

DISTRICT COURT OF MINNESOTA

CIVIL OTHER

FOURTH JUDICIAL DISTRICT

HENNEPIN COUNTY

Court File No. 27-CV-20-8414

EAST PHILLIPS NEIGHBORHOOD INSTITUTE, INC., and

CASSANDRA HOLMES

Plaintiffs,

AMENDED COMPLAINT

v.

THE CITY OF MINNEAPOLIS,

MINNESOTA POLLUTION CONTROL AGENCY, and

THE MINNESOTA ENVIRONMENTAL QUALITY BOARD,

Defendants.

Preliminary Statement

1. Plaintiffs bring these claims pursuant to Minnesota Environmental Rights Act (“MERA”) and Minnesota Environmental Policy Act (“MEPA”).

2. Plaintiffs seek an order enforcing Minn. Stat. 116.07 against Defendant Minnesota Pollution Control Agency and prohibiting Defendants from permitting or causing further pollution to the East Phillips Neighborhood by going forward with the Hiawatha Campus Expansion Project (“Project”).

3. Plaintiffs seek an order that Defendant Environmental Quality Board reassign the Responsible Government Unit to be the Minnesota Pollution Control Agency.

Jurisdiction and Venue

4. This case raises questions under the laws of the State of Minnesota. Therefore, this Court has jurisdiction over all of the Plaintiffs' claims.

5. This Court has jurisdiction over this matter under Minnesota Environmental Rights Act ("MERA"). Minn. Stat. § 116B.03, subs. 1 and 4.

6. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. § 555.01, and grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.

7. Pursuant to Minn. Stat. § 116B.03, and Minn. Stat. § 542.01, venue is proper in Hennepin County because it is where: conduct that is likely to cause pollution, impairment, or destruction occurred; the Defendants' actions at issue in this matter were taken; one or more of the Defendants reside in this county; and, the causes of action alleged herein, or some part thereof, arose.

Parties

8. Plaintiff East Phillips Neighborhood Institute, Inc. ("EPNI") is a non-profit community organization comprised of people living in the East Phillips Neighborhood of Minneapolis, which includes Little Earth of the United Tribes Community.

9. Plaintiff Cassandra Holmes is a board member of EPNI, a registered member of Lac Courte Oreilles Tribe of Wisconsin, and lives in the Little Earth Indian Community.

10. Defendant, City of Minneapolis ("City") is a municipality in Hennepin County, Minnesota.

11. Defendant, Minnesota Pollution Control Agency (“MPCA”) is a state agency in the State of Minnesota responsible for protection and improvement of the environment and human health. MPCA is located at 520 Lafayette Road North, St. Paul, Minnesota 55155.

12. Defendant, Minnesota Environmental Quality Board (“EQB”) is a state agency made up of nine agency heads and eight citizen members who provide leadership and coordination across agencies on priority environmental issues. EQB is located at 520 Lafayette Road, St. Paul, Minnesota 55155.

Facts

13. The Minneapolis Public Works Department, a subsidiary of the City of Minneapolis, is the organization responsible for the Hiawatha Campus Expansion Project.

14. The City of Minneapolis acquired part of the contested properties in 2016. The newly-acquired properties now owned by the City of Minneapolis are located at 2717 Longfellow and 1860 28th Street E. and are owned by the City of Minneapolis directly. One of the properties making up the subject land of the proposed Project includes the 230,000 square-foot building formerly owned by Roof Depot. The property is commonly known as the Roof Depot site.

15. The Hiawatha Campus Expansion Project (“Project”) is the City of Minneapolis’ plan to relocate its 2.43-Acre Minneapolis Public Works Water Distribution Maintenance Facility and Meter Shop.

16. The Project entails relocating the Water Distribution Maintenance Facility to a 7.66-Acre site formerly owned by 1860 East 28th Street, L.L.C.

17. The City of Minneapolis plans to relocate the Water Distribution Maintenance Facility at 2717 Longfellow Ave. S. (Parcel ID: 3602924320075) and 1860 28th St. E. (Parcel ID: 3602924320003) at the intersection of Longfellow Ave. S. and 28th St. E.

18. The Project would abut and is planned to become a part of the existing 8.97-acre Public Works Maintenance Facility already located at 1901 26th Street E.

19. The total land in the combined Hiawatha Campus site is 16.63-acres or 724,408.8 square feet.

20. The East Phillips Neighborhood of South Minneapolis is located within Hennepin County. East Phillips is part of a governmentally-recognized “Southside Green Zone,” an Environmental Justice community that is majority minority and that bears disproportionate harm from pollution sources. All Project property at issue is located within the East Phillips Neighborhood of South Minneapolis.

21. The Midtown Greenway (“Greenway”) is a paved recreational trail that runs east-west through Minneapolis. The Greenway runs by the Roof Depot property on a diagonal only feet from the site, and overlooks the Project site from the Martin Olav Sabo Bridge. The bridge is the first cable-stayed suspension bridge in Minnesota and is a scenic landmark that affords scenic views of the East Phillips neighborhood. The 5.5-mile Greenway is maintained by a group of neighborhoods, individuals and organizations that make up the Midtown Greenway Coalition (“Coalition”). The trail is accessible year-round and is used daily by thousands of visitors throughout the spring, summer and fall, and a few hundred visitors each day during the winter. It is a valuable community asset that serves a diverse population.

22. The Project site is located within the geographic area of the U.S. Environmental Protection Agency’s (“EPA’s”) Arsenic Superfund Site MNN000509136. While this residential Superfund Site was partially cleared, it has not been fully remediated. The Project land is located immediately west of the identified commercial/industrial source of residential arsenic

contamination, located at the North West corner of 28th St. E and Hiawatha Ave., and known as the source of the “Arsenic Triangle.”

23. The Arsenic Triangle land is the former location of two companies that manufactured, stored, and shipped arsenical pesticides between 1938 to 1968. After discovery of arsenic soil contamination in 1994, the property was enrolled in the Minnesota Superfund Program and partially cleared, although contamination remains at the site.

