

ENVIRONMENTAL QUALITY BOARD RULES HEARING - VOL. II

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1 STATE OF MINNESOTA  
2 OFFICE OF ADMINISTRATIVE HEARINGS  
3 FOR THE  
4 MINNESOTA POLLUTION CONTROL AGENCY  
5 MINNESOTA ENVIRONMENTAL QUALITY BOARD  
6  
7  
8 -----  
9 In the Matter of:  
10 Proposed Amendments to Rules Governing  
11 the Environmental Review Program,  
12 Minnesota Rules Chapter, 4410  
13 Revisor's ID Number R-04157  
14 -----  
15  
16 OAH Docket No. 80-9008-35532  
17  
18 VOLUME II  
19 The Public Rulemaking Hearing in the  
20 above-entitled matter came on before Administrative  
21 Law Judge LauraSue Schlatter, taken before  
22 Susan M. Strom, a Notary Public in and for the  
23 County of Dakota, State of Minnesota, taken on  
24 the 26th day of June, 2019, at Great River Regional  
25 Library, 1300 West St. Germain Street, St. Cloud,  
Minnesota, commencing at approximately 5:30 p.m.

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2  
3 MINNESOTA ENVIRONMENTAL QUALITY BOARD:  
4 DENISE WILSON: Director, Environmental  
5 Review Program  
6 ERIK CEDARLEAF DAHL: Planning Director  
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12 St. Paul, Minnesota 55101  
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1 P R O C E E D I N G S  
2  
3 THE JUDGE: Good afternoon, everybody.  
4 My name is LauraSue Schlatter. I'm an  
5 Administrative Law Judge with the Office of  
6 Administrative Hearings. I thank you all for  
7 taking the time to be here today to participate in  
8 the rulemaking process.  
9 Today is June 26, 2019. It is about 5:30  
10 p.m., and we are here at the St. Cloud Great River  
11 Regional Library in St. Cloud, Minnesota, and this  
12 is a public hearing in the Matter of the Proposed  
13 Amendments of the Environmental Quality Board Rules  
14 Governing Environmental Review. It's Minnesota  
15 Rules 4410.0200 .0500 .4300 .4400 .4600 .5200  
16 .7904 .7906 and .7926.  
17 The matter is referred to in our office at  
18 Office of Administrative Hearings as Docket Number  
19 80-9008-35532. If you are thinking of submitting  
20 any kind of written comments to our office, please  
21 make a note of that docket number, 80-9008-35532.  
22 And, please, put that docket number in the subject  
23 line of any correspondence or comments you submit  
24 to our office so that I can be sure that that gets  
25 properly routed to me and not to some other judge

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1 who is doing some other rule so we can be sure that  
2 I see it on time. Again, one more time, it's  
3 80-9008-35532. The Revisor's number, the Revisor's  
4 statutes number for this rule is R-4157.  
5 For your information, should you need them,  
6 there are restrooms out here and around the corner,  
7 kind of right behind the wall opposite us, if you  
8 should need them.  
9 The Office of Administrative Hearings is  
10 independent of the Environmental Quality Board,  
11 which I will refer to tonight as the EQB, which is  
12 the agency that's proposing to adopt these rules  
13 and that are the subject of today's hearing, as  
14 well as any groups or individuals that are  
15 participating in the hearing. The role of our  
16 office is to provide hearings like this that are  
17 fair to all participants.  
18 Before I go any further, can everybody hear  
19 me clearly? I didn't know if I should use the  
20 mike. But I would like to leave the door open so  
21 we are cool, and as long as there is not a lot of  
22 noise in the hall, I will do that. If you have  
23 trouble hearing me, please let me know.  
24 In Chapter 14 of the Minnesota statutes, the  
25 legislature directs that rulemaking hearings be

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1 conducted so that members of the public can be  
 2 heard as part of the rulemaking process. I am here  
 3 to ensure that there is procedural fairness, to  
 4 ensure that everybody is courteous to each other so  
 5 that all interested parties can be heard, and to  
 6 draw out information from as many voices as  
 7 possible. An underlying assumption of this process  
 8 is that we rely on the wisdom of the group. The  
 9 EQB and I appreciate that you are contributing your  
 10 thoughts, your experience and your expertise to the  
 11 formation of these rules.

12 There is a handout on the table next to the  
 13 little tent that says "Rule Language," just to this  
 14 side of it, that says "OAH Rule Hearing  
 15 Procedures." If you don't have a copy of that,  
 16 please take a moment to pick one up. It describes  
 17 the procedures that are set up by the legislature  
 18 for hearings like this. And I'm going to cover  
 19 some of the highlights of that now.

20 This hearing is part of a process by which  
 21 rules are adopted under the Minnesota  
 22 Administrative Procedure Act. During the  
 23 rulemaking proceeding, the EQB is required to do  
 24 three things. It has to document its statutory  
 25 authority to adopt the proposed rules; it has to

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1 demonstrate that it has fulfilled all relevant  
 2 legal and procedural requirements of the law; and  
 3 it has to demonstrate the need for and  
 4 reasonableness of each portion of the proposed  
 5 rules with an affirmative presentation of facts.

6 Those are the three big issues that I am  
 7 required to review as part of the proceeding. Some  
 8 of you are here to express your thoughts or views  
 9 on various parts of the rules, and that is very  
 10 helpful to me and to the EQB and to the process.  
 11 My job is not to rewrite the rules based upon the  
 12 views of the participants or to select one set of  
 13 proposed rules over another set of proposed rules.  
 14 My job is to ensure that the statutory requirements  
 15 are met for rulemaking.

16 So this is how the hearing this evening is  
 17 going to proceed. After I complete my introductory  
 18 remarks about the hearing procedures, I'm going to  
 19 introduce Ms. Ibrahim who is representing the EQB.  
 20 She will introduce the panel here from the EQB and  
 21 she will summarize the exhibits that the EQB  
 22 introduced into the hearing record at the May 31,  
 23 2019 public hearing. She will do that so that  
 24 everyone here has an idea of what is already in the  
 25 record. Please, feel free, there are copies of

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1 those exhibits on the table over here in the big  
 2 binders, feel free to take a look at them. Please,  
 3 leave them here tonight. Don't take them with you.  
 4 There are also copies of those exhibits posted  
 5 online and you can certainly feel free to look at  
 6 them online as well. They are on our website and  
 7 they are also on the EQB's website and we are  
 8 linked to one another for this proceeding, so you  
 9 can find them either way.

10 After summarizing the exhibits, the EQB will  
 11 make an oral presentation about the proposed rule  
 12 amendments and the reasons for the amendments and  
 13 the need for them. But most of the hearing time  
 14 has been allotted for statements and questions from  
 15 members of the public. And that's really the  
 16 reason we are here this evening.

17 In order to make sure that we have an  
 18 accurate record of the number of people attending  
 19 the meeting, I am asking that everyone sign the  
 20 hearing register which is located on the table  
 21 right here. If you wish to speak or to submit a  
 22 written statement, you are required to sign the  
 23 register. And if you wish to speak, please put a  
 24 checkmark in the appropriate column on the  
 25 register. If anyone who wishes to speak is under

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1 any time constraints, please let Mr. Dahl here in  
 2 the middle know and he will make sure that I know  
 3 and I will juggle the order. Otherwise, I'm just  
 4 going to have you speak in the order in which you  
 5 signed up.

6 When your name is called, please come up to  
 7 this front table here so that I can hear you and so  
 8 that our court reporter this evening can hear you.  
 9 We will have a microphone here for you to use as  
 10 well. And, please, use that, because since you are  
 11 facing us, we want the rest of the room to be able  
 12 to hear you clearly as well.

