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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
MINNESOTA POLLUTION CONTROL AGENCY
MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of:

Proposed Amendments to Rules Governing
the Environmental Review Program,
Minnesota Rules Chapter, 4410
Revisor's ID Number R-04157

OAH Docket No. 80-9008-35532

VOLUME I

The Public Rulemaking Hearing in the
above-entitled matter came on before Administrative
Law Judge LauraSue Schlatter, taken before
Susan M. Strom, a Notary Public in and for the
County of Dakota, State of Minnesota, taken on
the 31st day of May, 2019, at 520 Lafayette Road,
Room 100, St. Paul, Minnesota, commencing at
approximately 1:30 p.m.

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A P P E A R A N C E S

MINNESOTA ENVIRONMENTAL EQUITY BOARD:

DENISE WILSON: Director, Environmental
Review Program

ERIK CEDARLEAF DAHL: Planning Director
Rulemaking

NUR A. IBRAHIM, Esquire
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street
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THE JUDGE: Good afternoon, everybody.

My name is LauraSue Schlatter and I'm an Administrative Law Judge with the Minnesota Office of Administrative Hearings. I thank you all for taking the time to be here today to participate in this rulemaking process.

Today is May 31, 2019. It is approximately 1:30 p.m., and we are here for a public hearing in the Matter of the Proposed Amendments of the Environmental Quality Board Rules Governing Environmental Review. These are Minnesota Rules 4410.0200, .0500, .4300, .4400, .4600, .5200, .7904, .7906 and .7926. And this matter is referred to as Office of Administrative Hearings Docket Number 80-9008-35532.

This is the first of two public hearings in this docket. The second hearing will be on June 26th in St. Cloud, Minnesota starting at 5:30 p.m. There is information about the location for that public hearing on the table outside the door in the hallway.

Please put the docket number that I have just given you in the subject line of any

1 correspondence or comments you submit to my office,
2 so that anything you submit to us can be properly
3 routed to me. Again, that docket number is
4 80-9008-35532. That way, we will be sure that the
5 information, anything you write, any exhibits come
6 to me and not to another judge working on another
7 rule.

8 Yes, there is a question?

9 UNIDENTIFIED SPEAKER: This paper says
10 comments may not be submitted by e-mail.

11 THE JUDGE: So comments can be submitted
12 electronically on our website, but not e-mailed.
13 So you can go to our website and submit comments
14 electronically. You can submit comments by U.S.
15 Mail. We used to have an e-mail box for comments,
16 but we don't have that e-mail box anymore. We
17 accept comments on our eComments website instead.
18 So the information about how to do that is on that
19 sheet that you have. Those are the two options for
20 submitting comments to our office. You can mail it
21 or you can submit the comment on our website.

22 Mr. Cedarleaf Dahl, did you have something?

23 MR. CEDARLEAF DAHL: Thank you, Your
24 Honor. You may submit it -- we had allowed them to
25 submit it e-mail to Denise and I. Is that

1 allowable?

2 THE JUDGE: So the Agency apparently has
3 a -- the EQB apparently has an e-mail address for
4 themselves. I guess, if you want, you could e-mail
5 it to the EQB and then -- but what they are going
6 to do is also file those eComments on our eComment
7 website. As well, I want you to know that anything
8 that gets mailed to us, I believe -- let me check
9 with you, Ian, actually. Any mailed comments, do
10 those also go up on the website? Yeah. So no
11 matter how you submit them, they are all going to
12 wind up in the same place, which is on the eComment
13 website in our office so that people know what
14 other people are saying.

15 So, Ms. Overland, did you have a question?

16 MS. OVERLAND: A short one. The
17 website, can you do an attachment to that?

18 THE JUDGE: Yes.

19 MS. OVERLAND: Okay. Thank you.

20 UNIDENTIFIED SPEAKER: Your Honor, would
21 you repeat the docket number.

22 THE JUDGE: I'm going to get there. I
23 have a whole bunch of things to say here. I will
24 repeat the docket number for you. It's
25 80-9008-35532. And for your information, the

1 Revisor's number for this rule is R-4157.

2 Also, just a little bit of housekeeping. If
3 anyone needs a restroom, those are out the door.
4 You make a left and then a right down the hallway
5 past the entrance to the end of the hall and you
6 make a left and they are on your right. It's
7 really very straightforward, even though I said all
8 those lefts and rights. You are basically going
9 straight with a couple of little jogs.

10 The Office of Administrative Hearings is
11 independent of the Environmental Quality Board.
12 I'm going to refer to the Environmental Quality
13 Board here as the EQB, which is the agency that is
14 proposing to adopt these rules that are the subject
15 of today's hearings. It's also independent of any
16 groups or individuals that are participating in
17 today's hearing.

18 The role of our office is to provide
19 hearings that are like this that are fair to all
20 the participants. In Chapter 14 of the Minnesota
21 Statutes, the legislature directs that rulemaking
22 hearings be conducted so that members of the public
23 can be heard as part of the rulemaking process.

24 I'm here to ensure that there is procedural
25 fairness, to ensure that everybody is courteous to

1 each other, and so that all interested parties can
2 be heard and to draw out information from as many
3 voices as possible.

4 In the interest of that, I am asking that
5 nobody film or record this hearing, please, so that
6 people who are here to speak can feel free to speak
7 without the chilling effect of thinking that they
8 might be being filmed. If you want to interview
9 somebody about what they have said during the
10 hearing, you are welcome to talk to them out in the
11 hallway. But please don't be filming during this
12 public hearing.

13 An underlying assumption of this process is
14 that we rely on the wisdom of the group. The EQB
15 and I appreciate that you are contributing your
16 thoughts, experiences and expertise to the
17 formation of these rules.

18 There is a handout on the table entitled
19 OAH Rule Hearing Procedures. If you don't have a
20 copy, please feel free to take a moment to pick one
21 up, because it describes the procedures that are
22 set up by the legislature for hearings like this.
23 And I'm going to cover some of those highlights
24 now.

25 The hearing is part of a process by which

1 rules are adopted under the Minnesota
2 Administrative Procedure Act. During this
3 proceeding, the EQB is required to do three things:
4 It has to document its statutory authority to adopt
5 the proposed rules; it has to demonstrate that it
6 has fulfilled all of the relevant, legal and
7 procedural requirements of the law; and it has to
8 demonstrate the need for and reasonableness of each
9 portion of the proposed rules with an affirmative
10 presentation of the facts.

11 Those are the three big issues that I'm
12 required to review as part of this proceeding. I
13 know that many of you are here to express thoughts
14 or views that you have on various rules. And that
15 is certainly very helpful to me, to the EQB and to
16 the process.

17 My job is not to rewrite the rules based
18 upon the views of the participants, or to select
19 one set of proposed rules over another set of
20 proposed rules. My job is to ensure that the
21 statutory requirements are met for rulemaking.

22 So the roadmap for this hearing is as
23 follows: After I complete my introductory remarks
24 about the hearing procedures, I'm going to
25 introduce Assistant Attorney General Ibrahim who is

1 representing the EQB and she will introduce the
2 panel here from the EQB.

3 Next, the EQB will summarize the exhibits
4 that it's wishing to introduce into the hearing
5 record and will summarize those exhibits so
6 everyone has some idea what's going into the
7 hearing record.

8 There are copies of all those exhibits in
9 the hallway on the table. Feel free to look at
10 them. Please return them to the table. They are
11 not here for you to take away. They are here for
12 you to look at, but return them to the table. And
13 you should also know that they are available online
14 on the EQB's website and also on our rulemaking
15 website. So you can take a look at them online as
16 well.

17 MR. MATTISON: Your Honor?

18 THE JUDGE: Yes.

19 MR. MATTISON: Excuse me for the
20 interruption. You are making references to
21 documents that are not available. I'm wondering if
22 staff can provide us with additional copies, such
23 as the hearing procedures you described that are
24 not available out on the --

25 THE JUDGE: Sure. We will get more

1 copies made. I think there are more people here
2 than were expected. Is there anything else that's
3 not there that you are aware of?

4 MR. MATTISON: I think the table is
5 empty. So whatever was supposed to be there, it's
6 not.

7 UNIDENTIFIED SPEAKER: The SONAR.

8 MR. MATTISON: The SONAR is not.

9 THE JUDGE: We will get additional
10 copies made.

11 MR. MATTISON: Thank you.

12 THE JUDGE: And the SONAR should be
13 available with the hearing exhibits. It is in that
14 notebook. But we will have staff make additional
15 copies.

16 MR. CEDARLEAF DAHL: Would you like us
17 to do that now?

18 THE JUDGE: I would say during the
19 introductions. But I don't know if you have other
20 people who can do that.

21 MR. CEDARLEAF DAHL: We don't.

22 THE JUDGE: You don't. So I'm going to
23 take probably another 5, 10 minutes, so if you can
24 get started. Then Ms. Ibrahim will also take a
25 couple of minutes. There are more of you I think

1 than were expected.