24. The Roof Depot Site is contaminated with arsenic from the CMC Heartland Lite Site. Samples taken at several locations beneath the floor, roads, and parking areas around the building have a contamination level of arsenic at concentrations higher than the MPCA’s Screening Soil Leaching Value of 5.8 parts per million (ppm). Concentrations range from background levels to 147 ppm. There is no special pattern to the sites with the highest contaminations, which will create unknown risks when removing the current building and constructing new structures. The arsenic and antimony-contaminated groundwater plume extends beneath the Roof Depot site.

25. The land underneath the proposed Project site is known to be contaminated with toxic pollutants that include arsenic and polycyclic aromatic hydrocarbons (PAHs), among others.

Project Construction Impacts

26. There are two 12,000-gallon oil tanks used, along with natural gas, for building heat buried under the Roof Depot building that will need to be removed to complete the Project.

27. The soil and groundwater beneath the subject land has been contaminated with large amounts of arsenic over decades.

28. The City of Minneapolis has contracted with Braun Intertec to conduct four separate analyses of the Roof Depot site. The results of the analyses led the MPCA to recognize

multiple hazardous environmental conditions at the Roof Depot site. Soils extracted for purposes of testing at several locations beneath the floor, roads, and parking areas around the Roof Depot building show the soil is contaminated with arsenic concentrations above health-based screening values established by the MPCA and Minnesota Department of Health (“MDH”). A groundwater plume contaminated with arsenic (10.8 to 737 ppb) and antimony (6.9 and 13.7 ppb) exists under the Roof Depot site. The potential source for the antimony has not been identified in these reports from Braun, and it is possible it may be on site in an undiscovered location. In addition, results showed elevated concentrations of carcinogenic polycyclic aromatic hydrocarbons (“PAHs”) and gasoline range organics.

29. The proposed project requires the demolition of the Roof Depot building and construction of other buildings and structures on the Roof Depot site and adjacent Project properties.

30. Demolition of the Roof Depot building and subsequent construction activities will expose and allow transport of contaminated materials and contaminants from the Roof Depot site to residences in the neighborhood via wind dispersal during demolition, loading, and transport of contaminated soils and other media offsite. Vehicles moving on and off site may also track contamination off site and onto roads and streets in the Phillips Neighborhood where it may be resuspended and dispersed into residential areas.

Project Operation Impacts

31. The Project proposal calls for the construction of 118 surface parking stalls, at least seven new building structures, including a hot mix asphalt storage facility, heavy equipment parking, a large training building which is planned to include a multi-story “sandbox” for teaching the operation of diesel bulldozers, and storage for front-end loaders and other heavy equipment.

32. The Project website indicates that 102 of the 117 pieces of equipment that maybe used on-site or off-site will have diesel engines. An additional 28 diesel cars or trucks will routinely be on site or be traveling neighborhood streets coming and going from service calls throughout the City. The City has made no commitment to restrict the use or idling of diesel-powered equipment or vehicles within the Project site or to limit diesel vehicles' transit to and from the site.

33. In 2008 Minneapolis passed and/or updated both anti-idling and noise ordinances, promising "to protect the public health and the environment by reducing vehicular emissions" and prevent "loud, avoidable, unnatural and unnecessary noises, which under certain circumstances and conditions, constitute a serious threat to the health, the welfare, the contentment and the feeling of well-being of our people." However, neither ordinance has succeeded in protecting the East Phillips Neighborhood from excessive vehicle exhaust, as shown by the City's own reports on the Southside Green Zone. Even if they had been sufficient to protect public health, these ordinances contain numerous loopholes the City can use to permit its own vehicular and heavy equipment idling and noise pollution.

34. Air pollution consists of a complex mixture of compounds in gaseous, liquid, and solid phases. Particulate matter ("PM") is a heterogeneous mixture of suspended particles that vary in chemical composition and size, with diameters of less than several nanometers to coarse PM, 10 micrometers and larger. The combustion of fossil fuels, such as in gas- and diesel-powered engines, is a major source of air pollution, including dangerous PM emissions.

35. Diesel exhaust is a particularly hazardous contributor to PM. Exhaust from diesel engines contains a complex mixture of pollutants, including very small carbon particles, or "soot" coated with numerous organic compounds, known as diesel PM. The International Agency for

Cancer, the EPA, and the California Air Resources Board (the state's clean-air regulator) have classified diesel engine exhaust as a cause of cancer in humans.

36. Air pollution, including diesel- and gas-engine exhaust, is known to increase the risk of cardiovascular disease and mortality, asthma onset and exacerbation, and impaired lung development in children. The EPA states that “children, older adults, people with preexisting cardiopulmonary disease, and people of low socioeconomic status are among those at higher risk for health impacts from air pollution near roadways.”

37. The proposed Project would dramatically increase the traffic in the area due to the introduction of a fleet of 494 city vehicles and heavy equipment, many running on diesel, and daily visits by approximately 470 personal employee vehicles. A four-story parking structure with an estimated capacity of 480 vehicles is planned for construction to accommodate the increased traffic.

38. The proposed Project would also include a training ground where staff is instructed in using heavy equipment in an “industrial sandbox,” learning to drive and operate gasoline- or diesel-powered equipment during the facility's operating hours.

39. The East Phillips Neighborhood is already inundated with air pollution from traffic as it is surrounded by heavily trafficked state and county highways, their junctions with one another, and one-way streets that frequently carry heavy trucks and passenger vehicles.

40. Increased car and truck traffic associated with the Hiawatha Campus Expansion Project will increase traffic-related air pollution, including hazardous diesel exhaust. There is no evidence of a “safe” threshold for diesel exhaust or other forms of air pollution, therefore, any additions to current background levels of air pollution by the operations of the Hiawatha campus will cause additional adverse impacts on public health in the East Phillips Neighborhood. These

impacts would include increases in asthma onset, asthma exacerbations and cardiovascular disease morbidity and mortality.

41. The Project will increase dangerous emissions from the operation of vehicles and equipment within this impacted community. Typically, however, neither a MPCA-issued air permit nor an Environmental Assessment Worksheet (“EAW”) take into account the operation of *non-mobile* diesel sources. Therefore these dangerous onsite emissions will not be considered or controlled under any voluntary EAW prepared for the Project, to the likely detriment of environmental and human health in the surrounding community.