13 When you begin, please state and spell your  
 14 name. Please, if you are comfortable, give your  
 15 address. If you don't want to give your full  
 16 address, at least state where you come from, what  
 17 town you come from. And if you are representing  
 18 any group, please identify the group or interests  
 19 who you represent this evening. If you are just  
 20 representing yourself, if you are here on your own  
 21 behalf, that's fine.

22 I expect that there is going to be time for  
 23 everyone to be heard tonight, but it is always  
 24 helpful if you organize your remarks and focus on  
 25 the highlights. We welcome any written comments

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1 you want to have entered into the record. You're  
 2 welcome to do that tonight, if you want. You can  
 3 bring them up to me after you have spoken and I  
 4 will turn them into a hearing exhibit, give them a  
 5 number and they will be scanned and put onto our  
 6 website and they will become public hearing  
 7 exhibits right after tonight's hearing. Otherwise,  
 8 if you want to submit written comments later, I  
 9 will be talking about the comment period and how  
 10 long it lasts and you are welcome to submit written  
 11 comments later.

12 I'm not concerned, as I said, about time, so  
 13 I'm not going to put a time limit on your remarks.  
 14 However, I will be asking you to keep your remarks  
 15 to the -- to make them relevant to the rule and to  
 16 the process that we are focusing on tonight and the  
 17 subjects that we are focusing on tonight. If you  
 18 stray too much -- I will give you some leeway, but  
 19 if you stray too much, I am going to ask you to get  
 20 back to the subject at hand. I want to respect  
 21 everybody's time.

22 So I do see I think a couple of witnesses  
 23 who have spoken before in the room, and I don't  
 24 know if you are hoping to speak again.

25 MR. GREGG: (Indicating).

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1 THE JUDGE: Okay. Because I was just  
 2 going to say I'm going to let the others go first.  
 3 Your testimony was great last time, but if you want  
 4 to come back and speak some more you would be  
 5 welcome, but I will ask the others -- let the  
 6 others go first.

7 This is a fairly informal process. I'm here  
 8 to ensure that we are courteous to each other and  
 9 that the process runs smoothly. So as you are  
 10 making your comments, please keep these things in  
 11 mind. A rule hearing is really kind of like a  
 12 legislative hearing or a meeting of a local board  
 13 or city council, and in that sense any speaker may  
 14 ask questions of the Board panel and may also be  
 15 questioned by the Board panel or by me or even by  
 16 other people at the hearing. You should know that  
 17 the Board is permitted, but not required, to answer  
 18 your questions tonight. They may choose, instead,  
 19 to answer your questions later in writing during  
 20 the written comment period if it doesn't answer  
 21 your questions tonight. It's up to the Board panel  
 22 to decide whether to answer your questions on the  
 23 spot.

24 Because this isn't a court hearing, you  
 25 don't need to make your points by asking questions.

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1 And often the most direct way to make your points  
 2 known is simply to state them and go directly to  
 3 the point. And I really appreciate it when you are  
 4 direct.

5 It is most helpful to me if you can be  
 6 specific in your comments and tell me which rules  
 7 or rule parts you support or object to and why.  
 8 My report, when I write it, is organized as a  
 9 rule-by-rule analysis. So it's a huge help to me  
 10 if your comments are made in reference to specific  
 11 rule parts. The record we make today may be  
 12 reviewed by others later, and we want to make sure  
 13 that the matter you are addressing is also clear to  
 14 them.

15 Again, we have a court reporter here  
 16 tonight, and because we have to keep an accurate  
 17 record, it's important when you speak to remember  
 18 these things. Speak clearly, slowly and loud  
 19 enough to be heard, make all statements and  
 20 responses audible. Don't just nod your head, don't  
 21 just gesture. A few minutes ago I said "over  
 22 there" and I pointed. Don't do that, because that  
 23 will show up on the record as "over there" and we  
 24 won't know what that means. Say "on the table next  
 25 to the 'Rule Language' sign."

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1 Please, spell all proper names and technical  
 2 terms the first time you use them. And, please,  
 3 explain what acronyms stand for. Assume that I  
 4 don't really know anything about the subject at  
 5 hand. So that when I go back and listen or read  
 6 the transcript later, I will know what you are  
 7 talking about and I won't have to try and figure  
 8 out how to spell something and the court reporter  
 9 won't have to try to figure out how to spell a  
 10 technical term. Assume that she also is not  
 11 familiar with the subject matter and that she is  
 12 not going know what acronyms stand for.

13 Only one person speak at a time. If someone  
 14 is asking you a question, please wait for the  
 15 question to be finished before you answer. If  
 16 someone says something that makes you concerned or  
 17 upset, please wait until they finish before you  
 18 respond.

19 I might interrupt a speaker from time to  
 20 time to ask for a spelling or to ask a question if  
 21 something is unclear to me. I apologize in  
 22 advance. I ask you not to take offense. I'm not  
 23 doing it to distract you or to disrespect you, but  
 24 to ensure that we have an accurate record of what  
 25 you are saying and that I can understand it.

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1 Again, if you have a written copy of your  
 2 remarks that you can leave here as an exhibit,  
 3 please do so. That helps the court reporter a lot  
 4 when she's going back to do the transcript, and it  
 5 also is helpful to me.

6 Now, I want to talk about the written  
 7 comment period. Minnesota Statutes Section 14.15,  
 8 subdivision 1 provides that the Administrative  
 9 Judge may, by order, keep the hearing record open  
 10 for up to 20 days after the end of the public  
 11 hearing. And I'm issuing that order now. So the  
 12 record is extended to remain open for comment until  
 13 20 days after today's public hearing. That is 20  
 14 calendar days. So there are 20 calendar days after  
 15 today, June 26th, for initial submission of  
 16 post-hearing written comments. That is until July  
 17 16, 2019 at 4:30 p.m. for you to submit initial  
 18 written comments.

19 I refer you to the handout, again, for the  
 20 address to send your comments to to be sure that I  
 21 receive them. There are three ways for you to  
 22 submit comments. You can e-file them. And the  
 23 e-filing information is, I know, in the notice of  
 24 hearing. It's also in the information from our  
 25 office. I think the notice of hearing did not have

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1 my address or fax information. But that is on the  
 2 information from our office. And you are welcome  
 3 to submit something via U.S. Mail, personal  
 4 delivery or -- actually, so there are four ways.  
 5 You can bring it personally to our office, fax it  
 6 or put it in the U.S. Mail. However you do it, it  
 7 has to get to our office by 4:30 on July 16th to be  
 8 considered.

9 Our Office will post all comments we receive  
 10 on our rulemaking website for everybody to review.  
 11 So there is no privacy expectation. Whatever you  
 12 send to us is going to be public. The EQB also has  
 13 a rulemaking website, as I said, and so things will  
 14 be transparent through both websites.

15 Again, please, include the OAH Docket Number  
 16 80-9008-35532 in the subject line of any comments  
 17 you submit so we make sure it goes to the right  
 18 docket.

19 After July 16th, there is a five-working-day  
 20 rebuttal period to respond to comments that were  
 21 filed during the initial comment period. That  
 22 five-day period is meant for comment on the  
 23 comments. It is not to introduce new matters. We  
 24 will begin accepting rebuttal comments for posting  
 25 on Wednesday, July 17, 2019 and we will continue to

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1 accept those rebuttal comments through the day on  
 2 Tuesday, July 23, 2019 at 4:30 p.m. Again, the  
 3 rebuttal comments can only respond to comments that  
 4 were submitted by the end of the day on July 16th.

5 After July 23rd, I will prepare a report  
 6 that contains my conclusions about whether the EQB  
 7 has met its statutory burden in this matter. First  
 8 and foremost, I will focus on whether the Board has  
 9 documented its authority to enact the rules,  
 10 whether the Board has fulfilled all of the required  
 11 procedures, and, finally, whether the Board has  
 12 demonstrated the need and reasonableness for each  
 13 portion of the proposed rules.

