

Exhibit A

**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
RICHARD CLARK, P.G.**

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

I, RICHARD CLARK, in accordance with section 38.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

Background

1. My job title is Supervisor, Metallic Mining Sector Unit, Water and Mining Section, Industrial Division, for the Minnesota Pollution Control Agency (“MPCA”). I have been employed by MPCA since July 23, 1986.

2. My job responsibilities have included developing and drafting National Pollutant Discharge Elimination System/State Disposal System Permit No. MN0071013 (“Water Permit”) for the Poly Met Mining, Inc. NorthMet Mine Project.

3. I was involved in developing the Water Permit from the beginning of preliminary discussions in 2015 until issuance on December 20, 2018. I also participated in regular meetings and conference calls with EPA during the development of the Water Permit, including the April 5, 2018, telephone call with EPA referenced in WaterLegacy’s May 17, 2019, Motion for Transfer to the District Court or, in the Alternative, for Stay Due to Irregular Procedures and Missing Documents (“Motion”).

4. I submit this Declaration based on my personal knowledge and in support of MPCA's Response to WaterLegacy's Motion.

Development of the Water Permit in Consultation with EPA

5. Under normal circumstances, MPCA typically has limited, if any, discussions, meetings, or interactions with EPA during the permit-development period. Normally, MPCA drafts the permit and submits the draft permit to EPA shortly in advance of the public-comment period. EPA then has the opportunity to submit comments on the permit prior to the permit being placed on notice, or as is more typically the case, during the notice period itself. After the public comment period, MPCA may revise the draft permit as appropriate and then submits the proposed permit to EPA, which has the right to object to the issuance of the proposed permit. MPCA usually has limited, if any, discussions with EPA during the permit-development stage and does not interact with EPA about a permit until the public-comment period, if at all. MPCA always makes information about a permit available to EPA, however, and if EPA has comments, there may be (usually one) meeting or a conference call about EPA's comments.

6. However, in the case of the Water Permit, in my 33 years of experience developing NPDES/SDS permits with MPCA, EPA has never been as involved in the development of a permit from start to finish as it was with this permit.

7. MPCA and EPA began having discussions about the NorthMet project in 2015, long before Poly Met even submitted its permit application in the summer of 2016.

8. The proposed NorthMet Project went through extensive environmental review with the Department of Natural Resources with input from MPCA and EPA as early as 2005.

9. MPCA wanted a method of receiving consistent EPA feedback throughout the permit-development process, so shortly before Poly Met submitted its completed permit application, MPCA and EPA jointly decided to hold twice-monthly conference calls that would take place throughout the permit-development process. These twice-monthly conference calls were unique to this permit. I have never before worked on a permit where MPCA and EPA had routine discussions throughout the entire permit-development process.

10. MPCA and EPA held the first conference call in August 2016, within a month of receiving PolyMet's permit application package. These calls were scheduled to be held twice monthly, but on occasion there was only one call per month due to scheduling issues. But there was always at least one call per month. These calls were held regularly until August 2017, when MPCA and EPA took a break from the calls so that MPCA could focus on drafting the permit and the fact sheet in light of discussions over the previous year with EPA. By that time, MPCA and EPA had discussed together all of the major issues that EPA had with the pre-proposed permit and MPCA fully understood and considered EPA's positions.

11. MPCA had begun drafting portions of the Water Permit long before August 2017. As MPCA and EPA resolved different issues on the twice-monthly conference calls, MPCA would integrate those solutions into the relevant parts of the draft permit. But after

discussing all issues by August 2017, MPCA began to actively draft the remaining parts of the permit and the fact sheet and to tie together the parts of the permit that had already been drafted.

12. During this drafting period, MPCA and EPA met twice: on November 1, and November 9, 2017.

13. After completing the pre-comment draft permit, MPCA sent this version to EPA on January 18, 2018.

14. MPCA and EPA again had a conference call to discuss this version of the draft permit on January 31, 2018, and again during the public-comment period on February 13, 2018, and March 5, 2018.

15. On April 5, 2018, MPCA and EPA had a conference call in which EPA told us that it would read from its draft written comments. Mike Schmidt, an attorney with MPCA and another member of the Water Permit team, took notes on the call. After the call, MPCA reviewed the notes and we confirmed our impression of the call, which was that EPA had not raised any new, substantial concerns about the January 2018 public comment draft permit but had instead reiterated the principal concerns that it had previously raised in the twice-monthly calls and in-person meetings. In effect, EPA treated the call as a summary or compendium of all of its previous concerns about the public comment draft permit. There was no discussion or debate about the permit provisions on this call. It was simply an opportunity for EPA to summarize its feedback on the draft permit.

16. One primary focus of EPA's comments involved the prohibition against unauthorized discharges. MPCA had included that prohibition in the draft permit, but EPA wanted to include more explicit conditions in the Water Permit. MPCA agreed to revise the phrasing to address this concern.

17. After the call and after reviewing the notes, MPCA found that EPA had not raised any issues during the call that had not already been fully discussed in previous calls. A number of these issues were not finally resolved, however, until a September 2018 meeting between MPCA and EPA.

18. On September 25 and 26, 2018, MPCA and EPA met for a two-day, in-person meeting about the appropriate terms for the next draft of the Water Permit - the post-public comment draft. At these meetings, there was an exchange of views about a number of issues concerning the draft permit. For instance, EPA wanted MPCA to add operating limits for additional parameters and had some concerns about the federal enforceability of the Water Permit. MPCA added the additional operating limits and committed to add a permit condition prohibiting the violation of any water-quality standard, which commitment satisfied EPA's concern about enforceability.

19. At the September 2018 meeting, EPA also wanted to ensure that there would be public participation if there were subsequent modifications to the Water Permit as a result of submittals such as engineering, groundwater, or monitoring reports etc., or as a result of adaptive-management changes. MPCA added language to the draft permit that increased EPA's assurance that any changes meeting the threshold for public review would be subject to notice and comment.

20. At the conclusion of the September 2018 meeting, all the key issues had been discussed, and MPCA and EPA were in fundamental agreement on the required contents of the permit.

21. MPCA and EPA both left the meetings satisfied that they had made progress in developing a final version of the Water Permit. MPCA agreed to the remaining changes that EPA recommended, and I believe that EPA came away with a better understanding of what MPCA was trying to accomplish in the Water Permit. I had the impression that there were no remaining unresolvable issues.

22. On October 25, 2018, MPCA sent EPA a new draft of the Water Permit. This new draft, which MPCA made available for public review on its website, incorporated the issue resolutions that MPCA and EPA reached at the September 2018 meeting. This initiated a 45-day review period by EPA. Towards the end of this review period EPA indicated they did not have any comments on the new draft permit.

23. On December 4, 2018, per previous agreement with EPA, MPCA sent EPA a final draft of the Water Permit for their final 15 day review. Except for some stylistic revisions and corrections of some typographical errors, the December 4 draft was essentially identical to the October 25 draft. Again, MPCA received no comments or objections from EPA.

24. Although MPCA gave EPA a total of 60 days (instead of the typical 15) to object to the draft permit, EPA did not object to MPCA issuing the draft Water Permit, which MPCA did on December 20, 2018.

Dated: May 28, 2019
Ramsey County
St. Paul, Minnesota



Richard Clark, P.G.
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