42. Increased car and truck traffic, as well as onsite equipment running on diesel or gasoline, to and within the project will also increase noise pollution due to sporadic loud engine and impact noises, as well as a higher level of ambient noise pollution due to the continuous operation of vehicles and equipment during the working day.

The Project Exposes East Phillips To Environmental Injustice

43. The East Phillips Neighborhood, including the Little Earth of United Tribes Community, begins within 50 feet of the new project.

44. The Little Earth of United Tribes Community is the largest urban Native American community in the Country.

45. Cassandra Holmes has a been a resident of Little Earth for the majority of her life.

46. In 1996, her first son Trinidad Flores was born, and in 2004 her second son Daniel Solis-Corona was born, both of these children lived in Little Earth and the East Phillips Neighborhood all of their lives.

47. Both of her children have heart disease and Cassandra Holmes' elder son Trinidad passed away from complications from this disease in 2013. Cassandra Holmes' niece who lives in the Little Earth community suffers from asthma.

48. The East Phillips Neighborhood is also home to large populations of African Americans, Somalis, and Latinx peoples.

49. The children and other residents of the East Phillips Neighborhood and Little Earth suffer from a disproportionate number of health issues associated with environmental exposure to pollution and other toxic contaminants, including but not limited to, cancer, asthma and cardiovascular disease. Children are disproportionately impacted by these health risks, for example, the prevalence of elevated blood lead among children of the East Phillips Neighborhood is among the highest in Hennepin County, which itself has some of the highest blood lead levels in the state. Similarly, the rate of asthma hospitalizations among East Phillips residents is among the highest in the county and the state. These health effects are caused wholly or in part by the past and present pollution and socioeconomic conditions of the area.

50. Arsenic is a chemical element that is highly toxic to humans. Human exposures are considered acute (short term, high concentration), and/or chronic (long term, lower concentration). Among other health effects, arsenic causes cancer in humans. Arsenic does not degrade over time, so soils will remain contaminated unless remediated, and any disturbance of un-remediated soils can create risks for harmful human exposures.

51. EPNI is comprised of individuals, including Cassandra Holmes and her children, who have experienced elevated risks for actual adverse health effects due to past and ongoing environmental contamination and pollution in the East Phillips Neighborhood.

Better Alternatives to the Project Identified but not Considered by City

52. In 2015, prior to the City's purchase of the Roof Depot site, EPNI attempted to purchase the land that is being used for the Hiawatha Campus Expansion Project.

53. Upon obtaining the property, EPNI planned to build a combination low income housing, community center, urban farm, and job training center ("Urban Farm").

54. EPNI's planned project would have repurposed the Roof Depot building and the entire site for a community-driven, sustainable, and carbon-neutral development. Thus, EPNI's plan would avoid demolishing the Roof Depot building and disturbing the pollution-laden soil beneath.

55. The environmental improvements that would result from the Urban Farm project should be analyzed and considered as part of any environmental review, as a part of the full analysis of alternatives to and cumulative impacts of the Project.

56. The City purchased the subject land for the Project under the threat of eminent domain.

57. EPNI has not been given any opportunity to effectively present its plan for the land to City representatives.

58. Exercising legal rights under the Minnesota Environmental Policy Act ("MEPA"), on January 16, 2020, EPNI member Brad Pass—on behalf of many petitioners, East Phillips residents, and surrounding neighbors—filed a citizen petition ("EPNI petition") for an EAW for the Project with the EQB. An EAW is an environmental review document that assesses the need for a full Environmental Impact Statement ("EIS") analysis, which would require a full assessment of alternatives to and cumulative impacts of the Project.

59. The EPNI petition, in a section titled "RGU Selection" laid out factual and legal reasons that three state agencies, the Minnesota Department of Health, MPCA, or Minnesota

Department of Agriculture would be appropriate RGU selections for assessing the need for an EAW pursuant to the EPNI petition. These state agencies have unique expertise that would help them analyze the potential impacts of the project. The EPNI petition also explained that the City was not an appropriate RGU under the law because it had already made final decisions to grant permits for the Project.

60. The City has a decades-long vested interest in the Hiawatha Campus Expansion Project, as the expansion was included in a May 1991 Department of Public Works Comprehensive Facility Master Plan .

61. On January 21, 2020 the EQB designated the City as the Responsible Governmental Unit (“RGU”) with the responsibility to review the evidence presented in the petition and determine whether an EAW would be required.

62. An EAW is required whenever material evidence is presented by petitioners that a project may have the potential for significant environmental effects. *See* Minn. Stat. § 116D.04 subd. 2a (e) (2019).

63. The RGU must consider specific criteria and all of the material evidence that is presented to them when determining if an EAW is required. The EPNI petition contained considerable evidence on the cumulative potential effects and public health impacts that may occur because of the Project.

64. Since any EAW is meant to diagnose whether an EIS is warranted, the RGU must consider material evidence presented according to the same criteria that are considered when determining the need for an EIS, addressing whether or not there is the potential for significant environmental effects.

65. The criteria for determining whether a project has the potential for significant environmental effects are:

- A. the type, extent and reversibility of environmental effects;
- B. cumulative potential effects of related or anticipated future projects;
- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar project.

See Minn. R. 4410.1700, subp. 7 (2018).

66. On February 3, 2020, in a letter response to the EPNI petition, the City said “the City of Minneapolis cannot act on the petition at this time because no permit application has been filed with the City to date as the project details are still being finalized.” The letter nonetheless acknowledged the petition remained in effect for one year from January 21, 2020, meaning the City could not make final decisions or take final action on the Project over that timeframe.

67. On June 12, 2020, in response to this lawsuit, the City issued a one-page letter to EPNI denying the EPNI petition and not addressing any of the above criteria for whether or not there was a potential for significant environmental effects. Indeed, the letter only stated “the City of Minneapolis has determined that the project does not meet any mandatory environmental review category” under applicable rules.

68. The June 12, 2020, letter did not identify any changed circumstances or permit applications filed with the City that made it able to respond to the EPNI petition on the same day that this lawsuit was filed.