14 You can expect my report about 30 days after  
 15 the last rebuttal deadline, unless an extension is  
 16 necessary. If you want to receive a copy of my  
 17 report, please indicate that on the sign-in sheet  
 18 and we will contact you by e-mail and make sure  
 19 that you get a copy of the report when it's  
 20 available.

21 The handout that I mentioned goes into some  
 22 more detail about this process, has the important  
 23 address information that you will need to submit  
 24 written comments, so please grab a copy and keep  
 25 it.

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1 Are there any questions about the procedures  
 2 or what we are doing today before we proceed with  
 3 the Board's presentation?

4 (No response.)

5 THE JUDGE: Anything?

6 (No response.)

7 THE JUDGE: Then Assistant Attorney  
 8 General Ibrahim, would you like to proceed then.  
 9 Thank you.

10 MS. IBRAHIM: Thank you, Your Honor. My  
 11 name is Nur Ibrahim and I'm the Assistant Attorney  
 12 General here representing the Environmental Quality  
 13 Board. I'm joined by Erik Cedarleaf Dahl. Can you  
 14 hear me?

15 MS. THELEN: A little louder.

16 MS. IBRAHIM: I'm joined by Erik  
 17 Cedarleaf Dahl, Director of Rulemaking at EQB, and  
 18 Denise Wilson, the Director of the Environmental  
 19 Review Program. Before we move on to the  
 20 presentation, I just want to make note of the  
 21 exhibits that were entered into the record during  
 22 the May 31st hearing.

23 At that time, we entered into the record the  
 24 request for comments, the proposed rules, the  
 25 statement of need and reasonableness and the

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1 related exhibits, the notice of hearing,  
 2 certificate of mailing and the certificate of  
 3 giving additional notice pursuant to the additional  
 4 notice plan. At that time, we also entered into  
 5 the record the comments that were received between  
 6 November 13, 2018 and February 4, 2019. We also  
 7 entered documents that indicate that EQB has  
 8 complied with the requirements of the  
 9 Administrative Procedures Act. That includes the  
 10 certificate of compliance with the Minnesota  
 11 statutes regarding farming operations, submission  
 12 of the SONAR and consultation with the Minnesota  
 13 Management and Budget Office. We also introduced  
 14 the draft modification to the proposed rule  
 15 amendments which was then in response to comments  
 16 received during the dual notice comment period.  
 17 That is basically everything that was  
 18 submitted during the May 31st hearing. At this  
 19 point, the EQB will offer a presentation on the  
 20 recommended rules.  
 21 MR. CEDARLEAF DAHL: Let me know if you  
 22 can't hear me. Good afternoon, Your Honor and  
 23 members of the public. I'm Erik Cedarleaf Dahl and  
 24 this is Denise Wilson. We are before you today to  
 25 present an overview of the mandatory categories of

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1 rulemaking, Revisor ID 4157 and OAH Docket Number  
 2 80-9008-35532.  
 3 We will present the proposed rule changes  
 4 and reasoning for the changes as well as the  
 5 proposed revisions to certain rules based on public  
 6 comment. And so here's our outline. We are going  
 7 to give a little bit of EQB, Environmental Quality  
 8 Board, background and Environmental Review  
 9 background and the purpose of Environmental Review,  
 10 our statutory authority, and then a summary of the  
 11 proposed rule changes and a little bit about the  
 12 rulemaking engagement.  
 13 So I will start with a little background on  
 14 the Environmental Quality Board. The membership of  
 15 the EQB is made up of agencies with nine state  
 16 agencies and citizens and the Met Council as a  
 17 non-voting member. We have eight citizen members.  
 18 Currently, we only have six. Two have not been  
 19 appointed. That's our makeup.  
 20 Denise and I are going to switch back and  
 21 forth here.  
 22 MS. WILSON: Thanks, Erik. So one of  
 23 the primary responsibilities of the Environmental  
 24 Quality Board is the administration of the  
 25 Environmental Review Program. The Minnesota

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1 Environmental Review Program is implemented through  
 2 Minnesota statutes and rules. Board  
 3 responsibilities and authorities for administering  
 4 the Environmental Review Program are identified in  
 5 Minnesota Statute 116D and Minnesota Rules Chapter  
 6 4410. On behalf of the Board, staff initiate and  
 7 implement updates to Minnesota Rule Chapter 4410.  
 8 As I mentioned, the Board has the  
 9 responsibility for administration of the  
 10 Environmental Review Program. And this includes  
 11 ensuring that program objectives are met. The  
 12 Environmental Review Program objectives are  
 13 described in Minnesota Rule Chapter 4410.0400.  
 14 The objectives are to provide usable  
 15 information to the project proposer, government  
 16 decisionmakers and the public concerning the  
 17 primary environmental effects of a proposed  
 18 project. They also include providing the public  
 19 with systematic access to decisionmakers. And,  
 20 importantly, this program is delegated -- we  
 21 delegate the authority and the responsibility for  
 22 environmental review to the government unit most  
 23 closely involved with the project. This is  
 24 referred to in rule as the responsible governmental  
 25 unit. Another objective is to reduce delay and

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1 uncertainty in the environmental review process and  
 2 to avoid and eliminate duplication.  
 3 So now I'm going to walk you through a  
 4 little bit of the environmental review process at a  
 5 very high level. The environmental review process  
 6 begins with a project that requires a governmental  
 7 approval and has the potential to either directly  
 8 or indirectly impact the environment. The project  
 9 proposer considers the requirements in Minnesota  
 10 rules to determine if this program applies to that  
 11 project.  
 12 So in Minnesota Rules 4410.4300 and  
 13 4410.4400 there are categories of project types.  
 14 Each of those categories has a threshold and it  
 15 also assigns a government agency the responsibility  
 16 for preparing the review of that project, again,  
 17 referred to as the RGU or responsible governmental  
 18 unit.  
 19 So aside from the mandatory categories,  
 20 project proposers also have to consider whether  
 21 their project is a phased or connected action when  
 22 looking at those thresholds and they use a three-  
 23 year lookback period of time.  
 24 The most common types of environmental  
 25 review are the mandatory environmental assessment

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1 worksheet and a mandatory environmental impact  
 2 statement. Those are the categories and types of  
 3 processes that are used for those mandatory  
 4 categories. However, a responsible governmental  
 5 unit can actually order a discretionary review.  
 6 They have that authority. And citizens can  
 7 actually submit a petition for a project even  
 8 though it may fall below the threshold or not be  
 9 identified as a mandatory category.

10 So the project proposer will fill out a  
 11 worksheet, a spreadsheet that contains about 20  
 12 questions about their project and they will submit  
 13 that to the responsible governmental unit that  
 14 contains all the information that they have and  
 15 they know about the project.

16 So for the environmental assessment  
 17 worksheet, they submit that to the government  
 18 agency or RGU. The RGU then looks at the  
 19 information they provided, but they also have their  
 20 own technical expertise and understanding of the  
 21 regulatory framework and they will add that  
 22 information to the worksheet. Then they put it out  
 23 on public notice for a 30-day public notice to the  
 24 public, to other government agencies and they have  
 25 the opportunity to provide additional information.

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1 Once the responsible governmental agency or  
 2 unit receives all that information, they look at  
 3 that information and use criteria in rule under  
 4 4410.1700 to determine if the project has the  
 5 potential for significant environmental effect.

6 If they make the determination that that  
 7 information does not meet those requirements, then  
 8 the project moves on to permitting and other  
 9 approval. If they determine that it does have the  
 10 potential for significant environmental effect,  
 11 then they will require an environmental impact  
 12 statement.