2 After summarizing the exhibits, the EQB will
3 make an oral presentation of the proposed rule
4 amendments and the reasons and the need for them.

5 Most of the hearing time today has been
6 allotted for statements and questions from members
7 of the public. And that's the key reason we are
8 here today. In order to make sure we have an
9 accurate record of the number of people attending
10 the hearing, I would like everybody to sign the
11 hearing register which is located on the
12 registration table. If you wish to submit a
13 written statement today, you must sign the hearing
14 register. And if you wish to speak at the hearing
15 today, you must sign the hearing register. And,
16 please, if you wish to speak, put a checkmark in
17 the appropriate column, which is the first column
18 after name, address, telephone number, those
19 columns. Please, place a checkmark in that column
20 on the hearing register so that I know to call on
21 you.

22 If anyone who wishes to speak or ask
23 questions is under time constraints today, please
24 let Ms. Wilson who is sitting here at the table or
25 Mr. Dahl who just went to make copies, so you can't

1 let him know right now, but let one of them know
2 your time constraints and they will let me know so
3 that I can bump you to the front of the speaking
4 line. Okay? I want to make sure that everybody
5 gets a chance to speak.

6 I will call you generally in the order
7 listed on the hearing register. When your name is
8 called, please come up to the table in front so
9 that I can hear you and the court reporter can hear
10 you. If you are in one of the overflow rooms when
11 I call you, please come into this room so that we
12 can see you and so that you are speaking directly
13 to me. If you are at one of the remote locations,
14 you will pop up on the screen and we will be able
15 to see you and you will be able to see us as well.
16 What I will do is alternate between people here and
17 people at the remote locations, so that they are
18 not put at a disadvantage for being at remote
19 locations. We have five remote locations this
20 afternoon. So I will be working with them as well.

21 When you begin, this is important, please
22 state and please spell your name so the court
23 reporter has your name properly spelled in the
24 record. Please, either state your full address or
25 at least the town that you come from. And if you

1 are representing someone other than yourself, if
2 you are representing a group, please identify the
3 group that you are representing here today.

4 I do expect to have time for everyone to be
5 heard, but it will be helpful if you organize your
6 remarks and if you focus on the highlights of your
7 remarks. You can enter any written comments you
8 wish into the record as an exhibit by bringing it
9 up to the table after your remarks and I will mark
10 it as an exhibit and take a copy and that will be
11 posted as part of the hearing record. Otherwise,
12 again, you can submit written comments after the
13 hearing. And I will be giving dates for deadlines
14 for written comments.

15 I do want to ensure that everyone today has
16 time to speak and that everyone who wants to be
17 heard is heard. Given the number of people who at
18 this point I know want to speak, at this time I'm
19 going to allow 5 minutes per each person who wants
20 to speak. You cannot cede your time to a friend.
21 I do know of one set of people who want to speak
22 together who are doing kind of a dual presentation.
23 And I have told them that they can combine their
24 time. So I will allow them 10 minutes because they
25 are speaking together. But you can't just give

1 your time to someone else and say that person has
2 10 minutes and you are not going to speak at all.

3 If everyone who wants to speak gets a turn
4 and we have time left, we can give people a chance
5 to come back and speak again. If everyone has
6 spoken and there is time left, I will also ask if
7 you didn't sign up to speak but you have decided
8 that you want to speak, I will give an opportunity
9 for people to change their minds and come back and
10 say if they want to speak.

11 This is really a fairly informal process. I
12 am really here to ensure, as I said, that we are
13 courteous to each other and that the process runs
14 smoothly. As you make your comments, please keep
15 these things in mind. A rule hearing is really
16 like a legislative hearing or a meeting of a local
17 board or a city council. It's not like a trial.
18 So a speaker may ask questions of the panel and
19 also the panel can ask questions of a speaker. I
20 can ask questions, other people present can ask
21 questions of the speaker.

22 The Board panel is permitted, but it's not
23 required, to answer questions during the meeting.
24 The Board is ultimately required to answer your
25 questions in some way. It may be in writing during

1 the comment period. So if they don't answer your
2 questions today, that's okay. It's up to them to
3 decide. But you will have to look for them in
4 written comments for answers later. But because
5 this is not a court hearing, you don't need to make
6 your point by asking questions. And often the most
7 direct way to make your point is simply by stating
8 the point you want to make and moving on.

9 It's most helpful to me if you can be
10 specific with your comments. Tell me which rules
11 or rule parts you object to or you support and tell
12 me why. My rule report is organized as a rule-by-
13 rule analysis. So it's a really big help to me if
14 your comments are made in reference to specific
15 rule parts. The record we make today is going to
16 be reviewed by other people later and we want to
17 make sure that the matter you are addressing is
18 also clear to them.

19 Again, because of the number of people who
20 want to speak today, each person is going to have 5
21 minutes to speak initially. Again, if there is
22 time, you may have another chance to speak later.

23 I'm reminding you that the hearing is being
24 transcribed by a court reporter, and because we
25 must keep an accurate record it is important when

1 speaking to remember to speak clearly, slowly and
2 loud enough to be heard, to make all statements and
3 responses audible as opposed to a nod of the head
4 or a gesture, to spell all proper names and
5 technical terms the first time you use them,
6 explain what acronyms stand for the first time you
7 use it. Don't assume that I know anything
8 technical. Assume that I don't. So, again, spell
9 those technical terms, tell me what acronyms stand
10 for. And, please, only one person speak at a time.

11 I might interrupt a speaker from time to
12 time to ask for a spelling or to ask some other
13 question if something is unclear to me. I
14 apologize in advance. I ask you not to take
15 offense. I am not doing it to disrespect or to
16 distract you. I am only doing it to ensure that we
17 have an accurate record of what you are saying and
18 that I understand what you are saying.

19 If you have a written copy of your remarks
20 that you want to leave here as an exhibit, please
21 do so. That's often helpful to me so that I can go
22 back and read what you have said. Again, I will
23 enter that as an exhibit. I will number it. It
24 will get posted.

25 Now I want to talk about the written comment

1 period. Minnesota Statutes Section 14.15,
2 subdivision 1 provides that the administrative law
3 judge may, by order, keep the hearing record open
4 for up to 20 days after the end of the public
5 hearing. And I am going to issue that order now
6 after discussing this question with the Board.

7 In this case, there are two public hearings
8 for the rulemaking. And, again, the second public
9 hearing is on June 26th in St. Cloud. Because this
10 is the first of two public hearings, the record
11 shall be extended to remain open for comment until
12 20 days after the second of the two public
13 hearings. So there will be 20 calendar days after
14 June 26th for the initial submission of posthearing
15 written comments. That means you have until July
16 16, 2019 at 4:30 p.m. to submit initial written
17 comments.

18 Again, on the handout, you have the address
19 to submit your comments to to be sure that I
20 receive them. You can send them by mail. I think
21 you can actually fax them as well. You can e-file
22 them on our rule comment website, you can e-mail
23 them to the EQB. They must be received by 4:30 on
24 July 16th to be considered.

25 Our office will post all the comments we

1 receive to the rulemaking website for all to
2 review. So they are not -- these comments are
3 public. You need to know that. The EQB, again,
4 also has a rulemaking website. And their website
5 is linked to ours. Again, please include the OAH
6 Docket Number 80-9008-35532 in the subject line of
7 any comments you make so that the comments get
8 directed to me and not another judge or another
9 rule file.

10 After July 16, 2019, there is a 5 working
11 day rebuttal period to respond to comments filed
12 during the initial comment period. That 5 day
13 period is meant to respond to comments which have
14 already been made. It is not a time for
15 introducing new matters or new evidence. And,
16 again, you can look at Minnesota Statutes Section
17 14.15 regarding that.

18 We will begin accepting rebuttal comments
19 for posting on Wednesday, July 17, 2019 and will
20 continue to accept those rebuttal comments through
21 Tuesday, July 23, 2019 at 4:30 p.m. Again, the
22 rebuttal comments can only respond to comments that
23 were submitted by the end of the day on July 16,
24 2019.

25 After July 23, 2019, I will prepare a report

1 that contains my conclusions about whether the EQB
2 has met its statutory burdens in this matter.
3 First and foremost, I will focus on whether the
4 Board has documented its authority to enact the
5 rules, whether the Board has fulfilled all of the
6 required procedures and whether the Board has
7 demonstrated the need and reasonableness for each
8 portion of the proposed rules.

9 You can expect my report approximately 30
10 days after the last rebuttal deadline, unless for
11 some reason an extension is necessary. If you want
12 to receive a copy of my report, please indicate
13 that on the sign-in sheet. If you provide an
14 e-mail address, we will e-mail you and we will see
15 that you receive notice when the report is
16 available and how to obtain a copy. We will ensure
17 that it gets to you and are eager for you to have a
18 copy of the report.