69. In the June 12, 2020, letter the City of Minneapolis volunteered to do a discretionary EAW pursuant to Minn. R. 4410.1000, Subp. 3(D) to determine if the project has the

potential for significant environmental effects, while asserting that it otherwise has no obligation to complete an EAW or EIS pursuant to Minn. R. 4410.1000, Subp. 3(B), Minn. R. 4410.4300 or Minn. R. 4410.4400.

70. EPNI fears that this “voluntary” review, potentially circumscribed to only some of the Project’s impacts and discussing only the City’s preferred alternative, will not take into consideration past, current, and future pollution on the East Phillips Neighborhood and the community, minimizing the utility of an EAW review and denying EPNI the possibility of an EIS, an outcome guaranteed under MEPA if the EAW uncovers the potential for significant environmental impacts.

71. If the Project is allowed to commence without adequate environmental review, significant amounts of pollution will be released without warning to the community.

72. Additionally, if the Project is allowed to commence, it will cause irreparable harm to the East Phillips Community and residents’ health.

Unique Legal Duty of MPCA in East Phillips

73. Minneapolis experienced numerous air quality alert days in 2007 and 2008.

74. In 2008, a law was passed to protect the East Phillips Neighborhood from further pollution and the negative health effects that accompany excessive pollution as a result of the legacy and ongoing concentrations of pollution and pollution sources in the area.

75. The law is codified within Minnesota Statutes § 116.07 subd. 4a. This law is known colloquially as the Clark/Berglin Environmental Justice Law.

76. Minnesota Statue § 116.07 subd. 4a. states, in part:

The [MPCA] may not issue a permit to a facility without analyzing and considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents of the geographic area within which the facility’s

emissions are likely to be deposited, provided that the facility is located in a community in a city of the first class in Hennepin County that meets all of the following conditions:

- (1) is within a half mile of a site designated by the federal government as an EPA superfund site due to residential arsenic contamination;
- (2) a majority of the population are low-income persons of color and American Indians;
- (3) a disproportionate percent of the children have childhood lead poisoning, asthma, or other environmentally related health problems;
- (4) is located in a city that has experienced numerous air quality alert days of dangerous air quality for sensitive populations between February 2007 and February 2008; and
- (5) is located near the junctions of several heavily trafficked state and county highways and two one-way streets which carry both truck and auto traffic.

The Pollution Control Agency may revoke or modify any permit issued under this subdivision and section [116.081](#) whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

77. Minn. Stat. § 116.07 subd. 4a was passed specifically for the East Phillips neighborhood, and as demonstrated above and below, all five of the conditions in the law are satisfied for East Phillips and in relation to any MPCA permit for the Project.

78. In May 2013 MPCA issued guidance that suggests it will only undergo Minn. Stat. § 116.07, subd. 4a, analysis when issuing an air pollution permit under its authorities and the Clean Air Act. The relevant guidance is self-described to “provide information for use by air permit applicants whose facility is located within an area described by Minn. Stat. § 116.07, subd. 4a.”

79. On information and belief, MPCA does not have plan to issue an air pollution permit for the Project prior to the City’s demolition, construction, or operation of the Hiawatha Campus Expansion.

80. On information and belief, the City will have to obtain numerous MPCA permits in order to conduct demolition, construction, or operate the Hiawatha Campus Expansion. This

includes construction stormwater permits which MPCA summarily issues for construction sites such as the Project.

81. The demolition of the Roof Depot building, removal of the 12,000-gallon tanks, disturbance of contaminated soil, construction of new buildings and parking lots, and operation of the City's new Water Distribution Maintenance Facility will generate a substantial amount of pollution of air, water, and soil in the East Phillips neighborhood. Operations of the Water Distribution Maintenance Facility will produce increased and ongoing emissions from numerous sources.

82. MPCA must conduct a detailed cumulative impacts analysis considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents of the East Phillips Neighborhood, under Minn. Stat. § 116.07 subd. 4a, before MPCA can issue any permits for the Project.

83. The increased pollution will substantively reduce the overall health of the community, especially American Indian residents, low-income residents, and residents of color.

84. Members of EPNI, including Cassandra Holmes and her children, are individuals who will be at increased risk for adverse health effects as a result of the Hiawatha Campus Expansion Project.

Environmental Quality Board and Responsible Governmental Unit Designation

85. Pursuant to Minn. R. 4410.5200, subp. 3(A), the EQB is required to publish receipt of a valid petition and assignment of the RGU in accordance with Minn. R. 4410.1100, subparts 3 and 5. The EQB never published the receipt of the Citizens Petition nor the assignment of the City of Minneapolis as the designated RGU in its *EQB Monitor*.

86. On February 3, 2020, the City sent a letter to EPNI member Brad Bass indicating that it could not take an action on the EPNI petition because no permit applications for the Project had been filed with the City and project details were yet to be finalized.

87. The City of Minneapolis issued an active Request for Proposals (“RFP”) on April 14, 2020, for the use of the new Hiawatha Maintenance Facility Community, Recruitment & Training Center, which the City proposes to result in a contract with an initial five year lease of space. The City also engaged in preconstruction and construction activities by performing site and building clean-up on the Project land to prepare it for Roof Depot building demolition and subsequent Project activities.

88. Under EQB’s MEPA regulations, an automatic moratorium is placed on action or project approval and construction prior to the dismissal of a petition for and EAW. *See* Minn. R. 4410.3100.

89. The City as RGU did not deny the January 21, 2020, EPNI petition until June 29, 2020, as noticed in the *EQB Monitor*. The City’s denial of the petition, mailed to EPNI four days after this litigation was commenced, contains no findings of fact and provides no reasoning to support a denial of the petition, and no information for Plaintiffs about why the City thinks it does not have to conduct a mandatory EAW or EIS.

90. A local government that has put out bids and started construction activities on a final project before the dismissal of a petition and/or completion of the EAW, in violation of EQB’s MEPA regulations, is not fit to conduct an EAW on the same project. The City’s actions in the pendency of its decision on the petition already demonstrate that it has decided to issue all permits it oversees for the Project. The City cannot provide the impartial oversight that MEPA requires of RGUs.