13 The environmental impact statement process  
 14 has, again, their own set of categories, thresholds  
 15 and designated government agencies under 4410.4400.

16 Or, again, an EIS or environmental impact statement  
 17 can be required as a result of a decision on an  
 18 EAW. The EIS has a narrower focus. It also  
 19 includes an analysis of alternatives and looks at  
 20 not only environmental but economic, employment and  
 21 sociological impacts.

22 MR. CEDARLEAF DAHL: Thanks, Denise. So  
 23 here is our statutory authority. It's in the  
 24 exhibits, Exhibit D on page 62 and 63 of the SONAR.  
 25 It references EQB statutory authority to conduct

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1 this rulemaking on Minnesota Rules Chapter 4410.  
 2 The Board's statutory authority to adopt the rule  
 3 amendments is given in the Minnesota Environmental  
 4 Policy Act, Minnesota Statute 116D.04, subdivision  
 5 2a(b) and 5a and Minnesota Statute 116C.04. Under  
 6 these provisions, the Board has the necessary  
 7 statutory authority to adopt the proposed rule  
 8 amendments. In particular, Minnesota Statute  
 9 116D.04, subdivision 2(a)b directs the Board to  
 10 establish mandatory categories for EAWs, which are  
 11 environmental assessment worksheets; EISs,  
 12 environmental impact statements, and exemptions by  
 13 rule.

14 This rulemaking also includes the adoption  
 15 of the Silica Sand project thresholds in accordance  
 16 with the authority provided in laws of Minnesota  
 17 2013, Chapter 114, Article 4, Section 91 and the  
 18 Board's authority to establish thresholds for  
 19 different types of recreational trails that require  
 20 the preparation of an EAW as established in the  
 21 2015 legislative session laws of Minnesota 2015,  
 22 Chapter 4, Article 5, Section 33.

23 So these amendments are generally  
 24 reasonable, because the Minnesota legislature has  
 25 requested that these changes be made. In 2013, the

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1 EQB, along with other state agencies, completed the  
 2 Mandatory Environmental Review Categories Report  
 3 directed by the 2012 Minnesota legislature laws of  
 4 Minnesota for 2012, Chapter 150, Article 2, Section  
 5 3.

6 The proposed amendments to Minnesota Chapter  
 7 4410 are needed to, one, fulfill the  
 8 recommendations found in the 2013 Mandatory  
 9 Environmental Review Category Report which is  
 10 Exhibit D1, streamline environmental review for  
 11 both technical and housekeeping changes and adopt  
 12 thresholds specific to Silica Sand projects and  
 13 amend thresholds specific to recreational trails as  
 14 directed by the Minnesota legislature in 2013 and  
 15 2015.

16 The desired outcome is to make environmental  
 17 review more efficient by adding clarity and  
 18 specificity and thereby reducing ambiguous or  
 19 confusing application of the environmental review  
 20 rules. The proposed changes are needed both to  
 21 increase certainty for project proposers,  
 22 responsible governmental units and the public and  
 23 to ensure that certain proposed projects are  
 24 receiving environmental review.

25 The first type of change included in the

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<p style="text-align: right;">146</p> <p>1 edits is to improve grammar and language. These                  2 edits do not change how the rule is applied but are                  3 intended to change language so that it will be more                  4 clear to the public, responsible governmental units                  5 and project proposers how the rule should be                  6 interpreted.                  7 The second type of change will update                  8 Chapter 4410 with other statutory and regulatory                  9 requirements. And, finally, some of the rules are                  10 being updated because there is more information                  11 available now than when the category was originally                  12 created.                  13 So we are just briefly going to go over some                  14 of the rules, especially the proposed revisions                  15 that we introduced on May 31st, but for most of the                  16 changes we are just going to get to your comments.                  17 So I will move through these quickly and we can get                  18 into specifics if you have any questions.                  19 Here's a complete list of all the rule parts                  20 included in the rulemaking package. The last four                  21 parts only contain changes to improve language for                  22 interpreting the rule but don't change how the rule                  23 is currently applied. We are only planning to walk                  24 through the proposed changes, the proposed                  25 revisions we added on May 31st.</p>	<p style="text-align: right;">148</p> <p>1 reasonableness, at the September 19, 2018 board                  2 meeting. We held a comment period on the draft                  3 rules from November 13, 2018 to February 4, 2019                  4 and then did a notice of hearing on December 31,                  5 2018 to change hearing dates and add this hearing                  6 tonight.                  7 So we are going to start with 4410.0200,                  8 Definitions and Abbreviations. This part includes                  9 subparts with the definitions and abbreviations for                  10 Chapter 4410. These definitions are used to help                  11 interpret all of Chapter 4410 and, more                  12 specifically, to help determine when environmental                  13 review is needed in the mandatory EAW and EIS                  14 categories. The page numbers up there relate to                  15 Revisor's certified rule language which is                  16 available on the table over there, or by the door                  17 with the tent that says "Rule language."                  18 It's hard to kind of see the colors here,                  19 but the subparts highlighted in green mean they are                  20 aligning or referring to another rule part. The                  21 subparts highlighted in purple mean they are                  22 aligned with statutory definition or code of                  23 federal regulation definitions. If you have any                  24 questions about any of these, feel free to ask. I                  25 will keep moving forward.</p>
<p style="text-align: right;">147</p> <p>1 It's important to note that the changes were                  2 the result of an extensive public engagement                  3 process and also reflect input from responsible                  4 government units, the public and based on lessons                  5 learned from their experience and expertise over                  6 time in implementing these rules.                  7 The EQB took the following steps to develop                  8 the draft rules, notified interested parties about                  9 the draft rules and to solicit their input on rule                  10 language. We had the Silica Sand rule advisory                  11 panel which was 15 members and met from January                  12 2014 to February 2015. A request for comments                  13 prior to rule language occurred in 2013, 2015 and                  14 2016. The EQB established a rule-specific web page                  15 which is up there. It might be a little hard to                  16 read, but if you just go to EQB.state.mn.us. You                  17 can navigate there. We held informational meetings                  18 on March 18th, 21st and 22nd of 2016. We released                  19 preliminary language in an informal comment period                  20 from June 2016 to August 2016 and held a rulemaking                  21 open house on June 28, 2016. Preliminary rule                  22 language was presented at a public EQB board                  23 meeting on August 15, 2018. And then we did a                  24 draft rules and a SONAR presentation to the EQB                  25 board, the SONAR is the statement of need and</p>	<p style="text-align: right;">149</p> <p>1 Here are some examples of the first two                  2 types of changes. Changes are intended to improve                  3 clarity include the addition of the new                  4 definitions. The definitions are used in the                  5 mandatory categories to help clarify when                  6 environmental review is required.                  7 Another example of these types of changes                  8 are the recommendations we received from the                  9 Revisor's Office. In this example, the meaning is                  10 the same, but the words are intended to improve                  11 grammar. And then another example aligns Chapter                  12 4410 with the way terms are used in other state                  13 regulatory processes. By referencing other state                  14 rules in the definitions, Chapter 4410 will stay                  15 current and responsible government units, the                  16 public and project proposer will have an easier                  17 time understanding information, especially when                  18 environmental review documents and permits are                  19 co-noticed.                  20 Now we are going to move into part 4410.0500,                  21 subpart 6, Exceptions. And here is Denise.                  22 MS. WILSON: Thanks, Erik. So                  23 4410.0500, subpart 6 is used when there is a                  24 designated responsible governmental unit but a                  25 request is made typically by that designated RGU to</p>

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1 select a different RGU. In practice, these are  
 2 usually requested based on greater expertise and/or  
 3 across jurisdictional issues. On average, this may  
 4 happen one to two times per year. The requests are  
 5 not usually controversial and are typically  
 6 supported by both RGUs. Adding "or EQB chair" will  
 7 not prevent board members and EQB staff from  
 8 requiring the decision to be considered by board  
 9 members. And publishing the request will also  
 10 allow the public to make the same request directly  
 11 to a board member. These are all changes that are  
 12 proposed for this rule.