19 There are now enough handouts, I hope on
20 the --

21 MR. CEDARLEAF DAHL: They are coming
22 down.

23 THE JUDGE: They are coming down.

24 MR. CEDARLEAF DAHL: We are making 20
25 more of each.

1 THE JUDGE: So there are handouts coming
2 to the table that again go into more detail about
3 the process and contain the address information you
4 are going to need to submit written comments.
5 Please, keep a copy of that for your records. And
6 I'm going to say one more time the docket number,
7 because sometime people don't get it the first
8 couple of times. 80-9008-35532.

9 Are there any other questions about the
10 procedures that I have reviewed here? Any
11 questions from any of the remote locations?

12 (No response.)

13 THE JUDGE: Okay. And if there is
14 anybody in the overflow room who has a question,
15 feel free to pop in here and let me know.

16 MR. MATTISON: (Indicating).

17 THE JUDGE: Yes.

18 MR. MATTISON: Your Honor, I have a
19 rather detailed, complex question, but it does have
20 impact with regard to the scope of issues that are
21 at issue today, and a decision from your
22 perspective would be helpful in knowing my own
23 ability to comment as well as I believe some of the
24 people in the room. Are you willing to hear that
25 question at this moment?

1 THE JUDGE: Sure, go ahead. We will see
2 if I can answer it.

3 MR. MATTISON: Okay. The EQB staff has
4 made an assertion under the Administrative
5 Procedures Act that they are exempt from making any
6 finding of whether or not their proposed rules
7 demonstrate superior achievement of the objectives
8 of the MAPA rules. And they claim that because
9 they are not a regulatory, they need not provide
10 any such meaning or statement of a superior
11 objective. And I believe that's an incorrect
12 interpretation.

13 THE JUDGE: So I think this sounds to me
14 like a comment that you would make during the
15 course of the hearing. You're welcome to -- I
16 don't know whether you signed up to speak or not.

17 MR. MATTISON: I did.

18 THE JUDGE: Okay. That's something that
19 you can talk about during your comment time.

20 MR. MATTISON: My reason for raising it
21 now is that staff have told me that I'm limited to
22 submitting comments on the specific rule changes
23 themselves rather than going beyond that to
24 oversight. As the Administrative Procedures Act
25 suggests, citizens have this oversight ability to

1 point out things they should have changed but did
2 not. So it's that clarity with which I seek some
3 guidance from Your Honor.

4 THE JUDGE: So it is true that the scope
5 of my review here is limited to what the Board has
6 done, not to what they should have done. However,
7 again, when you make your comment, you are welcome
8 to briefly make that statement. I would encourage
9 you if you have those concerns to make them in more
10 detail in writing and I can look at them in more
11 detail in writing. And that's what I will tell you
12 when you make the comment. I hope that is helpful
13 to you and anyone else who is going to raise those
14 concerns.

15 MR. MATTISON: Thank you, Your Honor.

16 UNIDENTIFIED SPEAKER: I may have missed
17 this. I was stepping in and out of one of these
18 overflow rooms. I would like to respectfully
19 request that people who drove at least over 120
20 miles or 100 miles be given preference to comments.
21 And I would like to take that a step further by
22 requesting that members of tribal nations be given
23 preference with that group.

24 THE JUDGE: Well, I did say that anyone
25 who has time limitations or concerns should let

1 Mr. Cedarleaf Dahl or Ms. Wilson know, and I'm
2 happy to accommodate folks who have time
3 limitations. Are you already signed up to speak?

4 UNIDENTIFIED SPEAKER: I will talk to
5 them now, if that's okay.

6 THE JUDGE: Sure. That's fine.

7 (At this time a discussion was held off the record.)

8 THE JUDGE: Anything else before we
9 continue? So I gather from the two people who just
10 spoke, or at least one of them, that they don't
11 actually want to go first, first, is that right?

12 UNIDENTIFIED SPEAKER: Yeah.

13 THE JUDGE: Now, before we continue, we
14 do have the Agency to hear from. So I would like
15 to introduce Assistant Attorney General Nur Ibrahim
16 who is representing the EQB and invite her to
17 introduce the Board staff here today and continue
18 with the introduction of exhibits. Thank you.

19 MS. IBRAHIM: Thank you, Your Honor.
20 Again, I'm Nur Ibrahim. I'm the Assistant Attorney
21 General here on behalf of the EQB. I am joined by
22 Denise Wilson, the EQB Director of the
23 Environmental Review Program and Erik Cedarleaf
24 Dahl, the Director of Rulemaking for EQB.

25 At this time, Your Honor, I would like to

1 introduce the exhibits into the record. These
2 exhibits comprise the record that EQB relied upon
3 for the rulemaking amendment. The exhibits are in
4 three parts.

5 The first section of the exhibits are the
6 documents required for the record according to
7 Minnesota Rules 1400.2220, subpart 1. And that
8 includes the request for comments that were
9 published in the State Register, the proposed
10 rules, the statement of need and reasonableness and
11 their related exhibits. That also includes the
12 notices of hearing, certificate of mailing,
13 certificate of giving additional notice pursuant to
14 the additional notice plan. That section also
15 includes the 159 comments that were received during
16 the open comment period that ran from November 13,
17 2018 to February 4, 2019, and it also includes
18 documents pertaining to compliance with the
19 requirements of the Administrative Procedures Act.
20 And that includes the certificate of compliance
21 with Minnesota statutes regarding farming
22 operations, submission of the SONAR and
23 consultation with the Minnesota Management and
24 Budget Office.

25 The second part of the exhibits includes

1 Exhibit L, which refers to draft modifications to
2 the proposed rule amendment. And this is a
3 proposal in response to the comments that were
4 received during the dual notice comment period.
5 And part two also includes the rationale for these
6 proposed changes.

7 And the third section is really just a
8 placeholder for any of the exhibits that are received
9 today. And so I would like to offer the exhibits into
10 the record, Your Honor, at this time.

11 THE JUDGE: The exhibits are received.
12 Thank you.

13 MS. IBRAHIM: Thank you.

14 MR. CEDARLEAF DAHL: Good afternoon,
15 Your Honor and members of the public. I am Erik
16 Cedarleaf Dahl and this is Denise Wilson. We are
17 before you today to present an overview of the
18 mandatory categories of rulemaking, Revisor ID
19 R-4157 and OAH Docket Number 80-9008-35532.

20 We are going to give a little background of
21 the EQB and then we are going to talk about the
22 environmental review background and purpose and
23 then our statutory authority. And then we are
24 going to give a very brief summary of the proposed
25 rule changes, especially the revisions that we are

1 proposing today based on comments received, and
2 talk a little bit about rulemaking engagement and
3 we can answer any questions, if necessary.

4 So first a little background on the EQB.
5 The membership of the EQB is made up of nine state
6 agencies and the Met Council as a non-voting member
7 and eight citizen members representing districts
8 throughout Minnesota. Currently, we only have six
9 citizen members. We mostly have eight. And Denise
10 and I are going to switch off back and forth here.

11 MS. WILSON: Thanks, Erik. So one of
12 the primary responsibilities of the Environmental
13 Quality Board is the administration of the
14 environmental review program. The Minnesota
15 environmental review program is implemented through
16 Minnesota statutes and rules. Board
17 responsibilities and authorities for administering
18 the environmental review program are identified in
19 Minnesota Statute 116D and Minnesota Rules Chapter
20 4410. On behalf of the Board, staff initiate and
21 implement updates and changes to Minnesota Rule
22 Chapter 4410.

23 As I mentioned, the Board has the
24 responsibility for administration of the
25 environmental review program. And this includes

1 ensuring that the program objectives are met. The
2 environmental review program objectives are
3 described in Minnesota Rules Chapter 4410.0400 and
4 include the requirement to provide usable
5 information to project proposers, government
6 decisionmakers and the public concerning the
7 primary environmental effects of a proposed
8 project. Another objective is to provide the
9 public with a systematic access to decisionmakers,
10 which helps to maintain public awareness of
11 environmental concerns and encourage accountability
12 in public and private decisionmaking.

13 While the EQB has responsibility for
14 administrating the environmental review program,
15 they delegate the authority and responsibility for
16 environmental review to the governmental unit most
17 closely involved in the project. This is referred
18 to in rule as the responsible governmental unit or
19 RGU.

20 Some of the changes that we are going to
21 talk about today are being proposed in order to
22 meet the objective in this subpart for reducing
23 delay and uncertainty in the environmental review
24 process and eliminating duplication.

25 So now I'm going to walk through the

1 environmental review process at a high level and
2 just give a brief overview. The environmental
3 review process begins with a project that requires
4 both a governmental approval and has the potential
5 to either directly or indirectly impact the
6 environment.

7 The project proposer considers the
8 requirements in Minnesota Rule Chapter 4410 to
9 determine if their project needs to be evaluated
10 through the environmental review program. These
11 rules describe the categories of project types, the
12 thresholds for those project types, and the state
13 or local unit of government that is responsible for
14 completing the process.

15 In addition to the thresholds and the
16 categories of projects, the rules also require that
17 the project proposer consider if it is part of a
18 past or future phase or is connected to another
19 project within a three-year timeframe.