91. The EQB has the authority to designate a new RGU for the Project. Redesignating the RGU in order to eliminate the current conflict of interest on the part of the City would be consistent with EQB's legal duties. The EQB, MPCA, or another designation by EQB would be a more suitable RGU, who does not have a conflict of interest and has not demonstrated an inability to abide by basic requirements of the law.

92. On August 3, 2020, EPNI again requested that EQB reassign the RGU for the Project and reviewing the material claims made in the EPNI petition because: EQB retains the authority to designate a different RGU; MPCA has greater relevant expertise in assessing cumulative impacts and is not a conflicted project proposer; the City has violated its duties under MEPA and the public trust by commencing construction and taking actions to foreclose alternatives during the pendency of EPNI's petition and the preparation of an EAW.

93. On August 12, 2020, the EQB denied EPNI's renewed request to reassign the RGU for assessing the merits of the EPNI petition and for any environmental review of the Project. EQB asserted in this letter that because the City has decided to conduct a discretionary EAW there is no reason for EQB to consider agency expertise or the City's violations of MEPA and demonstrated conflicts raised in the EPNI petition and renewed request.

Claims for Relief

Count One – Minnesota Environmental Rights Act (“MERA”): Project Likely to Cause Air Emissions that Materially Adversely Affect Air and Health

Against City

94. Plaintiffs reallege the allegations set forth in paragraphs 1 – 93.

95. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural

resources located within the State from pollution, impairment, or destruction. MERA, Minn. Stat. § 116B.03

96. EPNI and Cassandra Holmes are “persons” under MERA, Minn. Stat. § 116B.02, subd. 2.

97. “Natural resources” are defined under MERA as including “but not to be limited to, all . . . animal, botanical, air, water . . . soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd. 4.

98. As defined under Minn. Stat. § 116B.02, subd. 4, natural resources are not limited to the items specified. Adverse effects on public health resulting from environmental pollutions as evidenced from the Health Impact Assessment for the Phillips Community (“HIA”) should be considered a natural resource under MERA.

99. Air is defined as a natural resource under MERA and air pollution and the associated health risks are already above levels of concern in the East Phillips Neighborhood.

100. “Pollution, impairment, or destruction” is defined as any conduct which materially adversely affects or is likely to materially adversely affect the environment. MERA, Minn. Stat. § 116B.02, subd. 5.

101. The Minnesota Supreme Court has identified five non-exclusive factors used as a guideline to determine whether conduct will materially adversely affect or is likely to materially adversely affect the environment, noting that each factor does not have to be met in order to find a materially adverse effect: (1) The quality and severity of any adverse effects of the proposed action on the natural resources affected; (2) whether the natural resources affected are rare, unique, endangered, or have historical significance; (3) whether the proposed action will have long-term

adverse effects on natural resources, including whether the affected resources are easily replaceable; (4) whether the proposed action will have significant consequential effects on other natural resources; (5) whether the affected natural resources are significantly increasing or decreasing in number, considering the direct and consequential impact of the proposed action. *State by Schaller v. Cty. of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

102. The known negative effects caused by the usage of diesel on air quality and human health and the likely increased use of diesel around the Project site identify potential severe adverse effects resulting from the Project. Typically, neither an air permit nor an EAW take into account the operation of non-mobile diesel sources. These diesel sources could be the source of the most toxic and long-lasting air pollution resulting from the Project.

103. The Hiawatha Campus Expansion Project will have long-term adverse effects on the air quality in the East Phillips Neighborhood. The demolition, construction, and ongoing operation at the site will result in current and continued pollution on an unreplaceable resources, air and the health of Plaintiffs and the surrounding community.

104. The Little Earth of United Tribes Community, adjacent to the Project, is a unique community with historical significance.

105. The human lives that will be lost due to increases in pollution are irreplaceable.

106. The Project will have additional significant consequential effects on other natural resources as defined by MERA, including: water, soil, quietude, scenic resources, and esthetic resources.

107. As more people move to the East Phillips Neighborhood, more public health impacts from the Project will accumulate.

108. The City's continued actions on the Project are likely to pollute, impair, and destroy natural resources because they will materially adversely affect the environment in the East Phillips neighborhood.

109. EPNI is entitled to judgment imposing conditions necessary to ensure that the City of Minneapolis' Hiawatha Campus Expansion Project will not have a material adverse effect on the environment of the East Phillips neighborhood.

Count Two – Minnesota Environmental Rights Act (“MERA”); Project Likely to Cause Air Emissions that Materially Adversely Affect Soil, Water, and Health

Against City

110. Plaintiffs reallege the allegations set forth in paragraphs 1 – 109.

111. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural resources located within the State from pollution, impairment, or destruction. MERA, Minn. Stat. § 116B.03

112. EPNI and Cassandra Holmes are “persons” under MERA, Minn. Stat. § 116B.02, subd. 2.

113. “Natural resources” are defined under MERA as including “but not to be limited to, all . . . animal, botanical, air, water . . . soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd. 4.

114. As defined under Minn. Stat. § 116B.02, subd. 4, natural resources are not limited to the items specified. Adverse effects on public health resulting from environmental pollution as

evidenced from the Health Impact Assessment for the Phillips Community (“HIA”) should be considered a natural resource under MERA.

115. Soil and Water are defined as a natural resources under MERA.

116. “Pollution, impairment, or destruction” is defined as any conduct which materially adversely affects or is likely to materially adversely affect the environment. MERA, Minn. Stat. § 116B.02, subd. 5.

117. The Minnesota Supreme Court has identified five non-exclusive factors used as a guideline to determine whether conduct will materially adversely affect or is likely to materially adversely affect the environment, noting that each factor does not have to be met in order to find a materially adverse effect: (1) The quality and severity of any adverse effects of the proposed action on the natural resources affected; (2) whether the natural resources affected are rare, unique, endangered, or have historical significance; (3) whether the proposed action will have long-term adverse effects on natural resources, including whether the affected resources are easily replaceable; (4) whether the proposed action will have significant consequential effects on other natural resources; (5) whether the affected natural resources are significantly increasing or decreasing in number, considering the direct and consequential impact of the proposed action. *State by Schaller v. Cty. of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

118. The destruction of the Roof Depot building and construction of new structures is likely to cause material adverse effects on the soil and water surrounding the site. The Roof Depot Site is heavily contaminated with arsenic from the CMC Heartland Lite Site and antimony from an unidentified source.

