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NATIVE AMERICAN CAUCUS,
CO-CHAIR

February 25, 2019

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington DC 20004

Dear Acting Administrator Wheeler:

I am writing to you regarding EPA's review of a National Pollution Discharge Elimination System (NPDES) permit issued in December 2018 by the Minnesota Pollution Control Agency (MPCA) for PolyMet Mining Inc.'s Northmet mining facility in St. Louis County, Minnesota.

Under the leadership of former Administrator Scott Pruitt, senior EPA officials may have sought to circumvent the requirements of the *Federal Records Act* by trying to minimize the creation of written records and instead conduct substantive agency business verbally. After you became Acting Administrator, you took numerous commendable steps to differentiate yourself from your predecessor. As part of that effort, last November you sent a memo to EPA staff reaffirming your commitment to agency transparency and reminding staff of their long-standing obligations under the Federal Records Act to create written documentation for "all substantive decisions reached orally."

Pursuant to an open records request to MPCA, notes of phone conversations and emails between EPA and MPCA staff related to the Northmet project permit review have been made public. Based on those materials, it appears that EPA staff in Region 5 had serious reservations about MPCA's draft NPDES permit from January 2018. MPCA's staffs' notes suggest that EPA staff raised concerns with several provisions in the permit, including with respect to water quality based effluent limits, monitoring plans to ensure Clean Water Act compliance, and potential risks for increased mercury contamination downstream of the project. Furthermore, the notes and various email exchanges between EPA staff and MPCA staff suggest that EPA staff had prepared written comments on the draft permit and that EPA staff were planning to transmit those written comments to MPCA. I note that it is EPA's usual practice to provide state agencies written comments in these situations.

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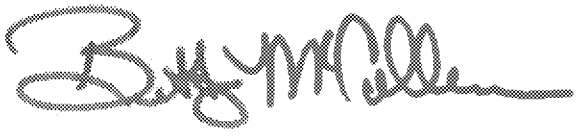
Ultimately, no written comments appear to have been transmitted to MPCA by EPA, and EPA appears to not have provided any comments at all on a revised draft permit prepared by MPCA in October 2018. As a result, the public has been left with very little insight into the specific concerns raised by EPA staff about the initial draft permit, or whether those concerns were adequately addressed by MPCA in the final permit issued in December 2018.

In the interests of transparency and maintaining the public's trust, I am requesting that you make available to the public a copy of any written comments or concerns prepared by EPA staff regarding the Northmet mine permits. To the extent that the substance of written comments were ultimately shared with MPCA verbally, I ask that the written comments be annotated to indicate which concerns were shared verbally.

EPA's mission is to protect public health by safeguarding the air we breathe and the water we drink. The American people have a right to know if the agency is faithfully meeting that obligation. It is incumbent upon EPA to act in a transparent and open fashion. EPA should immediately make its written comments on the Northmet NPDES permit available to the public.

Sincerely,



Betty McCollum
Member of Congress

CC: Region 5 Administrator Stepp