20 The rules also determine the types of
21 process that is required. The most common
22 processes are the environmental assessment
23 worksheet or EAW and the environmental impact
24 statement or EIS. Even if there isn't a mandatory
25 requirement, it is possible that a project will be

1 required to undergo review if a government agency
2 uses their discretionary authority or if a
3 government agency orders review as a result of a
4 citizen petition.

5 Once it is determined that environmental
6 review rules apply to the project, a project
7 proposer completes an environmental assessment
8 worksheet form with the information that is
9 necessary for that government agency to understand
10 what the project is and how it's being proposed and
11 what the project proposer feels are the important
12 potential environmental effects, and they submit
13 that form to the government agency identified in
14 the rules for that category.

15 So now I'm going to briefly walk through the
16 most commonly used review process, the
17 environmental assessment worksheet process or EAW,
18 again, at a high level. After the project proposer
19 submits their information on the EAW form to the
20 designated governmental agency or RGU, that
21 government agency evaluates the information for
22 accuracy and completeness and adds any additional
23 information based on their expertise. The
24 government agency is ultimately responsible for
25 identifying what information is included as well as

1 how much information to include on the EAW form.

2 The environmental review program rules
3 require that the government agency publish a
4 notification to the public and send copies to other
5 government agencies for a 30-day public comment
6 period.

7 Once the public comment period ends, the
8 government agency or RGU considers any additional
9 information they received from the public. They
10 are also required to respond to anyone that
11 submitted a comment as well as create a record of
12 decision.

13 For an EAW, the decision is either that the
14 information considered does not indicate the
15 potential for significant environmental effects and
16 that project moves on to the permitting and
17 approval processes, or for projects that have the
18 potential for significant environmental effects,
19 they order a more in-depth environmental impact
20 statement.

21 The environmental review process does not
22 approve or deny a project. Rather, it is meant to
23 provide information that can then be used to inform
24 those approval decisions.

25 The environmental impact statement process

1 is required for projects that have the potential
2 for significant environmental effects. The EIS
3 process may either be required because the project
4 exceeds the mandatory threshold in Minnesota rules
5 or as a result of the decision on an EAW. An EIS
6 has a narrower focus than an EAW and identifies
7 only those potentially significant issues. It
8 compares the potentially significant impacts of the
9 proposal with those of other reasonable
10 alternatives to the proposed project and discusses
11 environmental, economic, employment and
12 sociological impacts. The EIS process is more
13 complex and typically takes longer than the EAW.
14 The procedures also require multiple opportunities
15 for the public to provide input throughout the
16 process.

17 MR. CEDARLEAF DAHL: Thanks, Denise. I
18 just wanted to mention to everyone that there are
19 more copies now out there of both the rules, the
20 proposed revisions and the SONAR. There should be
21 about 20 copies. I will just pause for 20 seconds
22 and make sure everyone can get back.

23 THE JUDGE: Thank you.

24 MR. CEDARLEAF DAHL: So here is our
25 statutory authority. It's in Exhibit D in the

1 hearing exhibit the SONAR pages 62 and 63. It
2 provides a reference to EQB statutory authority to
3 conduct this rulemaking on Minnesota Rules Chapter
4 4410. The Board statutory authority to adopt the
5 rule amendment will be given in the Minnesota
6 Environmental Policy Act, Minnesota Statutes
7 116D.04, subdivision 2a(b) and 5a and Minnesota
8 Statutes 116C.04.

9 Under these provisions, the Board has the
10 necessary statutory authority to adopt the proposed
11 rule amendments. In particular, Minnesota Statutes
12 116D.04, subdivision 2a(b) directs the Board to
13 establish mandatory categories for EAWs, EISs and
14 exemptions by rule.

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

24 The proposed amendments to Minnesota Rules
25 Chapter 4410 are needed to fulfill the

1 recommendations found in the 2013 Mandatory
2 Environmental Review Categories Report, which is in
3 Exhibit D1; streamline environmental review through
4 both technical and housekeeping changes, and adopt
5 thresholds specific to Silica Sand projects and to
6 amend thresholds specific to recreational trails as
7 directed by the Minnesota Legislature in 2013 and
8 2015.

9 The desired outcome is to make environmental
10 review more efficient by adding clarity and
11 specificity and thereby reducing ambiguous or
12 confusing application of the environmental review
13 rules. The proposed changes are needed both to
14 increase certainty for project proposers, RGUs --
15 responsible government units, sorry -- and the
16 public and to assure that certain proposed projects
17 are receiving environmental review.

18 Before we begin going over the proposed
19 draft rules, and we are going to go over those very
20 briefly, I would like to describe the types of
21 changes that are included in this rulemaking.

22 The first type of change includes edits to
23 improve grammar and language. These edits do not
24 change how the rule is applied, but are intended to
25 change language so that it will be more clear to

1 the public, responsible government units and
2 project proposers how the rules should be
3 interpreted.

4 The second type of change will update
5 Chapter 4410 with other statutory and regulatory
6 requirements. And, finally, some of the rules are
7 being updated because there is more information
8 available now than when the category was originally
9 created.

10 Here is a complete list of all the parts
11 included in this rulemaking package. The last four
12 parts only contain changes to improve the language
13 for interpreting the rule but don't change how the
14 rule is currently being applied. Therefore, we are
15 only planning to walk through the proposed changes
16 in the first five parts. If you have specific
17 questions, just let us know and we can include
18 these in other parts in the discussion.

19 As we walk through the proposed changes, it
20 is important to note that the changes were a result
21 of an extensive public engagement process and also
22 reflect input from responsible governmental units
23 based on lessons learned from their experience and
24 expertise over time with implementing these rules.

25 This slide is the engagement. The EQB took

1 the following steps to develop the draft rules and
2 notified interested parties about the draft rules
3 and solicited their input on the rule language. A
4 Silica Sand rule advisory panel with 15 members met
5 from January 2014 to February 2015. A request for
6 comments prior to the rule language occurred in
7 2013, 2015 and 2016. This is all contained in the
8 hearing exhibits. The EQB established a rule-
9 specific web page. We held informational meetings
10 March 18th, 21st and 22nd in 2016. Preliminary
11 language was released and an informal comment
12 period was held June 2016 to August 2016. A
13 rulemaking open house was held on June 28, 2016.
14 Preliminary rule language was presented at a public
15 EQB board meeting on August 15, 2018. And the
16 draft rules and SONAR were presented, which is the
17 statement of need and reasonableness, at the public
18 EQB board meeting on September 19, 2018. A comment
19 period was held on the draft rules from November
20 13, 2018 to February 4, 2019. And a notice of
21 hearing which changed the dates was on December 31,
22 2018 and then on February 25, 2019. And then we
23 added an additional hearing and comment period
24 which was added to June 26th in St. Cloud. And we
25 added a comment period from May 20th to June 21st.

1 We are going to start with part 0200. This
2 part includes subparts with the definitions and
3 abbreviations. These definitions are used to help
4 interpret all of Chapter 4410 and, more
5 specifically, to help determine when environmental
6 review is needed in the mandatory EAW,
7 environmental assessment worksheet, and EIS,
8 environmental impact statement, categories.

9 The page numbers relate to the Revisor's
10 certified rule language page numbers and in the
11 handout that's on the table over there or in
12 Exhibit C in the hearing exhibits.

13 We are not going to go through each of these
14 rules, as we would like to hear from the public on
15 comments. But the subparts highlighted in green
16 mean they are aligning and/or referring to another
17 rule part. And all of this is detailed in the
18 SONAR that is available there or we can look at the
19 actual rule language. The subparts highlighted in
20 purple mean they are aligning with statutory
21 definitions or a code of federal regulation
22 definitions. And the blue ones we are going to go
23 through, but not now, unless anyone would like us
24 to.

25 Here are some examples of the first two

1 types of changes. Changes intended to improve
2 clarity include the addition of new definitions.
3 The definitions are used in the mandatory
4 categories to help clarify when an environmental
5 review is required.

6 Another example of these types of changes
7 are the recommendations we received from the
8 Revisor's Office. In this example, the meaning is
9 the same, but the words are intended to improve
10 grammar.

11 The second example aligns Chapter 4410 with
12 the way terms are used in other state regulatory
13 processes. And that section is a compost facility.
14 To allow Chapter 4410 to stay current and RGUs and
15 the public and project proposers will have an
16 easier time understanding information, especially
17 when environmental review documents and permits are
18 co-noticed.

19 We are going to talk about one part before
20 we get into the EAW and EIS categories.

21 MS. WILSON: So I'm going to talk a
22 little bit about the changes that are being
23 proposed to 4410.0500, subpart 6. Subpart 6 is
24 used when there is a designated RGU but a request
25 is made typically by that designated RGU to select

1 a different RGU. Again, an RGU is a responsible
2 governmental unit, a government agency with
3 delegated authority to implement that environmental
4 review program.