119. Results from the studies conducted by Braun Intertec show multiple toxins present in the soil at the Roof Depot site, each creating a risk for toxic exposure when demolition and construction activities begin at the site.

120. The MPCA also recognizes multiple hazardous environmental conditions at the site, furthering the concern that the proposed action will have severe adverse effects on soil, water, and public health.

121. Arsenic is an element that will not degrade over time, so soils remain contaminated and the demolition and construction at the Roof Depot site has the potential to spread these pollutants around the East Phillips Neighborhood and to other natural resources when contaminated soils are disrupted at and transported from the Roof Depot site.

122. The Project will have additional significant consequential effects on other natural resources as defined by MERA, including: air, quietude, scenic resources, and esthetic resources.

123. The Little Earth of United Tribes Community, adjacent to the Project, is a unique community with historical significance.

124. The human lives that will be lost due to increases in pollution are irreplaceable.

125. As more people move to the East Phillips Neighborhood, more public health impacts from the Project will accumulate.

126. The City's continued actions on the Project are likely to pollute, impair, and destroy natural resources because they will materially adversely affect the environment in the East Phillips neighborhood.

127. EPNI is entitled to judgment imposing conditions necessary to ensure that the City of Minneapolis' Hiawatha Campus Expansion Project will not have a material adverse effect on the environment of the East Phillips neighborhood.

Count Three – Minnesota Environmental Rights Act (“MERA”); Project Likely to Cause Noise and Pollution that Materially Adversely Affect Quietude, Scenic Resources, and

Esthetic Resources

Against City

128. Plaintiffs reallege the allegations set forth in paragraphs 1 – 127.

129. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural resources located within the State from pollution, impairment, or destruction. MERA, Minn. Stat. § 116B.03

130. EPNI and Cassandra Holmes are “persons” under MERA, Minn. Stat. § 116B.02, subd. 2.

131. “Natural resources” are defined under MERA as including “but not to be limited to, all . . . animal, botanical, air, water . . . soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd. 4.

132. As defined under Minn. Stat. § 116B.02, subd. 4, natural resources are not limited to the items specified. Adverse effects on public health resulting from environmental pollutions as evidenced from the Health Impact Assessment for the Phillips Community (“HIA”) should be considered a natural resource under MERA.

133. Quietude, scenic resources, and esthetic resources are defined as a natural resources under MERA.

134. “Pollution, impairment, or destruction” is defined as any conduct which materially adversely affects or is likely to materially adversely affect the environment. MERA, Minn. Stat. § 116B.02, subd. 5.

135. The Minnesota Supreme Court has identified five non-exclusive factors used as a guideline to determine whether conduct will materially adversely affect or is likely to materially adversely affect the environment, noting that each factor does not have to be met in order to find a materially adverse effect: (1) The quality and severity of any adverse effects of the proposed action on the natural resources affected; (2) whether the natural resources affected are rare, unique, endangered, or have historical significance; (3) whether the proposed action will have long-term adverse effects on natural resources, including whether the affected resources are easily replaceable; (4) whether the proposed action will have significant consequential effects on other natural resources; (5) whether the affected natural resources are significantly increasing or decreasing in number, considering the direct and consequential impact of the proposed action. *State by Schaller v. Cty. of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

136. The destruction of the Roof Depot site and construction of new structures will create noise and disturbance to the natural resource quietude of the neighborhood.

137. The operation and storage of hundreds of diesel vehicles, heavy equipment, non-mobile emissions sources, and employee vehicles will create sporadic disruptive noise pollution and raise ambient noise pollution in the area surrounding the project.

138. The Midtown Greenway Corridor runs adjacent to the Roof Depot site. Several thousand people use the Greenway every spring, summer, and fall day. In addition, hundreds of cyclists and runners use it daily year-round. The Roof Depot building destruction and construction at the Project site will cause serious disturbances and significant consequential effects on the scenic

and esthetic resources in the East Phillips Neighborhood, in an area where such resources are a rarity. The impact will be immediate, making this scenic resource less valuable to everyone who frequents the Midtown Greenway, including EPNI's members.

139. During construction and once completed the Project will be visible from the Martin Olav Sabo Bridge and portions of the Greenway that are adjacent to the Roof Depot building. People recreating on the Greenway will be exposed to sights and sounds of industrial yards, staff training on heavy equipment, and parking lot facilities, instead of what is now a quiet and historic warehouse building.

140. The City's anti-idling and noise ordinances are inadequate to prevent pollution, impairment, and destruction of identified natural resources.

141. The Project will have additional significant consequential effects on other natural resources as defined by MERA, including: public health, air, water, and soil.

142. The Little Earth of United Tribes Community, adjacent to the Project, is a unique community with historical significance.

143. The Martin Olav Sabo Bridge, the Greenway, and views from each of these are unique resources with historical significance and great importance to the public health of the wider community.

144. The quietude, scenic resources, and esthetic resources that will be lost due to increases in pollution are irreplaceable.

145. As more people move to the East Phillips Neighborhood, more public health impacts from the Project will accumulate.

146. The City's continued actions on the Project are likely to pollute, impair, and destroy natural resources because they will materially adversely affect the environment in the East Phillips neighborhood.

147. EPNI is entitled to judgment imposing conditions necessary to ensure that the City of Minneapolis' Hiawatha Campus Expansion Project will not have a material adverse effect on the environment of the East Phillips neighborhood.

Count Four – Minnesota Environmental Rights Act (“MERA”); Project Cumulative

Impacts Will Materially Adversely Affect Public Health

Against City

148. Plaintiffs reallege the allegations set forth in paragraphs 1 – 147.

149. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural resources located within the State from pollution, impairment, or destruction. MERA, Minn. Stat. § 116B.03

150. EPNI and Cassandra Holmes are “persons” under MERA, Minn. Stat. § 116B.02, subd. 2.

151. “Natural resources” are defined under MERA as including “but not to be limited to, all . . . animal, botanical, air, water . . . soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd. 4.