13 The next two slides include all of the  
 14 subparts included in the proposed rulemaking for  
 15 the environmental assessment worksheet mandatory  
 16 categories. As a reminder, the subparts  
 17 highlighted in orange only include changes  
 18 recommended for improving clarity. So we will not  
 19 specifically review those changes, unless you have  
 20 questions.

21 We are planning to walk through the proposed  
 22 changes for each of the mandatory EAW categories in  
 23 red and then give a brief summary of the  
 24 justification for that change. The categories  
 25 highlighted in red are proposed revisions to the

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1 draft rule language based on comments received  
 2 during the comment period. Here are the remaining  
 3 EAW mandatory categories included in the proposed  
 4 changes in this rulemaking.

5 MR. CEDARLEAF DAHL: I will just pause  
 6 for a second so people can see all the changes.  
 7 Now we will move into part 4410.4300, subpart 3,  
 8 Electric-generating facilities, which is on page 4  
 9 of the rule language over there on the table. And  
 10 I'm only going to focus on part D, which is one of  
 11 the proposed revisions to the draft rule language  
 12 published on November 13, 2018.

13 The environmental review and permitting  
 14 threshold noted in Minnesota Rules 4410.4300,  
 15 subpart 3 for wind energy conversion systems for  
 16 part D should be 5 megawatts. This threshold has  
 17 been established by the legislature in Minnesota  
 18 Statute 216F. Subpart 3 should be edited to ensure  
 19 consistency with the statute. The threshold  
 20 included in the Revisor's draft of the proposed  
 21 mandatory category rules was a clerical error.

22 MS. WILSON: Minnesota Rule 4410.4300,  
 23 subpart 7, Pipelines, the proposed changes to this  
 24 subpart are being removed from consideration. The  
 25 proposed changes were intended to add greater

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1 understanding for when environmental review is  
 2 required. However, based on the comments received,  
 3 more discussion is warranted on the potential  
 4 impacts of those proposed changes. The withdrawal  
 5 of the proposed change will result in the language  
 6 reverting back to the current language in Minnesota  
 7 rules.

8 MR. CEDARLEAF DAHL: And the current  
 9 language is available on the proposed revisions  
 10 sheet over on the table. And you can see it on the  
 11 proposed revisions as red here on the first page  
 12 which says 705. That's just the page number that's  
 13 in the exhibit.

14 So up next we have part 4410.4300, subpart  
 15 27, Wetlands and Public Waters. We are just going  
 16 to focus on the proposed revision to the draft rule  
 17 language published on November 13, 2018 in red.  
 18 The changes that are proposed for this subpart are  
 19 intended to provide greater understanding for when  
 20 environmental review is required and update the  
 21 requirements to better align with the descriptions  
 22 in the Wetland Conservation Act.

23 During the public comment period, we  
 24 received information from government agencies that  
 25 have the responsibility and expertise for

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1 evaluating these projects. They indicated that the  
 2 proposed changes may now include projects that  
 3 don't have the potential for significant  
 4 environmental effects. As a result of this  
 5 information, we are now proposing to add a sentence  
 6 to be clear that these types of projects do not  
 7 apply to this subpart by referencing projects  
 8 described in Minnesota Rules Chapter 4410.4600.  
 9 Because the change is highlighting information  
 10 already in rule and aligns with our intent for the  
 11 original amendments, we don't consider this a  
 12 substantive change.

13 MS. WILSON: So here are the mandatory  
 14 environmental impact statement categories included  
 15 in the proposed changes in this rulemaking. Just  
 16 like the mandatory environmental assessment  
 17 worksheet categories, we are planning to walk  
 18 through the proposed changes for each of the  
 19 mandatory EIS categories in red, but not the  
 20 categories in orange. Proposed revisions to the  
 21 draft rule language were published on November 13,  
 22 2018 and are in red.

23 MR. CEDARLEAF DAHL: To keep things  
 24 interesting, I'm going to now speak instead of  
 25 Denise. I don't know why we passed it back and

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1 forth there. But the proposed revisions to the  
 2 draft rule language published on November 13, 2018  
 3 are in red here -- sorry, move to the next slide --  
 4 on pages 19 and 20 of the rule language on the  
 5 table, the Revisor's copy. The proposed changes to  
 6 this subpart are removed from consideration. The  
 7 proposed changes were intended to add greater  
 8 understanding for when environmental review is  
 9 required. However, based on comments received,  
 10 more discussion is warranted on the potential  
 11 impacts of the proposed changes. The withdrawal of  
 12 the proposed change will result in the language  
 13 reverting back to the current language in red in  
 14 Minnesota Rule Chapter 4410.4300.  
 15 And then, finally, we now are reviewing the  
 16 proposed changes to part 4600 which is Exemptions.  
 17 The proposed changes in orange include  
 18 recommendations that are intended to improve  
 19 understanding but don't substantively change what  
 20 is currently required. The parts in black include  
 21 recommendation to rule parts for exemptions. These  
 22 are parts we are not going to walk through today.  
 23 Here's an overview of the comments. The EQB  
 24 received comments supporting parts of the proposed  
 25 draft rules. We also received comments opposing

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1 specific parts of the proposed draft rules and  
 2 neutral comments seeking information. During the  
 3 comment period, EQB received 190 comments on the  
 4 proposed rules and 176 hearing requests. These  
 5 comments were received during the November 13th to  
 6 February 4th comment period and are located in  
 7 Exhibit I. All of the comments are available  
 8 there. And the EQB will respond to all comments  
 9 during the post-hearing comment period. Here's how  
 10 to submit a comment to the written record.  
 11 Thank you.  
 12 THE JUDGE: Okay. I need the list here  
 13 to see who is making comments. I'm not sure which  
 14 of these was the first -- oh, yes, I am. It looks  
 15 like the first person who wants to speak is -- is  
 16 it Jonathan Fribley?  
 17 MR. FRIBLEY: That's me.  
 18 THE JUDGE: Okay. Mr. Fribley, welcome.  
 19 MR. FRIBLEY: Thank you.  
 20 THE JUDGE: Again, when you start, if  
 21 you could just make sure you use the microphone,  
 22 and state your name for the record and spell it so  
 23 that we have got a record of who you are.  
 24 MR. FRIBLEY: Jonathan Fribley.  
 25 Jonathan is J-o-n-a-t-h-a-n. And Fribley is

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1 F-r-i-b-l-e-y. 423 16th Avenue North, St. Cloud.  
 2 Any more information you need?  
 3 THE JUDGE: That's good. Unless you are  
 4 representing some organization.  
 5 MR. FRIBLEY: No, not an organization.  
 6 I guess I need to start my remarks by saying I am  
 7 not at all well versed in the Environmental Quality  
 8 Board or the processes at these rulemakings. And  
 9 I'm very impressed with your ability to hang on to  
 10 all of this and understand it. You lost me at I  
 11 think it was 7904 early on. So I wrote that down.  
 12 It's, like, okay. So, in any case, I, frankly,  
 13 will have difficulty speaking to particular rules.  
 14 I am taking time on an evening during the  
 15 week, when you folks are, too, because I'm counting  
 16 on you folks to fulfill your mission, and I want to  
 17 speak to that as it relates to the rules.  
 18 By your own count -- I have to say, when I  
 19 found out this was happening, I went onto the  
 20 website and got your report card. It's not  
 21 everybody that publishes their own report card  
 22 online. So thank you for that.  
 23 By your own count, you describe a state and,  
 24 by implication, a board's responsibilities as  
 25 essentially failing in climate right now. That we