5 In practice, these are usually requested
6 based on greater expertise or across jurisdictional
7 issues. On average, this may happen one to two
8 times per year. Their requests are not usually
9 controversial and are typically supported by both
10 RGUs. Adding our EQB chair will not prevent Board
11 members and EQB staff from requiring the decision
12 to be considered by the full Board and publishing a
13 request will also allow the public to make the same
14 request directly to Board members. The five-day
15 timeline is removed because it is inconsistent with
16 the operating procedures of the Board process. In
17 practice, it is not possible to meet that five-day
18 timeline.

19 So the next two slides include all of the
20 subparts in the proposed rulemaking for the EAW
21 mandatory categories. The subparts highlighted in
22 orange only include changes that are recommended
23 for improving clarity.

24 The categories highlighted in red are
25 proposed revisions to the draft rule language based

1 on comments received during the comment period of
2 November 2018 through February 2019. Here are the
3 remaining EAW mandatory categories included in this
4 proposed rulemaking.

5 MR. CEDARLEAF DAHL: So we are just
6 going to talk about the ones that are in red. So
7 the first one is the electric generating
8 facilities. And we are just going to talk about
9 part D, the proposed revision to the draft rule
10 language published on November 13, 2018. It's in
11 red.

12 The environmental review and permitting
13 threshold noted in Minnesota Rules 4410.4300,
14 subpart 3 for wind energy conversion systems should
15 be 5 megawatts. This threshold has been
16 established by the legislature in Minnesota
17 Statutes 216F. Minnesota Rule 4410.4300, subpart 3
18 should be edited to ensure consistency with the
19 statute. The threshold included in the Revisor's
20 draft of the proposed mandatory category rules of
21 25 megawatts was a scrivener's or clerical error.

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

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

7 MR. CEDARLEAF DAHL: I'm just going to
8 again talk about the part in red here, which the
9 proposed revision to the draft rule language
10 published in November 13, 2018 is in red. The
11 changes that are proposed for this subpart are
12 intended to provide greater understanding for when
13 environmental review is required and update the
14 requirements to better align with descriptions in
15 the Wetland Conservation Act.

16 During the public comment period, we
17 received information from government agencies that
18 have the responsibility and expertise for
19 evaluating these projects. They indicated that the
20 proposed changes may now include projects that
21 don't have the potential for significant
22 environmental effects.

23 As a result of this information, we are now
24 proposing to add a sentence to be clear that these
25 types of projects do not apply to this subpart by

1 referencing projects described in Minnesota Rules
2 Chapter 4410.4600. Because the change is
3 highlighting information already in the rule and
4 aligns with our intent for the original amendments,
5 we don't consider this a substantive change.

6 MS. WILSON: So here are the mandatory
7 environmental impact statement categories that are
8 included in this rulemaking and where we are
9 proposing changes. And I'm just going to go
10 through those so that we can move on.

11 MR. CEDARLEAF DAHL: Again, we are only
12 going to talk about the red one again, which is the
13 proposed revisions to the language published on
14 November 13th. For subpart 8, metallic mineral
15 mining and processing and the sub item is now not
16 going to be deleted and the remaining sub items
17 have been relabeled in red. The existing rule
18 envisioned the potential for projects involving
19 extraction of radioactive minerals to occur.
20 Although thought to be possible when originally
21 enacted, the rule is now obsolete -- oh, sorry.
22 Reading the wrong -- the proposed changes are to
23 remove it based on -- were to give it greater
24 clarity and understanding for when environmental
25 review is required. However, based on comments

1 received, more discussion is warranted on the
2 potential impacts of the proposed changes. The
3 withdrawal of the proposed change will result in
4 the language reverting back to the current language
5 in red in Minnesota Rule Chapter 4410.4300.

6 And then here is the exemptions. We are not
7 going to go over these. This is just there so you
8 can see which page number they are on in the
9 Revisor's certified rules.

10 And then we just wanted to acknowledge that
11 EQB received comments supporting parts of the
12 proposed draft rules and also received comments
13 opposing specific parts of the proposed rules and
14 neutral comments seeking information. The EQB will
15 respond to all comments received during the
16 posthearing comment period.

17 Then here is just an informational slide on
18 when the next hearing is and the address of the
19 hearing. It's also available on the table as well
20 as on our website. If there aren't any copies, let
21 me know and I can have more copies made. And then
22 how to submit a written comment at OAH's website or
23 mail or you can e-mail us or submit a written
24 comment at today's hearing. And here is the
25 rulemaking web page and our e-mails. Thank you

1 very much.

2 THE JUDGE: Thank you. Is that all from
3 the Board at this time?

4 MR. CEDARLEAF DAHL: Yes. Thank you.

5 THE JUDGE: Okay. So we are ready to
6 start taking public testimony at this time.

7 Ms. Overland, you are first up.

8 Mr. Cedarleaf Dahl, if you could check on
9 where we are with commenters both here and in the
10 other locations.

11 Ms. Overland, I'm reminding you and I will
12 remind others to please state and spell your name.

13 MS. OVERLAND: Good afternoon. I'm
14 Carol Overland, C-a-r-o-l O-v-e-r-l-a-n-d.
15 Legalectric, L-e-g-a-l-e-c-t-r-i-c. And I have
16 provided the court reporter with my card with my
17 the with my address, et cetera.

18 Well, first, an important thing is I think
19 that this room is too small and I would think,
20 given the number of comments, that the Agency
21 should have booked us downstairs. This is not
22 adequate.

23 Now, looking at specific comments. First,
24 regarding Silica Sand. I was, I believe, the first
25 one to put in a request for an advisory panel on

1 that. And they did form an advisory panel. There
2 were a number of people. But under the statute the
3 purpose of an advisory panel is to review the
4 proposed rules ahead of the formal rulemaking
5 process. And what happened through this is that
6 there were all these meetings held where people
7 were just yammering and yammering about Silica Sand
8 and environmental impacts, but there were no rules
9 to review and the committee did not fulfill the
10 statutory mandate of reviewing rules. There were
11 not rules provided until September. The group
12 started meeting in January 2014 and rules, a draft
13 was not provided until September of 2014. There is
14 just no excuse for that. It's a waste of people's
15 time to show up at these meetings that last, like,
16 two hours or more and not to deal with specific
17 rules and not be able to offer comments on what
18 those rules should be and how they should be
19 changed. I raised that issue many times and it
20 didn't change.

21 Next, the part regarding wind at 4410.4300.
22 There is a handout guide to tracking modifications
23 in this document. And that shows at page 707.
24 That has that rule. It's also in the -- these
25 don't have titles on them. But the mandatory

1 categories of proposed rules from the Revisor.
2 There is also something in the SONAR about it.
3 But the issue is 4410.4300, subpart 3 it says A in
4 this page 707, but it's D in the rules here. It
5 says: For construction of a wind energy conversion
6 system, as defined in Minnesota Statutes Section
7 216F.01, designed for and capable of operating at a
8 capacity of 25 megawatts or more, the PUC is the
9 RGU and environmental review must be conducted
10 according to Chapter 7854.

11 There is no environmental review for wind
12 projects. That's in the statutes. Where did that
13 come from? Look at Chapter 7854. I mean, I have
14 submitted how many petitions for rulemaking for
15 wind. Two to the EQB, both -- I mean, two to the
16 PUC, both rejected. Another to the MPCA.
17 Rejected. There is no environmental review for
18 wind. Shouldn't this just say there is no
19 environmental review for wind under 216F? This is
20 misleading. Totally inappropriate, because there
21 is no environmental review for wind. And that is a
22 repeated problem.

23 And then on Transmission, subpart 6. Just a
24 minute.

25 THE JUDGE: Subpart 6 of?

1 MS. OVERLAND: Of 4410.4300, subpart 6.
2 It looks to me like this requires a petition to get
3 an EAW on this. It's not clear. Because in the
4 SONAR it says that, well, the PUC could do it on
5 its own or it requires a petition. I think the
6 language ought to be clearer in that subpart 6 that
7 it's not assumed and that it does require an act of
8 the PUC or a petition to get that done. And that
9 is all I have at this time. Thank you.

10 THE JUDGE: Okay. Thank you very much.
11 I believe we have someone in Duluth? Is that
12 correct?

13 MR. CEDARLEAF DAHL: Someone in
14 Brainerd.

15 THE JUDGE: I'm sorry. I'm going to
16 switch this up here. I understand someone in
17 Brainerd has a time issue, so I'd actually like to
18 call the person in Brainerd.

19 MR. TUMMINELLO: Hello, Your Honor. Can
20 you hear me? This is Giuseppe Tumminello with the
21 Environmental Quality Board.

22 THE JUDGE: I can. I'm trying to figure
23 out -- there you are. Okay.

24 MR. TUMMINELLO: Should I also state and
25 spell my name?

1 THE JUDGE: No, we have got your
2 spelling. You are with the EQB, right?

3 MR. TUMMINELLO: Correct.

4 THE JUDGE: There is a person who would
5 like to comment there, though, is that correct?

6 MR. TUMMINELLO: That is correct. I am
7 joined by Rita. I will let her take over.

8 THE JUDGE: And if you could state and
9 spell your name, please.

10 MS. CHAMBLIN: You bet. Rita Chamblin.
11 Spelled R-i-t-a. Last name is C-h-a-m, as in Mary,
12 b, as in boy, l-i-n, as in Nancy.