152. As defined under Minn. Stat. § 116B.02, subd. 4, natural resources are not limited to the items specified. Adverse effects on public health resulting from environmental pollutions as

evidenced from the Health Impact Assessment for the Phillips Community (“HIA”) should be considered a natural resource under MERA.

153. Public health should also be considered a natural resource under MERA because the statute regards whether contested actions are “consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state’s paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction.” Minn. Stat. § 116B.04(b).

154. “Pollution, impairment, or destruction” is defined as any conduct which materially adversely affects or is likely to materially adversely affect the environment. MERA, Minn. Stat. § 116B.02, subd. 5.

155. The Minnesota Supreme Court has identified five non-exclusive factors used as a guideline to determine whether conduct will materially adversely affect or is likely to materially adversely affect the environment, noting that each factor does not have to be met in order to find a materially adverse effect: (1) The quality and severity of any adverse effects of the proposed action on the natural resources affected; (2) whether the natural resources affected are rare, unique, endangered, or have historical significance; (3) whether the proposed action will have long-term adverse effects on natural resources, including whether the affected resources are easily replaceable; (4) whether the proposed action will have significant consequential effects on other natural resources; (5) whether the affected natural resources are significantly increasing or decreasing in number, considering the direct and consequential impact of the proposed action. *State by Schaller v. Cty. of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

156. The destruction of the Roof Depot site and future construction of structures has the potential to cause material adverse effects on public health through exposure to numerous toxic

chemicals and elements. Off-site residents and people on the Greenway will be at increased risk for exposure to contaminated dust through inhalation when these activities are taking place, as well as dust that is deposited on surfaces, resuspended, and later inhaled. For example, the known arsenic contamination at the site will be just one of the potential adverse effects on public health. As mentioned, arsenic is known to increase cancer risks in those exposed.

157. The destruction of the Roof Depot site and future construction of structures has the potential to cause severe adverse effects on public health. The air pollution resulting from the usage of diesel-powered equipment and vehicles both on and off-site will increase the exposure to known cancer-causing pollutants. Increased gasoline-powered vehicle visits and usage will also increase air pollution from fuel combustion.

158. The destruction of the Roof Depot site and future construction of structures has the potential to cause severe adverse effects on public health. The increased air pollution will negatively affect the usage of the Midtown Greenway, and those who continue to use the pathway will be exposed to increased health-damaging pollutants. In addition, the construction workers and those who work on-site will be at the highest exposure risks to the known cancer-causing constituents of air pollution. Increased noise pollution will cause additional stress in a neighborhood already designated under the Southside Green Zone because of exposure to environmental racism and disproportionate impacts.

159. The Project will have additional significant consequential effects on other natural resources as defined by MERA, including: air, soil, water, quietude, scenic resources, and esthetic resources. These impacts will have material cumulative negative impacts on public health.

160. The Little Earth of United Tribes Community, adjacent to the Project, is a unique community with historical significance.

161. The human lives that will be lost and harmed due to increases in pollution are irreplaceable.

162. As more people move to the East Phillips Neighborhood, more public health impacts from the Project will accumulate.

163. The City's continued actions on the Project are likely to pollute, impair, and destroy natural resources because they will materially adversely affect the environment in the East Phillips neighborhood.

164. EPNI is entitled to judgment imposing conditions necessary to ensure that the City of Minneapolis' Hiawatha Campus Expansion Project will not have a material adverse effect on the environment of the East Phillips neighborhood.

Count Five – Minnesota Environmental Rights Act (“MERA”); Conduct Likely to Violate an Environmental Quality Standard, Limitation, or Rule

Against MPCA

165. Plaintiffs reallege the allegations set forth in paragraphs 1 – 164.

166. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural resources located within the State from pollution, impairment, or destruction. MERA, Minn. Stat. § 116B.03

167. EPNI and Cassandra Holmes are “persons” under MERA, Minn. Stat. § 116B.02, subd. 2.

168. “Natural resources” are defined under MERA as including “but not to be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical

resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd. 4.

169. As defined under Minn. Stat. § 116B.02, subd. 4, natural resources are not limited to the items specified. Adverse effects on public health resulting from environmental pollutions as evidenced from the Health Impact Assessment for the Phillips Community (“HIA”) should be considered a natural resource under MERA.

170. Minn. Stat. § 116B.02, subd. 5 defines “pollution, impairment or destruction” to include “any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, [or] rule . . . of the state . . . which was issued prior to the date the alleged violation occurred or is likely to occur . . .”

171. Minn. Stat. § 116.07, subd. 4a is an environmental quality standard, limitation, or rule of the state of Minnesota, requiring MPCA to do a comprehensive cumulative impacts analysis before issuing *any* permit for a facility that would emit pollution onto the East Phillips neighborhood. MPCA is likely to issue permits, including stormwater construction permits, for the Project.

172. Because MPCA’s 2013 guidance suggest it only complies with Minn. Stat. § 116.07, subd. 4a, when assessing an air pollution permit, and MPCA is unlikely to require an air pollution permit for the Project, MPCA is likely to not conduct a full cumulative impacts analysis required under Minn. Stat. § 116.07, subd. 4a, for the permits it is likely to issue for the Project.

173. Some of the permits MPCA is likely to issue for the Project issue automatically from online application forms with no public participation process, making it impossible for Plaintiffs to challenge them or even know that they have been issued.

174. Issuing MPCA permits for the Project without first performing the full cumulative impacts analysis for a facility within an area described by Minn. Stat. § 116.07, subd. 4a, that will emit pollution onto the East Phillips neighborhood is likely to cause pollution, impairment, and destruction because any such permits will allow the Project to proceed without the specialized MPCA cumulative impacts review required by law.

175. EPNI is entitled to judgment imposing conditions necessary to ensure that MPCA will not issue permits for the Project without first complying with Minn. Stat. § 116.07, subd. 4a.

Count Six – Minnesota Environmental Policy Act (“MEPA”); Violation of Prohibition on

Final Government Decisions, Beginning the Project, and Construction

Against City

176. Plaintiffs reallege the allegations set forth in paragraphs 1 – 175.

177. MEPA’s prohibitions on starting a project before undergoing necessary review “may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place.” Minn. Stat. § 116D.04, Subd. 13.

