

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

**DECLARATION OF ANDREW C. EMRICH IN SUPPORT OF
MINNESOTA POLLUTION CONTROL AGENCY'S
RESPONSE OPPOSING RELATORS'
MOTION IN LIMINE FOR SPOILIATION SANCTIONS**

I, Andrew C. Emrich, in accordance with section 358.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

1. I am a partner with Holland & Hart LLP, 6380 South Fiddlers Green Circle, Suite 500, Greenwood Village, Colorado 80111. I have worked at Holland & Hart for over fourteen years. During that time, I have represented mining, oil and gas, renewable energy, and real estate clients in environmental and natural resources litigation and regulatory compliance involving a wide range of federal, state, and local administrative agencies. During my time in private practice, I have been involved in many cases in which one or more federal and/or state agencies were parties. I regularly work with attorneys from the U.S. Department of Justice ("DOJ") as well as agency counsel, and agency program personnel, from a wide range of federal, state, and local government agencies.

2. Prior to joining Holland & Hart LLP, I served as Counsel to the Assistant Attorney General at the Environment and Natural Resources Division of the DOJ from 2001 to 2005, where I both litigated significant environmental and natural resources cases and helped

develop and implement litigation positions and strategy for federal agencies in courts throughout the United States.

3. While at DOJ, I served as lead counsel or co-counsel in a number of federal court cases before federal district courts and appellate courts throughout the United States. Most of my litigation work involved defending federal agencies' decisions, regulations, and permits in Administrative Procedure Act ("APA") and similar record review cases.

4. As trial counsel in these record review cases, I regularly coordinated with agency counsel and agency program officials at multiple federal agencies including the Department of the Interior, the Environmental Protection Agency, the Army Corps of Engineers, the Forest Service, the Department of the Defense, the Department of Commerce, and the Department of Transportation in compiling the administrative records for agency decisions under judicial review. In connection with my litigation work at DOJ, I was personally acquainted with the procedures federal agencies used to compile and certify their administrative records in connection with legal challenges to agency decisions.

5. While the agencies' program personnel and counsel held primary responsibility for compiling the administrative records, these agency personnel consulted with me and other DOJ attorneys concerning the scope and content of their administrative records. I regularly worked with agency counsel and program personnel on issues related to the scope and content of administrative records, including the treatment of documents that were protected from disclosure under the attorney-client privilege and/or deliberative process privilege. These discussions often took place after a complaint had been filed challenging a particular federal agency decision.

6. In addition, in those cases where the agencies anticipated that their decisions were likely to be the subject of a future APA or similar legal challenge, I was often consulted during

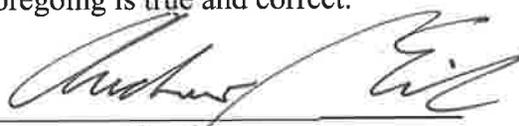
the agency decision-making process concerning the type of information that should be documented and preserved for the administrative record.

7. During my time at DOJ, I never instructed agency counsel or agency program personnel to issue a “litigation hold” for agency documents related to decisions, regulations, or permits that were subject to judicial review under the APA or similar federal judicial review statute.

8. It was neither my practice, nor that of my colleagues at DOJ as far as I know, to instruct our federal agency clients to issue litigation holds in record review cases. I am not aware of any formal procedures at DOJ for instructing federal agencies to issue litigation holds in APA or similar record review cases.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 9, 2020
Arapahoe County
Greenwood Village, Colorado


Andrew C. Emrich