13 THE JUDGE: Ms. Chamblin, I'm going to
14 also remind you, I'm not sure if you heard
15 everything that has happened up to this point, but
16 I am limiting comments to 5 minutes. So, please
17 proceed.

18 MS. CHAMBLIN: Thank you. My first
19 comment is a question on 4410. Well, it's not a
20 question. A comment on 4410.0500, subpart 6. And
21 I'm in opposition to the language that is proposed
22 in terms of changing who can change the RGU for
23 environmental review. That to add the EQB chair to
24 be able to act independent of the Board is
25 inappropriate. The chair is appointed by the

1 Governor and the entire Board really should be
2 involved in the process.

3 The time limit is also an issue. I
4 understand that the 5 days doesn't coincide with
5 the timing of the Board meetings. It would be more
6 appropriate I think to add a 30-day timeframe to
7 that to be more consistent with the Board meetings
8 rather than eliminate the timeframe entirely. But
9 I do think it's important that we not change the
10 rule and let the entire Board decide.

11 Secondly, on mandatory EAW categories on
12 4410.4300, subparagraph 4. We really need a
13 stronger rule here. Any expansion of a petroleum
14 refinery these days should require or initiate an
15 EIS. And in 4410.4400, subparagraph 4 the language
16 should also include major rebuilds and expansion of
17 capacity.

18 Just using the Superior refinery fire as an
19 example, wouldn't we want an EIS on the rebuild and
20 be able to review continued use of hydrogen
21 fluoride there.

22 On the hazardous materials storage
23 facilities rule 4410.4300, subparagraph 10B, C and
24 D, I think it's important to keep the phrase
25 "designed for or capable of storing" before the

1 quantity of a 1,000,000 gallons. Otherwise, a new
2 facility with a slated design of less than a
3 1,000,000 but capable of storing more could bypass
4 an EAW altogether. And what about a facility with
5 less than a 1,000,000 gallons of hazardous
6 materials, it seems like it should still require an
7 EAW.

8 I would also say in subparagraph G, any
9 expansion of facilities and increasing storage
10 tanks should require a mandatory EAW or EIS as
11 well. And those are my notes. I'm good. Thank
12 you.

13 THE JUDGE: Thank you very much. I am
14 going to move now to one of the folks here who had
15 asked to speak early, due to time constraints. And
16 I believe this is Nancy Beaulieu. Do I have the
17 right name?

18 MS. BEAULIEU: I'm still kind of just
19 gathering my thoughts.

20 THE JUDGE: Okay. I can wait. I will
21 come back to you then. Is this Sherry --

22 MS. COUTURE: Couture.

23 THE JUDGE: Couture. Would you like to
24 speak now?

25 MS. COUTURE: I'm good.

1 THE JUDGE: Please spell your name.

2 MS. COUTURE: Just my last?

3 THE JUDGE: First and last.

4 MS. COUTURE: S-h-e-r-r-y C-o-u-t-u-r-e.

5 THE JUDGE: Thank you.

6 MS. COUTURE: I see a lot of state rules
7 in here. 77 pages. Water quality standards.
8 Right now, the water quality standards of Fond du
9 Lac are not in here and, right now, those can't be
10 passed. And those go directly to congress. And we
11 are currently trying to reinforce those water
12 quality standards as well. Our EIS, right now,
13 can't pass that. So I'm wondering why those are
14 not in here.

15 Impact on local government ordinances and
16 rules. Let's see, that would be the 1854 Treaty.
17 That's a sovereign nation. I think that might be a
18 little bit above government ordinances and rules.
19 I mean, that's just the 1854 Ceded Treaty
20 territory. So the EIS of Fond du Lac cannot be
21 passed right now. Isn't in here. The water
22 quality standard, that cannot be passed right now.
23 In fact, they came to Fond du Lac to see if we
24 would lower that. The 1854 Treaty for governance
25 isn't in here. And nowhere either is the 1826 --

1 1825, actually, Treaty that is specifically on my
2 notes. So I'm kind of wondering where all these
3 things are. Because as a Minnesota resident and a
4 sovereign nation I would probably expect that they
5 would both be in here, since these mines want to
6 come into my 1854 Treaty territory, which I have
7 supreme law of the lands. I have two treaties that
8 back that up. And that was before Minnesota was
9 even a state. So I'm a little confused why those
10 things are not in here. Because although you guys
11 might say that separately you deal with the Fond du
12 Lac Reservation, the Minnesota public should maybe
13 know that right now that according to our standards
14 and our 1854 Treaty the water qualities and the EIS
15 right now cannot be passed. So I'm wondering what
16 all the other regulations and all the -- it doesn't
17 really matter when you look at it on a sovereign.
18 And those are federal. Those water quality reports
19 go straight to congress. So I'm wondering why
20 those are not in here. Maybe you guys need to
21 answer me that question, if you would like to.

22 THE JUDGE: Does the Board have a
23 response at this time?

24 MS. WILSON: Thank you, Your Honor.
25 Thank you for the comment. I think we would like

1 to spend a little more time talking to you, if you
2 are available, to better understand and see where
3 the opportunities might be to include that
4 information. You are right, it's not in the
5 current rulemaking, but there is opportunity going
6 forward to consider your thoughts that you are
7 bringing forward.

8 MS. COUTURE: Would that be the 1826 and
9 1854 Treaty as well as the water quality standards
10 that we have that we can't pass? Air quality, we
11 do have air quality on Fond du Lac, too, that you
12 guys --

13 MS. WILSON: Okay. I think that, like
14 you said, it's not necessarily called out in the
15 current rulemaking as it's proposed to Minnesota
16 Rules Chapter 4410. But that's something we could
17 continue to have conversations and work through.

18 THE JUDGE: Thank you. And then the
19 third person who asked to speak early was
20 Ms. Topping. Debra Topping. Are you here now?

21 MS. TOPPING: Since it's a little warm
22 in here, I figure I better go. Otherwise, I will
23 be snoring.

24 THE JUDGE: Again, if you could spell
25 your name to start with and say where you are from.

1 MS. TOPPING: My name is Debra Topping.
2 D-e-b-r-a T-o-p-p-i-n-g. I'm from Nagaajiwanaang,
3 Fond du Lac. So we are here to talk about the
4 environment. And one of the biggest concerns I
5 have is the Husky Refinery explosion, the hydrogen
6 fluoride that is there within two and a half miles
7 of the world's -- 10 percent of the world's
8 population. Best water in the world. Right? Lake
9 Superior. So that's a huge environmental concern.

10 I have been to their public comment. I have
11 told them it should not be anywhere 100 miles near
12 that freshwater. That hydrogen fluoride should not
13 be anywhere near. Was that clear?

14 The Rights of Nature -- I don't know if
15 anybody has been over there. I have done a toxic
16 tour. I lived there. That's where I'm from. You
17 can't drink the water. We talk about the Treaty of
18 1854. That is right there where -- where they
19 signed that treaty is right there on the river. I
20 have pictures that you cannot drink, you cannot eat
21 the fish that are in that water. So is that what
22 my ancestors, is that what they wanted for us?
23 When they looked for seven generations, that's what
24 they wanted for us, for their decendents not to be
25 able to drink that water, not to be able to eat

1 that fish? Because that's not what I want for my
2 future generations. I asked Husky. They said, oh,
3 the water is okay, the water is okay. Just like
4 Enbridge does. Let's go drink it. If you drink
5 it, I'll drink it. Let's drink it. Will you drink
6 it, any of your attorneys? I'm willing to put my
7 life on the line right here, right now. If it's so
8 good for us, let's go drink it. Because you know
9 what, them frogs have to drink it and them fish
10 have to drink it, those migratory birds, those
11 geese, they all have to drink that. And who eats
12 that? Who -- you know, we're all -- why do I need
13 to feel like I have to repeat myself. For the last
14 10 years, I've had to sit here and say this.
15 Right? Really? And here I am again, for God's
16 sakes, trying to defend the water and the wild
17 rice, the food and the water that we eat. It's
18 time to get your shit together. We don't have
19 time. Thank you for listening.

20 THE JUDGE: Thank you.

21 MS. BEAULIEU: Your Honor, I feel a
22 little bit more comfortable now.

23 THE JUDGE: Okay. You were the person I
24 was going to call next. So come on forward.
25 Again, please spell your name.

1 MS. BEAULIEU: Thanks for this
2 opportunity. I'm Nancy Beaulieu, B-e-a-u-l-i-e-u.
3 I'm a citizen of the Minnesota Chippewa Tribe and I
4 reside on Leech Lake. I'm here to not only speak
5 for myself, but for my people. And, you know, just
6 like my ancestors, a lot of this legal stuff it's
7 not always easy to understand. So I'm going to go
8 back to what my sisters were speaking about, the
9 EIS.