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1 are seeing heat and rainfall as poor, greenhouse  
 2 gas emissions as poor, climate change and wildlife  
 3 as okay but getting worse. Heat and rainfall  
 4 problems are ahead. So when I look at your  
 5 mission, which is a very lovely statement, eloquent  
 6 statement, to enhance Minnesota's environmental  
 7 quality for current and future generations and I  
 8 look at that report card on climate, that's not  
 9 acceptable for any of us. I think we all know  
 10 that.  
 11 So while I don't represent an organization,  
 12 I represent my granddaughters, I represent the pine  
 13 woods of the north that we love, I represent the  
 14 health of Minnesota, the Minnesota environment and  
 15 ecosystems, and we depend on this agency. So while  
 16 I don't have a specific rule to speak to, what  
 17 brought me here was, as I heard this meeting was  
 18 happening and looked at your agency, the discovery  
 19 that this Environmental -- is it Quality Board? Do  
 20 I have that right?  
 21 THE JUDGE: You do.  
 22 MR. FRIBLEY: I'm very early in this.  
 23 Is responsible for rulemaking around fossil fuel  
 24 infrastructure. And so my request in rule would be  
 25 that fossil fuel infrastructure be given the

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1 strictest level of environmental review possible  
2 and that climate change be central to any aspect of  
3 that review.  
4 I didn't catch all of the things that you  
5 folks are responsible for. It was environment, but  
6 it was also sociological, it was also economic.  
7 All of those at heart are climate issues. And  
8 there is no fossil -- there is no such thing -- we  
9 are getting to the point where there is no such  
10 thing as a job promoting fossil fuel project when  
11 we look at the long-term economic and sociological  
12 costs for everyone down the road. So I would urge  
13 that whatever rules are made regarding expansion of  
14 petroleum refineries, oil and natural gas  
15 pipelines, hazardous materials storage and so on,  
16 that those have central to them climate  
17 considerations. And beyond that, that we begin --  
18 and I have no idea where your rules are on this,  
19 but that when we consider such things as  
20 residential development, which I understand -- I  
21 was deeply impressed with all the areas that this  
22 Board touches. That when residential development,  
23 for example, is considered, that climate is central  
24 to that. I would suggest that the day will come  
25 when this Environmental Quality Board is placed in

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1 the position where they will simply need to  
2 disallow the creation of economic structures,  
3 infrastructure that is fossil fuel based. I know  
4 that is completely politically untenable right now.  
5 But it would be wholly within the intent and the  
6 mission of this Board to adopt that position.  
7 So I would suggest that as you look towards  
8 clarity that we move towards clarity of what are  
9 the aspects of this Board's responsibility that  
10 have impacts on climate and that those are vividly  
11 illustrated in the rules and that decisions are  
12 made based on the consequences of those actions for  
13 my granddaughter, all of our grandchildren. The  
14 north woods, I was up there two weeks ago watching  
15 the red oaks emerge where there used to be white  
16 pines. It's unmistakable what's happening, if you  
17 go out in the woods. And so I ask of you to -- I'm  
18 here because we need you.  
19 I thank you for your work and I hope that  
20 consideration of rules focus on preserving the  
21 ecological and human health of Minnesota. Thanks  
22 for your time.  
23 THE JUDGE: Thank you very much. Thank  
24 you, Mr. Fribley. Mr. Lange. No. Wait a minute.  
25 Not Mr. Lange. Sorry. Julie -- no. You are the

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1 only person who has actually signed up to speak.  
2 Okay.  
3 MS. THELEN: Can others sign up now?  
4 THE JUDGE: Yes. That was going to be  
5 my next question. Is there somebody who hasn't  
6 already signed up to speak who would like to speak?  
7 MS. THELEN: (Indicating).  
8 THE JUDGE: Could you please tell me  
9 your name, so I can make a note that you are  
10 speaking.  
11 MS. THELEN: My name is Rose Thelen,  
12 T-h-e-l-e-n. I'm from Clearwater, south of  
13 Clearwater in Clearwater Township. My address is  
14 15510 Huber Avenue Northwest, Clearwater,  
15 Minnesota.  
16 And I'm here -- nobody sent me here, but I  
17 have a bunch of monikers I suppose I could bring  
18 up. I'm with the Central Minnesota Environmental  
19 Coalition which is a group of environmental groups  
20 in St. Cloud. I'm also a township supervisor in  
21 Clearwater Township, formerly a Wright County  
22 commissioner. I'm also on the advisory board of  
23 the Clearwater River Watershed District.  
24 THE JUDGE: Can everybody hear  
25 Ms. Thelen?

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1 MS. THELEN: Can you hear me?  
2 THE JUDGE: If everybody can hear you  
3 without it, then we're fine.  
4 MS. THELEN: Everybody can hear me?  
5 Okay. Anyway, and then Clearwater River Watershed  
6 District Advisory Board and Clearwater River,  
7 formerly Clearwater River Watershed District Board.  
8 So, anyway, I've been involved in a number  
9 of processes in these roles where there were  
10 environmental impact statements required and I just  
11 want to support the need for them and sooner than  
12 take some projects out from under consideration  
13 under EIS and putting them into EAW, I think it's  
14 called, environmental worksheet. That they remain  
15 in, or I don't know if they were there before, but  
16 they should be getting an environmental impact  
17 statement. And I'm like Jonathan and probably  
18 everybody in this room, that climate change is  
19 real, and I think that currently there is an  
20 assault on all of the regulations that have been  
21 put in place and the attempts over time that we  
22 have made to protect the environment. And what we  
23 are seeing is, you know, a full court hustle by the  
24 fossil fuel industries, et cetera.  
25 I am very involved in working on the effort

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1 to close a couple of units at the Sherco Becker,  
 2 Xcel's Becker coal plant. And in that process we  
 3 were really happy that in fact the system worked  
 4 for us. You know, that it was recommended by the  
 5 PUC that they be shut down and there was an  
 6 environmental impact statement and all that. So  
 7 bravo. I'm very happy that you are here, too.  
 8 But then, of course, what we saw was my  
 9 knucklehead representative went in and through a  
 10 political process created legislation so that Xcel  
 11 would just be given a gas plant without having to  
 12 do any of the PUC process, environmental impact  
 13 process, et cetera, establish the need. So, I  
 14 mean, it was a perfect example of how the political  
 15 forces are taking over and subverting what we need  
 16 and want from an Environmental Quality Board or  
 17 even our environmental agencies.  
 18 You know, so I just want to support -- I  
 19 mean, I know it's difficult work. My daughter  
 20 worked for the Met Council and it was always a  
 21 political struggle, will we be shut down if we do  
 22 something that really asserts, you know, the  
 23 survival of the species and the planet. Or, you  
 24 know, how much do we capitulate to political  
 25 forces. I'm not being very articulate. I'm

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1 generally fairly articulate. But I did rush in  
 2 here, too, without a lot of preparation. But I  
 3 just want to say that we need environmental impact  
 4 statements, specifically the changes that you  
 5 proposed from types of projects that were listed  
 6 under 4410.4300 section. And that I believe is the  
 7 environmental assessment worksheet. Those projects  
 8 like expansion of petroleum refinery, oil and gas  
 9 pipeline projects, expansions of hazardous material  
 10 storage sites shouldn't get EAWs. They should get  
 11 EISs. And so they should go into the 4410.4400  
 12 section. That's specifically it.  
 13 But anything that I can do to support your  
 14 doing more EISs or strengthening your capacity to  
 15 not have to be beholden to political forces or  
 16 other pressures that make you have to soften your  
 17 oversight capabilities I'm here to support.  
 18 And so, you know, I think there should be  
 19 more things in the EIS. And I don't have a full  
 20 understanding of all that you govern. But I know  
 21 right now, for example, at Wright County there is  
 22 an operation that wants to put in a paving  
 23 facility. Do you know what I'm talking about? And  
 24 it went to the county commission because the  
 25 township supervisors in Silver Creek opposed it,

