

STATE OF MINNESOTA  
 COUNTY OF RAMSEY

DISTRICT COURT  
 SECOND JUDICIAL DISTRICT  
 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

Court File No. 62-CV-19-4626  
 Judge John H. Guthmann

**[PROPOSED] ORDER GRANTING  
 RELATORS' MEMORANDUM IN  
 SUPPORT OF MOTION TO STRIKE  
 THE DECLARATIONS OF ADONIS  
 NEBLETT, ANDREW EMRICH, AND  
 THOMAS SANSONETTI AND  
 STATEMENTS MADE IN RELIANCE  
 ON THEM FROM MPCA'S POST-  
 HEARING BRIEF AND PROPOSED  
 FINDINGS OF FACT**

The above-captioned matter came before the Court on Relators' Motion to Strike the Declarations of Adonis Neblett, Andrew Emrich, and Thomas Sansonetti and Statements Made in Reliance on Them from MPCA's Post-Hearing Brief and Proposed Findings of Fact (the "Motion"). Relators waived oral argument.

The Court, having read and considered the Motion, and based on all the files, records, and proceedings herein, makes the following:

IT IS HEREBY ORDERED:

1. Relators' Motion is GRANTED.
2. The Court strikes from MPCA's Post-Hearing Brief
  - a. The following from page 45:

*see also* MPCA Response to Motion for Spoliation Sanctions, Ex. 2 at ¶¶ 6-7 (Decl. of Adonis Neblett) (explaining that implementing litigation hold orders on all matters potentially reviewed on the administrative record “would be very burdensome” and would “consume a large amount of this Agency’s scarce resources”). Here, MPCA did not reasonably anticipate that the PolyMet Permit would be the subject of litigation beyond the administrative record until the Court of Appeals transferred this proceeding to this Court on June 25, 2019. MPCA Response to Motion for Spoliation Sanctions, Ex. 2 at ¶ 3 (Decl. of Adonis Neblett). Once the Transfer Order was issued, MPCA promptly issued a litigation hold order. *Id.* at ¶ 8. Thus, MPCA’s handling of litigation holds was consistent with its standard practice. *Id.* at ¶ 4;

- b. Footnote 4 on page 45; and
- c. The following from page 47:

Until the Court of Appeals issued its Transfer Order on June 25, 2019, MPCA anticipated that the PolyMet Permit would give rise only to judicial review on the administrative record. MPCA Response to Motion for Spoliation Sanctions, Ex. 2 at ¶ 3 (Decl. of Adonis Neblett).

3. The Court strikes from MPCA’s Proposed Findings of Fact

- a. Finding 189;
- b. Finding 201; and
- c. The following from Finding 202:

MPCA Response to Motion for Spoliation Sanctions, Ex. 2 at ¶¶ 3-4 (Decl. of Adonis Neblett)

[and]

MPCA’s practice is consistent with the customary practices of federal agencies. MPCA’s Response to Motion for Spoliation Sanctions, Ex. 11 at ¶¶ 7-8 (Decl. of Andrew Emrich); MPCA’s Response to Motion for Spoliation Sanctions, Ex. 12 at ¶¶ 3, 7 (Decl. of Thomas Sansonetti).

BY THE COURT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
John H. Guthmann  
Judge of District Court