

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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.

Court File Number: 62-CV-19-4626

Honorable Judge John H. Guthmann

**MINNESOTA POLLUTION CONTROL AGENCY'S RESPONSE TO
RELATORS' MOTION TO AMEND EXHIBIT LIST**

Minnesota Pollution Control Agency (“MPCA”) requests that the Court deny Relators’ Motion to Amend Relators’ Exhibit List. First, at the December 6, 2019, conference, this Court extended the exhibit list deadline, initially set for December 9, 2019, to December 16, 2019. Am. Order ¶ 7; December 6, 2019, Conf. Tr. 35:1–10. Relators’ motion, filed on December 27, 2019, is therefore untimely. Second, even if Relators only obtained some of these documents after the December 16, 2016, deadline, they cannot show “good cause” to include these as exhibits, because the documents are irrelevant, lack foundation, are hearsay, or are otherwise inadmissible in this limited-scope hearing. For the same reasons MPCA presented in its motion *in limine* filed on December 27, 2019, incorporated here by reference, MPCA opposes Relators’ Motion to Amend Exhibit List.

INTRODUCTION

On June 25, 2019, the Court of Appeals transferred this matter to this Court “for the limited purpose of an evidentiary hearing and determination of the alleged irregularities in procedure” regarding the NorthMet Permit permitting process. Sept. 9, 2019 Order at 1 (quoting Court of

Appeals' June 25, 2019 Order). The scope of this transfer proceeding is governed by the following statutes and transfer order:

- a) Minn. Stat. § 14.68, which establishes the procedures for review of the challenged permit;
- b) Minn. Stat. § 14.69, which defines the scope of judicial review of the permit; and
- c) The Court of Appeals' June 25, 2019, transfer order.

Minn. Stat. § 14.68 confines judicial review to the administrative record except for “alleged irregularities in procedure” that are not shown in the record. The meaning of “irregularity” in section 14.68 should be interpreted in accordance with the scope of judicial review set forth in section 14.69, which authorizes judicial relief regarding procedural defects only for administrative action “made upon *unlawful* procedure.” (emphasis added). Thus, these statutory provisions contemplate relief only based on a showing of “unlawful” procedures upon which the agency’s administrative action is based.

This Court’s jurisdiction derives from, and is limited by, the Court of Appeals’ June 25, 2019, transfer order.¹ That order (at 3–4) describes the subject of this hearing. As discussed more fully in MPCA’s motion *in limine* filed on December 27, 2019, the Court of Appeals’ order identifies the scope of this hearing as whether any alleged procedural irregularities by MPCA prevented EPA from commenting on the NorthMet permit or otherwise prevented EPA’s concerns about the permit from being made a part of the record. It does not describe anything else. In

¹ Although the pleadings on the motion to transfer provide context that could help interpret the Court of Appeals order, those pleadings cannot override the jurisdiction limited by sections 14.68 or 14.69 and the Order itself. Here, the Court of Appeals was careful to describe the scope of the jurisdiction it was conferring on this Court. It is the scope defined by sections 14.68 and 14.69 and the Court of Appeals’ Order—not the scope of Relators’ numerous allegations—that should control the scope of this hearing.

particular, the governing statutes and the June transfer 25 order do not provide a jurisdictional basis for evidence about MPCA procedural actions other than those the order describes.

Accordingly, MPCA respectfully requests that the Court exclude all exhibits presented in Relators' motion to amend Exhibit List, which are (1) untimely and (2) lack good cause for inclusion because they are not relevant to the Court's limited inquiry under Minn. Stat. § 14.68.

STANDARD OF REVIEW

The Court has inherent authority to “prevent injection into trial of matters which are irrelevant, inadmissible and prejudicial.” *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 418 (Minn. Ct. App. 2003) (internal quotation marks omitted). The exclusion of evidence for immateriality or lack of foundation rests primarily in the discretion of the trial court. *Hiedeman v. Hiedeman*, 290 Minn. 210, 217, 187 N.W.2d 119, 124 (1971). Moreover, Rule 103 of the Minnesota Rules of Evidence provides that the Court may “make[] a definitive ruling on the record admitting or excluding evidence, either at or before trial[.]”

ARGUMENT

The Exhibits Presented in Relators' Motion to Amend Exhibit List Should Be Excluded.

MPCA respectfully requests the Court to exclude the exhibits that Relators seek to include in their amended Exhibit List. First, Relators' motion is untimely, submitted eleven days after the Court extended the Exhibit List deadline to December 16, 2019. December 6, 2019, Conf. Tr. 35:1–10. In fact, Relators concede that they had access to at least a few of these documents (Exhibit E, Bates Nos. Relators_0064227-0064228 and Exhibit F, Bates Nos. Relators_0064181-0064182) before submitting their Exhibit List to the Court on December 16, 2019, but those documents were either “inadvertently” not included or were not included because they supposedly “only became relevant” upon Relators' review of MPCA's exhibit list. Relators' Motion at 2-3.

Relators have therefore failed to establish “good cause” for some of these documents because Relators had control of them before the December 16, 2019, deadline to list exhibits. *See* Relators’ Motion at 3 (conceding that a prerequisite for “good cause” to include a document after the deadline is that Relators had no control of the document before the exhibit list deadline).

Second, with respect to the DPA and FOIA documents Relators seek to add, even if Relators obtained some of these documents after December 16, 2019, they cannot show “good cause” to include them as exhibits, because the documents are irrelevant, lack foundation, are hearsay, or are otherwise inadmissible under the Minnesota Rules of Evidence in this limited-scope hearing. Relators’ exhibits fall into one or more of the following categories: (1) exhibits that are or contain newspaper articles describing the NorthMet permitting process and/or challenges thereto; (2) exhibits that do not show that any procedural irregularity occurred or did not occur; (3) exhibits lacking foundation and constituting hearsay; and (4) exhibit Relators had access to before December 16, 2019, but were not included in Relators’ initial Exhibit List. And they are all irrelevant to the Court’s limited inquiry under Minn. Stat. § 14.68 into whether any alleged procedural irregularities occurred that prevented EPA’s comments on the NorthMet Permit from being submitted to MPCA or otherwise made a part of the record. Furthermore, the addition of such documents only days before the hearing would prejudice MPCA. Accordingly, the following exhibits listed in Relators’ Motion to Amend Exhibit List should be excluded:

(1) Newspaper Article(s):

Exhibit F, Bates Nos. Relators_0064183-0064185.

(2) Exhibits That Do Not Show the Existence or Absence of Any Procedural Irregularity:

Exhibit A, Bates No. Relators_0065955.

Exhibit B, Bates Nos. Relators_0065952-0065954.

Exhibit C, Bates Nos. Relators_0065950-0065951.

(4) Exhibits Lacking Foundation and Constituting Inadmissible Hearsay:

Exhibit D, Bates Nos. Relators_0065956-0066002.

(5) Exhibits Relators Had Control of Before December 16, 2019, But Not Included in Relators'

Initial Exhibit List:

Exhibit E, Bates Nos. Relators_0064227-0064228.

Exhibit F, Bates Nos. Relators_0064181-0064182.

CONCLUSION

For the reasons above, MPCA requests that the Court deny Relators' Motion to Amend Exhibit List and exclude all exhibits listed therein from admission at the hearing commencing on January 21, 2020.

DATED: January 10, 2020.

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