178. MEPA requires a RGU to either complete an environmental review or reject a citizen’s petition for an EAW before making a final government decision on or starting its project. Minn. Stat. § 116D.04, Subd. 2b(1); Minn. R. 4410.3100, subp. 1(A). Impermissibly starting a project includes “construction” activities. Minn. R. 4410.3100, subp. 1. EQB regulations define “construction” to include “any activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping.” Minn. R. 4410.0200, subp. 10.

179. MEPA contains further prohibitions on government-sponsored projects starting before the necessary review is complete. For such projects:

the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project, until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.

Minn. R. 4410.3100. This prohibition applies equally during the delay that the City took in replying to the Petition. Minn. R. 4410.3100, subp. 9.

180. The City's actions have prejudiced the ultimate decision on the Project because it continues to engage in construction and contracting for the Project. These actions could soon foreclose other alternatives, such as the alternative prepared by EPNI, should the City demolish the Roof Depot building or so commit itself to final plans that the Project becomes a fait accompli.

181. EPNI is entitled to a declaratory judgment, requiring the City to cease construction activities and all actions that prejudice ultimate decisions on the project and work to foreclose EPNI's preferred alternative and mitigation measures for the Roof Depot site.

Count Seven – Minnesota Environmental Policy Act (“MEPA”); Violation of MEPA in

Assigning RGU to City, and in City Retaining RGU Despite

Against EQB and the City

182. Plaintiffs reallege the allegations set forth in paragraphs 1 – 181.

183. MEPA's requirements for EQB regarding choosing a RGU "may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place." Minn. Stat. § 116D.04, Subd. 13.

184. MEPA requires the EQB to assign a petition to *the appropriate* RGU. Minn. Stat. § 116D.04, Subd. 2a(e). EQB's MEPA regulations also requires that "the EQB chair or designee shall not designate as the RGU any governmental unit which has already made its final decisions to grant all permits or approvals required from it to construct the project." Minn. R. 4410.0500, subp. 3.

185. Additionally, "[n]otwithstanding [any other section of Minn. R. 4410.0500] the EQB or EQB chair may designate a different RGU for the project if the designee has greater expertise in analyzing the potential impacts of the project." Minn. R. 4410.0500, subp. 6. Therefore, EQB retains authority to redesignate a RGU that was wrongly designated because it lacked relevant expertise in MEPA or environmental review practices.

186. In situations where the RGU is assigned because of a citizen petition, the project sponsor is not a state agency, and the approval of the project is shared between governmental units "the RGU is the governmental unit with the greatest responsibility for supervising or approving the project as a whole," but if it is not clear which unit has such responsibility the different involved units must come to an agreement about responsibility or submit the decision of correct RGU for EQB determination. Minn. R. 4410.0500, subp. 5, subp.3(C).

187. Due to the unique legal and historic pollution issues covering the Project, MPCA has far more responsibility for supervising the permits that regard the Project than the City does. The City is a project proposer with a direct interest in the Project's success, but it does not have

greater legal responsibility for supervising or approving the project than Minnesota's lead agency on issues of pollution and Environmental Justice.

188. EPNI's petition explained that the City was not the appropriate for the RGU, stating that it had made its final decisions to grant all permits for the Project, and that MPCA, the Minnesota Department of Health, or the Minnesota Department of Agriculture would have necessary expertise that the City lacks in determining whether an EAW or EIS was required by MEPA.

189. Nevertheless, EQB failed to acknowledge the reasons the petition gave for assigning a more appropriate RGU, and it failed to publish its decision on assigning the RGU as required by its own MEPA regulations, denying EPNI notice required by law. Minnesota Rules 4410.5200, subp. 3(A).

190. In the nearly five months that the City demonstrated its inability to respond to the petition, and in its hasty June 12 letter upon receiving a complaint from EPNI, the City has further demonstrated that it lacks the expertise necessary to comply with MEPA. The City's willful violation of MEPA's prohibition on starting its project while a petition was pending provides further evidence that the RGU should be reconsidered.

191. On August 3, 2020, EPNI renewed its request that the RGU for the EPNI petition be reassigned because of MPCA's superior expertise and the City's failure to comply with MEPA in the months that it sat on the EPNI petition without answering it.

192. In a letter dated August 12, 2020, EQB again failed to honor a renewed request by EPNI to reassign the RGU for the EPNI petition to a competent agency, and denied that it had any authority over the City's discretionary EAW or the City's demonstrated history of MEPA violations.

193. EPNI is entitled to a declaratory judgment consistent with requirements of Minn. Stat. § 116D.04: declaring EQB violated a duty to reassign the RGU under Minn. R. 4410.0500, subp. 3 & 6, based on the information and arguments originally provided in the petition, and in light of the City's subsequent actions and EPNI's renewed request; and declaring the City has a duty under Minn. R. 4410.0500, subp. 5(B), to either agree with state agencies to another RGU, or ask the EQB to assign an appropriate RGU other than the City.

WHEREFORE Plaintiffs request the Court

1. Require Defendant MPCA to comply with Minn. Stat. 116.07;
2. Require Defendant EQB reassign the Responsible Government Unit to be the MPCA;
3. Prohibit Defendant City from violating MEPA by making final government decisions, taking actions prejudicing alternatives and mitigation measures, and engaging in construction in furtherance of the Hiawatha Campus Expansion Project;
4. Prohibit Defendants from permitting or going forward with the Hiawatha Campus Expansion Project as it is likely to cause substantial air and water pollution and has significant adverse health effects on members of EPNI and Cassandra Holmes;
5. Award Plaintiffs their attorney's fees and costs;
6. Award such other relief as the Court finds just and fitting.

ACKNOWLEDGEMENT

The party or parties on whose behalf the attached pleading is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. §549.211.

Elizabeth Royal Law Office

Date: 08/16/2020

/s/Elizabeth C. Royal
Lic. No. 0327207
1026 Prior Avenue South
Saint Paul, MN 55116
Tel: (612) 845-1458
royalesq@hotmail.com



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