10 Our words fall on deaf ears all the time.
11 And that's kind of what brings us to these
12 hearings. Because we hope that some day soon
13 someone is going to pay attention to what we have
14 to say.

15 So I, too, am also a mother and a
16 grandmother, and I'm also worried about the future,
17 not just for us but for you guys, too. So what
18 brings me here is I want to make sure that there is
19 an adequate environmental impact study.

20 When I talk about the environment, we are
21 people of the water. We are the environment. So I
22 would hope that you guys would take a little bit of
23 time to really consider being a little bit more
24 thorough on who this really effects.

25 And what I do know is -- I'm going to read

1 something out of this treaty book. This comes from
2 GLIFWC. It's the Great Lakes Indian Fish &
3 Wildlife Commission. It's a pretty black and white
4 explanation of treaties. And I hope to leave a
5 copy for you guys when we're done. But here, James
6 Williams Junior, he's the board of commissioners
7 for the GLIFWC, the Great Lakes Indian Fishing &
8 Wildlife Commission, and he's also a chairman. He
9 quotes, "Treaties are at the heart of understanding
10 tribal governments and the unique political status
11 tribes and Indian people have in comparison to
12 others. Treaty rights are not a handshake or a
13 handout. They are binding, reciprocal commitments
14 between two sovereigns. Powers lawfully vested in
15 an Indian tribe through treaties are not delegated
16 by congress, but rather inherent powers of the
17 sovereign which have never been extinguished."

18 So our treaties are a government-to-
19 government relationship, and never once in any of
20 our treaties did we surrender our right to protect
21 our water. Never did we surrender our right to be
22 at the table. That's what those treaties were
23 designed for. It's a two-party agreement. You
24 guys have a responsibility to those treaties. And
25 as a board, I think you need to be a little bit

1 more inclusive of the people that it's going to
2 impact the most.

3 Again, I'm going to tell you, our words fall
4 on deaf ears. We just came from a hearing and how
5 we were treated at the Minnesota PUC. So it's been
6 a busy day, but we make a lot of sacrifices because
7 we care about the future, not just for us but for
8 you guys.

9 So what I'm thinking is that you guys really
10 don't have the authority to make any decisions on
11 ceded or reservation lands because are treaties are
12 a government-to-government agreement, not a state
13 agency to a tribal agreement. So I think there is
14 a little -- you guys don't have this authority to
15 make these decisions, especially without us being
16 at the table. You might want to go speak to the
17 people, not the elected counsels. Our elected
18 counsels are five people. That's the chairman, the
19 secretary/treasurer and three reps. They don't
20 have general assemblies. They don't have
21 referendum votes. So also unheard. And it's
22 oppression when we are not even heard by our own
23 people. We are not heard by our elected
24 governments because they have background deals with
25 Enbridge and PolyMet and they don't want us to know

1 about it and so we are left out. It's
2 environmental and racial injustice to think that
3 these treaties don't exist. Because they are very
4 much alive as the day they were signed. We are
5 still here. We have college degrees. Don't let
6 the cover, you know, fool you. I'm a nursing
7 student. I went to school for business. I went to
8 school for metalsmithing. We work hard, too. But
9 when you guys think you can show up and tell us and
10 consult for us -- failure to consult is not
11 consent. And taking Enbridge and allowing them or
12 PolyMet to come show up and get three out of five
13 votes, that's not the people. That's not the
14 tribe. The people constitute the tribe. Not you
15 guys, nor five elected officials. Sovereignty
16 belongs to the people. We need to be included.

17 I appreciate today and I want to leave this
18 treaty book with you guys for a little education.
19 These are legal and binding. I will also leave you
20 a United Nations declaration. These are nonlegal
21 binding, but they are kind of like a code to be
22 good to your neighbor. So I think it would serve a
23 good purpose. I appreciate your time today. And I
24 just want to make sure that our people are truly
25 represented and we are not going to stay in the

1 dark no more. Thank you.

2 THE JUDGE: Thank you. Could you bring
3 those up to the table and I will mark them and put
4 them in the record. And you are Ms. Beau -- tell
5 me how to pronounce your name.

6 MS. BEAULIEU: Beaulieu. You're getting
7 there. Those are just a brief overview. They're a
8 good start. That's a good start.

9 THE JUDGE: So I'm going to put the
10 United Nations Declaration as P1, Exhibit P1, and
11 the treaty rights discussion as Exhibit P2. Just
12 one second while I mark these.

13 I have got a note stating that there are
14 some dogs in a bus outside barking and there is
15 concern that because of the heat they may not be
16 doing okay. So if anybody has some dogs outside,
17 you might want to go check on them. Thank you.

18 There are two people in Duluth? Is that
19 correct?

20 MS. CALE: Yes. That's correct. We
21 have two commenters.

22 THE JUDGE: Let's start with the first
23 Duluth commenter.

24 MS. HABERMAN: Thank you. My name is
25 Jo Haberman, J-o H-a-b-e-r-m-a-n. And I live here

1 in Duluth. And I have two comments on part
2 4410.4300, subpart 37. And then I want to make an
3 additional comment.

4 Regarding item A, the change to mandatory
5 review of any route from a 10-mile threshold to a
6 25-mile threshold is a 150 percent increase in the
7 threshold limit. It is in stark and direct
8 conflict with the 1982 statement of needs and
9 reasonableness restated in the 2004 SONAR under
10 Historical Intended Purposes which reads, and I
11 quote, "As stated in the 1982 SONAR, linear
12 projects usually entail greater impact as a
13 function of increased length. Specifically for
14 recreational trails, while different types of
15 trails or trail uses vary in their potential for
16 impacts such as ecological damage, runoff and
17 erosion, damage to water resources, and noise, the
18 potential for these impacts will tend to increase
19 with the length of the project simply because, all
20 else being equal, a longer trail has more
21 likelihood of encountering sensitive resources of
22 whatever kind."

23 To increase the length from 10 miles to
24 25 miles is to intentionally increase the potential
25 risk to resources as stated by the EQB itself in

1 these SONARs in 1982 and 2004. Administrative
2 streamlining financial operation and the duration
3 of procedural process concerns just supersedes
4 specific established and environmentally justified
5 environmental protection thresholds is counter to
6 the very purpose of creating the Environmental
7 Quality Board and the establishment of the
8 Minnesota Environmental Policy Act and is counter
9 to environments and public self-interest and
10 therefore public policy.

11 Regarding the environmental impacts of
12 item B. Categorically adding recreational
13 motorized traffic to any already motorized road
14 without first considering the existing natural
15 resources and wildlife along it and the impacts of
16 adding additional motorized traffic volume is not
17 an environmentally sustainable approach to creating
18 motorized vehicle trails. Many current motorized
19 roads were created long before environmental
20 awareness and road ecology existed.

21 As one of the nearly 2 million visitors to
22 Cook County each year, I spend as much time as
23 possible in quiet beauty, hiking, berry picking,
24 observing wildlife, swimming, or just enjoying the
25 calming back country.

1 In Cook County, there are examples of
2 unpaved roads crossing exceptional streams and
3 tributaries leading into those streams, passing
4 along wetlands and protected wild rice lakes all
5 with very minimal buffer zones. It is well known
6 that crossings on unpaved roads are sediment and
7 fugitive dust polluters to waterways. The
8 Minnesota Pollution Control Agency has attributed
9 the lack of degradation of exceptional waters
10 situated on motorized unpaved roads to low
11 population density and historically low traffic
12 use. It is wrong to conclude that because a road
13 has motorized traffic it does not have
14 environmental impacts to natural resources and
15 wildlife. Adding new recreational traffic uses to
16 roads that already have environmental impacts would
17 exacerbate and multiply these impacts. All new
18 created recreational routes must be reviewed for
19 environmental impact and alternative options
20 considered when environmental impacts to waters,
21 wildlife and vegetation are determined.

22 So thank you for listening to those
23 comments. And the additional comment that I just
24 wanted to make is as I was hearing the earlier
25 commenters, I want to add my voice to Debra Topping

1 and Rita Chamblin, their very important comments
2 about the Husky Refinery here in the Twin Ports
3 area and the stated interest of Husky to continue
4 using hydrogen fluoride.

5 My granddaughter was evacuated. My
6 neighbors were evacuated when the explosion
7 occurred. I was within a couple of blocks of the
8 evacuation process and chose to evacuate
9 voluntarily with my granddaughter. It is
10 absolutely unbelievable to me that we would not
11 have a mandatory EAW/EIS process for the Husky
12 Refinery expansion, and it's very critical to
13 question and evaluate hydrogen fluorides continued
14 use in this highly populated area. Thousands of
15 people in Superior, thousands of people in Duluth
16 have lost their lives or have been permanently
17 harmed and damaged because of the explosion that it
18 could have been the hydrogen fluoride that
19 exploded. Thank you.

