FILED
July 10, 2019
OFFICE OF
APPELLATE COURTS

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 SHANNON LOTTHAMMER

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

I, SHANNON LOTTHAMMER, in accordance with section 358.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

Background

1. Currently I am Assistant Commissioner at the Department of Natural Resources of the State of Minnesota. I have served in this position since February of 2019. Before then, I was employed for 21 years by the Minnesota Pollution Control Agency ("MPCA"). From February 2018 until February 2019, I served as Assistant Commissioner for Water Policy at MPCA.

2. I make this Declaration based on my personal knowledge and in support of MPCA's Sur-reply to WaterLegacy's Motion to Transfer or Stay.

MPCA/EPA Email Exchange Regarding EPA Feedback on the Poly Met Permit

3. On March 16, 2018, I exchanged emails with Kurt Thiede, who was Chief of Staff of the Office of the Regional Administrator of Region 5 of the U.S. Environmental

Protection Agency ("EPA"). Those emails are part of Exhibit 1 to the Declaration of Jeffry Fowley that was filed in this case on June 5, 2019, in WaterLegacy's reply in support of its motion to transfer or stay this appeal. In that declaration, Mr. Fowley argues that there were "irregularities" in the procedures used to develop the Poly Met NPDES permit (the "Poly Met Permit").

4. I was involved in the discussions with EPA that resulted, in part, in the April 5, 2018, conference call in which EPA read its comments to MPCA on the public-comment draft of the Poly Met Permit. I know the basis for the agreement that Mr. Thiede correctly summarized.

5. Mr. Thiede's email summarized our agreement on March 16, 2018, which was the last day of the public-comment period on that draft of the permit. At that point, MPCA already knew that it would be making changes to that draft based on the public comments it had received. Rather than have EPA send us written comments on the version of the permit that we knew we were going to change, we believed that it would be more efficient—both for us and for EPA—if EPA waited to give us any written comments based on the next draft, in which we had the opportunity to address concerns shared by the public.

6. For its part, EPA expressed the need to preserve a meaningful review of the next draft of the permit. That concern was based on the 1974 Memorandum of Agreement between the agencies, which allowed EPA only 15 days to review and object to the revised permit (the "proposed" permit). Our goal was not to foreclose adequate EPA review, but

simply to make the process more efficient, so we agreed to give EPA an additional 45 days to review a "pre-proposed permit," before the 15-day clock started ticking. Thus, EPA's total review period would be 60 days instead of 15 days. That was the approach that satisfied both parties: MPCA would get a chance to improve the draft permit before EPA sent written comments, and EPA would have ample time to review the revised draft permit before its comment deadline.

7. This arrangement was advantageous to MPCA because it allowed MPCA to apply what it had learned during the public-comment period before EPA commented in writing. In that way, EPA's written comments would be more relevant and would address a draft that would be a better work product.

8. I am not aware of any MPCA discussions of a strategy to keep EPA's written comments permanently out of the administrative record—the only goal I am aware of was that those written comments come at a time that would make the permit-development process more efficient.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: June 12, 2019
Ramsey County
St. Paul, Minnesota

Shannon Lotthammer
Assistant Commissioner
Minnesota Department of Natural Resources