTZ: Well, we disagree, and for
5 the moment, there's probably nothing more to
6 be gained by continuing the argument, so we'll
7 preserve the fact that we remain in
8 disagreement.

9 MR. NELSON: I would agree that we can't
10 resolve this here, and I think we should close
11 the deposition, if that's okay with you.

12 MR. SCHWARTZ: (Nodding.) Yes.

13 MR. NELSON: No nods of the head. Verbal
14 responses.

15
16 (WHEREUPON, at approximately 12:13
17 p.m. the foregoing deposition was concluded.)

18 (The ORIGINAL EXHIBITS were attached
19 to the ORIGINAL TRANSCRIPT)

20 (The ORIGINAL TRANSCRIPT was
21 provided to ATTORNEY SCHWARTZ and copies to
22 ATTORNEYS NELSON and MILLS.)

23 * * (END OF RECORD) * *

24

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1 STATE OF MINNESOTA

2 COUNTY OF DAKOTA

3

4

5 I, MARY E. PIEHL, hereby certify that I
6 reported the Deposition by Written Questions of
7 CHRIS KNOPF on the 16th day of October, 2019 in
8 St. Paul, Minnesota, and that the witness was by me
first duly sworn to tell the truth and nothing but
the truth concerning the matter in controversy
aforesaid;

9 That I was then and there a notary public in
10 and for the County of Dakota, State of Minnesota;
that by virtue thereof I was duly authorized to
administer an oath;

11

12 That the foregoing transcript is a true and
13 correct transcript of my stenographic notes in said
matter, transcribed under my direction and control;

13

14 That the cost of the original has been charged
15 to the party who noticed the deposition and that all
parties who ordered copies have been charged at the
same rate for such copies;

16

17 That the reading and signing of the
deposition was waived;

18

19 That I am not related to any of the parties
hereto nor interested in the outcome of the action
and have no contract with any attorneys, or persons
with an interest in the action that has a
substantial tendency to affect my impartiality.

20

21 WITNESS MY HAND AND SEAL THIS 16TH DAY OF
22 OCTOBER, 2019.

22

23

24

MARY E. PIEHL
Notary Public

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