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1 this expansion of this plant. I think it's an  
 2 asphalt plant into something else. A paving  
 3 operation. Because they are going to be expanding  
 4 freeway 94. Anyway, so it went to the county board  
 5 of commissioners. They were going to decide this  
 6 week. Because the citizens of the area who would  
 7 be living next to this paving facility, you know,  
 8 did what they thought was their civic duty. Went  
 9 to the Silver Lake Township who supported them in  
 10 resisting this. They went to the county board.  
 11 The county board is going to vote -- I believe they  
 12 voted yesterday. I don't know what the outcome  
 13 was. But they wanted an environmental impact  
 14 statement. And so, of course, the corporation that  
 15 owns them argued against it. They say they are  
 16 regulated just fine. Thank you very much. But we  
 17 are all hoping at the township levels that, in  
 18 fact, we are able to prevail. You know, there is  
 19 something called local control that we are  
 20 interested in, too.  
 21 One last piece. And this is about can you  
 22 do more to irritate more fossil fuel companies and  
 23 that sort of thing, big corporations that run the  
 24 place? But I live in a township, have 53 acres in  
 25 Clearwater Township. Without my knowing it, 200

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1 acres were bought by the R.D. Offutt company across  
 2 the road from me. And this is the outfit that  
 3 grows potatoes and is responsible for poisoning the  
 4 wells up in Park Rapids. And so I had no idea.  
 5 Didn't know it was happening. Can't find anybody  
 6 who oversees it. So, you know, from the Department  
 7 of Ag to Soil and Water to, you know, to the DNR,  
 8 it just seems like -- so at 6:30 in the morning  
 9 here come the helicopters dumping stuff. And you  
 10 can smell it. It's there. You know? You know,  
 11 they are just drawing all this water out of the  
 12 water table. It's in the Clearwater River water  
 13 watershed which goes into the Mississippi. And  
 14 nobody has got any oversight of it. So I said,  
 15 well, what -- and I talked to the head of the  
 16 company. Right? I said, you know, can we at least  
 17 find out what you are dumping on there so that --  
 18 you have a website that says you are a good  
 19 corporate neighbor. Could we know what it is you  
 20 are dumping so we know whether we should shut the  
 21 windows or leave town for the day? What do we need  
 22 to do? And he said, no, that's proprietary. So I  
 23 can't remember who I talked to finally about who --  
 24 nobody really governs what they put on it. They  
 25 told me -- I think the Department of Ag said that

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1 they put what -- who governs what they put on the  
 2 fields is on the label, on the poison that they are  
 3 using.  
 4 So it just seems like it's just a war  
 5 against nature right now. I know I'm blabbing on  
 6 and on. But, you know, I'm a fairly political  
 7 animal and so I would support anything you do that  
 8 holds the line and demonstrates your political will  
 9 and cares about his grandchildren and the planet.  
 10 So, you know, we shall -- sing a song for you, "We  
 11 Shall Overcome." Anyway, so I guess that's it.  
 12 Thank you.  
 13 THE JUDGE: Thank you very much.  
 14 Thanks. Is there anybody else who did not sign up  
 15 to speak who would like to?  
 16 MS. BURRELL: (Indicating).  
 17 THE JUDGE: Okay. And are you  
 18 Ms. Burrell?  
 19 MS. BURRELL: Melissa Burrell.  
 20 M-e-l-i-s-s-a. Burrell, B-u-r-r-e-l-l. From 37  
 21 South College Avenue, St. Joseph. I'm a student of  
 22 the College of St. Benedict. And I am also here  
 23 with Minnesota 350, the organization.  
 24 I would like to state that we need mandatory  
 25 environmental impact statements for more categories

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1 of projects with full consideration of climate  
 2 impacts. The proposed rules indicates that some  
 3 types of projects will receive a mandatory EIS,  
 4 such as the nuclear storage sites and new oil  
 5 refineries, as you stated. But some will get a  
 6 lighter form of environmental review. The  
 7 environmental assessment worksheet.  
 8 A category of projects that are proposed to  
 9 get an EAW instead that I think should receive a  
 10 EIS is any oil or gas line projects. The mandatory  
 11 EAW Rule Section 4410.4300, the mandatory EIS rule  
 12 section is 4410.4400. The changes we are  
 13 advocating for in this instance is moving pipeline  
 14 projects listed above out of the 4410.4300 section  
 15 and into the 4410.4400 section.  
 16 And I would like to say that I really  
 17 appreciate the rollback of the proposed rule  
 18 changes around pipeline projects that has already  
 19 occurred. These proposed changes would have  
 20 exempted pipelines from the EIS review and the EQB  
 21 did the right thing by withdrawing these changes in  
 22 response to the earlier public feedback.  
 23 The EQB stated in their previous  
 24 presentation that they want to prioritize these  
 25 environmental effects. An EIS, as you stated,

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1 would also consider the economic, employment and  
 2 socioeconomic effects. And I would like to say  
 3 that this is an emphasis on the basic human rights  
 4 of our community. So that would include  
 5 freshwater, that would include clean air and  
 6 health, and that would include not having carbon  
 7 intensive oil corroding the land that goes through  
 8 with these pipelines.  
 9 New information has also come up since the  
 10 start of the rulemaking process. Which means we  
 11 need more scrutiny on the fossil fuel industry.  
 12 This would include the Superior refinery explosion  
 13 showing dangers of hydrogen fluoride even in a  
 14 relatively small refinery. Recent climate change  
 15 data shows that we have 11 years to transition all  
 16 fossil fuels and must start right now. That would  
 17 leave me at age 31 without an earth to support me.  
 18 Progress towards a 100 percent renewable  
 19 energy in Minnesota would effectively be erased by  
 20 approving projects without fully considering their  
 21 carbon impact.  
 22 So, finally, in all cases, a full EIS  
 23 provides the best option for environmental review.  
 24 This is the only type of review that includes a  
 25 full alternatives analysis of other and potentially

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1 better ways to accomplish the progress goals.  
 2 Thank you for your time.  
 3 THE JUDGE: Thank you, very much. Is  
 4 there anybody else who would like to speak who has  
 5 not signed up to speak?  
 6 (No response.)  
 7 THE JUDGE: Okay. The hearing is  
 8 scheduled to last until 8:30. So what we are going  
 9 to do now is adjourn. So we are adjourning  
 10 temporarily. We are all going to hang out here.  
 11 So we can go off the record.  
 12 (At this time a discussion was held off the record.)  
 13 THE JUDGE: We are back on the record.  
 14 If you can just come up and state your name. You  
 15 can ask the question and it will be on the record  
 16 and the Board can decide how they want to respond.  
 17 MS. HIEMENZ: Okay. Maybe dialogue a  
 18 little?  
 19 THE JUDGE: That is up to the Board to  
 20 decide. I don't know if you were here when I said  
 21 that.  
 22 MS. HIEMENZ: I heard everything you  
 23 just said. But you just said we were going to go  
 24 off the record, so I thought --  
 25 THE JUDGE: When I said we are going off

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1 the record, what that was about is that there was  
 2 nobody else who wanted to speak. So if you had  
 3 something else that you want to say, state your  
 4 name and say what you want to say. So your name  
 5 is?  
 6 MS. HIEMENZ: Julie Hiemenz,  
 7 H-i-e-m-e-n-z. I live on the Mississippi River,  
 8 25 Riverside Drive Northeast. We kayak, he fly  
 9 fishes. It's our life.  
 10 So I have been particularly laser focused on  
 11 PolyMet. And I noticed in your rules that the RGU  
 12 is going to be the DNR and the local government for  
 13 PolyMet. Am I right? Did I read it right?  
 14 MS. WILSON: I would have to look back  
 15 at the citation.  
 16 MS. HIEMENZ: It's on I want to say page  
 17 8. But it's probably 12.  
 18 THE JUDGE: 8 or 12 of?  
 19 MS. HIEMENZ: The packet. The  
 20 changed --  
 21 THE JUDGE: Oh, in the changes? This is  
 22 Exhibit L.  
 23 MS. HIEMENZ: It doesn't say "PolyMet"  
 24 anywhere. So if you're looking for that. It says  
 25 mining, metallic mineral mining.

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1 MR. CEDARLEAF DAHL: (Indicating).  
 2 MS. HIEMENZ: Oh. Thank you. Metallic  
 3 mineral mining and processing. Part 4410.4400,  
 4 Metallic mineral mining and processing. Designate  
 5 the RGU for the type of project listed.  
 6 MS. THELEN: Could you speak a little  
 7 louder, Julie?  
 8 THE JUDGE: Just pick up the mike.  
 9 MS. HIEMENZ: I'm not a public speaker.  
 10 RGU it says is the DNR. "For construction of a new  
 11 facility for mining metallic minerals or for the  
 12 disposal of tailings from a metallic mine, the DNR  
 13 is the RGU.  
 14 MS. THELEN: What page are you on?  
 15 MS. HIEMENZ: Turn it over. Or flip it  
 16 over. Who thinks it should be the EQB or at least  
 17 the environmental agency?  
 18 THE JUDGE: So, Ms. Wilson, were you  
 19 going to respond?  
 20 MS. WILSON: I can respond to this.  
 21 Just for clarification, under 4410.4400, subpart 8,  
 22 I believe this is the rule that you are referring  
 23 to for metallic mineral mining and processing. And  
 24 the change to this subpart that was originally  
 25 proposed was subpart A. But that's being -- that

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1 is being reversed. That change. And so we are  
 2 putting it back to the original language. The  
 3 other changes in this subpart include clarifying  
 4 language. So changing "shall be" to "is." But the  
 5 DNR is the designated responsible governmental unit  
 6 in the current rules, and that's not changing under  
 7 these proposed changes.  
 8 MS. THELEN: Yeah. And, Julie, the  
 9 EQB --  
 10 THE JUDGE: Please, don't -- you are  
 11 interrupting.  
 12 MS. THELEN: Sorry.  
 13 THE JUDGE: Let Ms. Wilson finish  
 14 speaking, please.  
 15 MS. WILSON: So I just want to make sure  
 16 that I understand the question is that you are  
 17 asking whether or not that is a change to the  
 18 responsible governmental unit for the DNR to be  
 19 designated? Or are you asking that that be under  
 20 consideration and a future rulemaking, that it be  
 21 evaluated whether the DNR should be the RGU? I'm  
 22 not understanding your question entirely.  
 23 MS. HIEMENZ: I don't think they should  
 24 be the RGU. And so who would I speak to?  
 25 THE JUDGE: Well --

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1 MS. HIEMENZ: The governor?  
 2 THE JUDGE: Ms. Wilson.  
 3 MS. WILSON: Sure. I think, again,  
 4 since this is on the record, that statement will be  
 5 part of this record and then we are going to  
 6 consider those statements and that information.  
 7 Not during this current rulemaking, as it is not a  
 8 change that's proposed, but we are looking at  
 9 information that people provide and considering  
 10 that information in the record.  
 11 MS. HIEMENZ: Thank you. And I second  
 12 Rose. I think you are doing a magnificent job.  
 13 Just need to go further up the river. Thank you.  
 14 THE JUDGE: Thank you. I'm sorry, did  
 15 you have something that you wanted to say?  
 16 MS. THELEN: No, never mind. I was just  
 17 speaking out of turn.  
 18 MS. HIEMENZ: She was going to explain  
 19 the protocol to me.  
 20 MS. THELEN: I know her.  
 21 THE JUDGE: Was there anybody else who  
 22 wanted to speak before we go off the record?  
 23 MR. GREGG: I just have a few questions.  
 24 THE JUDGE: Can you come up, please, and  
 25 state your name.

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1 MR. GREGG: My name is Levi Gregg.  
 2 L-e-v-i G-r-e-g-g. And my address is 11277 Neal  
 3 Avenue North, Stillwater.  
 4 MS. THELEN: Could you use the mike,  
 5 please? I have a little bit of a hearing issue.  
 6 MR. GREGG: I just have a few questions  
 7 about the EQB process in general. Is the  
 8 Environmental Quality Board able to make changes  
 9 without a mandate from state legislature?  
 10 MS. IBRAHIM: The EQB rules allow --  
 11 there is a Minnesota statute, and I don't have it  
 12 in front of me, that do refer to EQB's rulemaking  
 13 authority. So it says on their slideshow here that  
 14 116D.04, subdivision 2(a)b and 5a and 116C.04 allow  
 15 for rulemaking.  
 16 MR. GREGG: Okay. Can citizens -- is  
 17 there any way that citizens not on the Board can  
 18 move -- motion the Board to consider new changes  
 19 and that we could force consideration of them?  
 20 MS. IBRAHIM: It's not an Environmental  
 21 Quality Board rule, but there is a process that  
 22 citizens can use to petition state agencies for  
 23 rulemaking. And I don't have reference to that in  
 24 front of me.  
 25 THE JUDGE: I don't remember the exact

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1 statute, but there is a statute in Minnesota  
 2 Statutes Chapter 14, which is the Administrative  
 3 Procedure Act, that allows citizens to petition for  
 4 rulemaking.  
 5 MR. GREGG: Thank you. That was all of  
 6 my questions.  
 7 THE JUDGE: Is there anybody else who  
 8 has anything that they would like to talk about  
 9 right now while we are still on the record?  
 10 (No response.)  
 11 THE JUDGE: Okay. Then we are going to  
 12 go off the record for a bit and take a break.  
 13 (A recess was taken from 6:48 p.m. until 7:58 p.m.)  
 14 THE JUDGE: So we will go back on the  
 15 record. It is about I have 7:58 p.m. and it has  
 16 been over an hour, I think about almost an hour and  
 17 a half since anybody has been at the hearing or  
 18 wanted to speak at this hearing. Nobody new has  
 19 arrived, so we will adjourn. And that's it. Thank  
 20 you all for being here.  
 21  
 22 (Whereupon, at 7:58 p.m., June 27, 2019  
 23 the Public Hearing was adjourned.)  
 24  
 25

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1 REPORTER'S CERTIFICATE  
 2  
 3 I, SUSAN M. STROM, do hereby certify that  
 4 I recorded in stenotype the Public Hearing on the  
 5 foregoing matter on the 26th day of June, 2019, at  
 6 St. Cloud, Minnesota;  
 7  
 8 That I was then and there a Notary Public in  
 9 and for the County of Dakota, State of Minnesota;  
 10  
 11 I further certify that thereafter and on that  
 12 same date I transcribed into typewriting under my  
 13 direction the foregoing transcript of said recorded  
 14 hearing, which transcript consists of the typewritten  
 15 pages 1 through 55.  
 16  
 17 I further certify that said hearing  
 18 transcript is true and correct to the best of my  
 19 ability.  
 20  
 21 WITNESS MY HAND AND SEAL THIS 27th DAY OF  
 22 JUNE, 2019.  
 23  
 24 SUSAN M. STROM  
 25 Court Reporter

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