20 THE JUDGE: Thank you very much. Okay.
21 Mr. Gregg. Levi Gregg. Mr. Gregg, you have a
22 partner here, is that right?

23 MR. GREGG: Yes.

24 THE JUDGE: I would say we have many
25 more commenters than we did when we started, so to

1 the extent that you can take less than 10 minutes,
2 I would ask you to really please try and take less
3 time today.

4 MR. GREGG: Yes. We don't intend to
5 take that long.

6 THE JUDGE: And, please, each of you
7 introduce yourselves and spell your names.

8 MR. GREGG: Your Honor, members of the
9 Board, thank you for this opportunity. My name is
10 Levi Gregg. That is spelled L-e-v-i G-r-e-g-g.

11 MR. LANGE: I'm Connor Lange. My name
12 is spelled C-o-n-n-o-r L-a-n-g-e.

13 THE JUDGE: Thank you.

14 MR. GREGG: We support the Environmental
15 Quality Board's purposed changes to Rule 4410.4300,
16 subpart 27, item B. Especially in its lowering of
17 the threshold for an environmental assessment to
18 include projects impacting one or more acres of
19 wetland. However, we believe the use of the
20 definition of "impact" will result in unintended
21 consequences, allowing projects to be done to
22 wetlands types 6 through 8 without environmental
23 assessment.

24 "Impact" is defined as the loss in the
25 quantity, quality or biological diversity to a

1 wetland caused by draining or filling of wetlands
2 wholly or partially or by the excavation either
3 permanently and semi-permanently flooded areas of
4 types 3, 4 or 5 wetlands as defined in subpart 75
5 and in all wetland types if the excavation results
6 in filling, draining or conversion to non-wetland.

7 The problem with this definition is that
8 projects that result in the loss of quantity,
9 quality or biological diversity but do not result
10 in wetlands filling, draining or conversion to
11 non-wetland will not require an environmental
12 review if done to types 6, 7 or 8.

13 We propose that the Board change the
14 definition of "impact" to read: Impact means the
15 loss in the quantity, quality or biological
16 diversity of a wetland caused by draining or
17 filling of wetlands wholly or partially or by the
18 excavation of either permanently and
19 semi-permanently flooded areas of types 3, 4, 5, 6,
20 7 and 8 wetlands as defined in subpart 75 and in
21 all wetland types if excavation results in filling,
22 draining or conversion to non-wetland.

23 MR. LANGE: So wetlands types 6, 7 and 8
24 include shrubs, swamps, wooded swamps and bogs,
25 each of which are particularly vulnerable to losses

1 in biological diversity. As a consequence of the
2 proposed rule change, a project can remove peat
3 moss from the surface of a bog without an
4 environmental review so long as it did not actually
5 result in the draining or filling of the bog.

6 THE JUDGE: Mr. Lange, could you just
7 slow down a little bit for our court reporter here.
8 Thank you.

9 MR. LANGE: Do you want me to repeat
10 that?

11 THE JUDGE: She's okay.

12 MR. LANGE: Bogs and wooded swamps are
13 critically important ecosystems with species found
14 nowhere else on earth. They provide habitat for
15 species of dragonflies and amphibians that are
16 essential to the natural regulation of misquote and
17 horsefly populations. Furthermore, all wetlands
18 provide natural erosion control and help to filter
19 toxins from water before water reaches large
20 aquifers. Bogs are also a major driver of
21 ecotourism in Minnesota and provide Minnesotans
22 with a valuable resource for environmental
23 education.

24 MR. GREGG: We also have a
25 recommendation for the Board to make it easier for

1 citizens to understand the rule changes and to
2 understand the rules themselves. We realize that
3 the Environmental Quality Board's proposed changes
4 are intended to streamline environmental reviews
5 and to clarify rules. However, while these changes
6 will make the rules more easily understood by
7 corporations and local governments, they do little
8 to make the Environmental Quality Board's policies
9 more clear to average citizens. To improve this,
10 we have created a list of recommendations that we
11 believe would allow concerned citizens to become
12 involved in supporting Minnesota's environment.

13 We recommend that the Environmental Quality
14 Board includes a summary of the potential
15 environmental impacts of rule changes when
16 applicable. We understand that the statement of
17 need and reasonableness already includes a
18 statement of economic and regulatory impacts. And
19 we ask that the Environmental Quality Board
20 includes a statement of environmental effects of
21 rule changes as well.

22 We recommend that the Environmental Quality
23 Board makes easily accessible guides explaining the
24 function and implementation of the Environmental
25 Quality Board's existing rules such as Rule 4410

1 and explain how the rules will benefit the
2 environment.

3 We recommend that whenever rules refer to
4 definitions, the Environmental Quality Board either
5 writes out the definitions or clearly links them to
6 the rules document.

7 We recommend that the Environmental Quality
8 Board clearly states the impetus for rule changes.
9 And we recommend that whenever a rules document
10 refers to other policy rules or laws the
11 Environmental Quality Board links that policy to
12 the rules document and provides a summary of that
13 policy's pertinent information.

14 We recognize that the Environmental Quality
15 Board has attempted to make some of these changes
16 already and we appreciate the Environmental Quality
17 Board's continued efforts to encourage and
18 facilitate citizen involvement. Furthermore, we
19 applaud all the work that the Environmental Quality
20 Board does to ensure that Minnesota remains a
21 leader in environmental protection and sustainable
22 development. Thank you for your time.

23 THE JUDGE: Thank you very much.

24 MR. GREGG: We also have written copies
25 of our recommendations.

1 THE JUDGE: Thank you. I will mark them
2 as exhibits and enter them into the record.

3 MR. PETERSON: Your Honor, I was with
4 the folks going back to Duluth and they would like
5 it if I could testify or speak sooner if possible.
6 They are attempting to leave.

7 THE JUDGE: Let me just handle these
8 exhibits and I will talk about that in a second.
9 So Levi Gregg is P3. And Mr. Lange is P3.

10 Did you sign up to speak?

11 MR. PETERSON: Yes.

12 THE JUDGE: Are they all ready to leave?

13 MR. PETERSON: Yes, they are trying to
14 take off without me right now, but I'm determined.

15 THE JUDGE: And what was your name?

16 MR. PETERSON: Jesse Peterson.

17 THE JUDGE: Did you say Jesse Peterson?

18 MR. PETERSON: Yes.

19 THE JUDGE: Okay. Why don't you come on
20 up then.

21 MR. PETERSON: Thank you, Your Honor.

22 THE JUDGE: Again, please state your
23 name for the record and spell it.

24 MR. PETERSON: My name is Jesse
25 Peterson. J-e-s-s-e P-e-t-e-r-s-o-n. I just want

1 to reiterate some of the concerns of the people who
2 came before me, that they are expressing a feeling
3 across reservations that's been stated. I can't
4 speak for people. More people should be consulted,
5 so that folks like me aren't trying to wing it
6 doing some advocacy. But it does not seem that any
7 document is complete that doesn't have some sort of
8 land acknowledgment and treaty acknowledgment and
9 that the Environmental Quality Board and any board
10 that can decide who regional government
11 organizations are I think is in dire need to
12 clarify how treaty laws are interpreted and how the
13 use of rights are interpreted, because some of the
14 scope of impact of things that come before various
15 agencies could negatively impact people's treaty
16 rights to hunt, fish, gather and possibly even
17 mineral rights are not being appropriately
18 acknowledged and that these -- as it's written over
19 and over again, as my friends have stated who are
20 more appropriate to talk on this in all honesty, it
21 is considered the supreme law of the land, and the
22 three treaties -- three of the treaties at least
23 are older than the state of Minnesota. You know?
24 So when Wisconsin tribes have been hard pressed to
25 use their treaty rights, typically the federal

1 government you will see in that GLIFWC book states
2 over and over again that they don't have to work
3 with Minnesota. You know, I know there is 1988
4 agreements with the state of Minnesota, but I'm
5 pretty certain that that's kind of a voluntary
6 thing. They still can't supersede the initial
7 treaty rights. So, like, anything here that
8 doesn't mention that, any opportunity to change and
9 rectify that is advisable for the Board. And I'm
10 greatly concerned that they have decided to
11 withdraw a proposed change.

12 I'm to understand if you guys can decide who
13 governs, like, the crude oil pipelines and stuff,
14 we've had quite a calamity, and Enbridge being
15 allowed to lobby the PUC for many millions of
16 dollars. There's a lot to understand here, and I
17 think the two people before me were very correct to
18 advise that there be greater clarity provided to
19 people what their rights are and how they can
20 participate in the process. At this point I think
21 in the twentieth century, we should be getting a
22 guide every year in the mail as a citizen or
23 something equivalent.

24 But I see this stuff in red. And my initial
25 response is that it was ill advised to withdraw it

1 because the -- maybe not. I don't know. I think
2 maybe more agencies should give oversight, though,
3 with more citizen oversight, not less. I don't
4 think it should be streamlined or quickened for the
5 people applying for their projects. I would be
6 curious to see if it's stated anywhere in the
7 mission statement the Environmental Board to
8 accommodate the people applying for their projects
9 or if it's to represent the people and the
10 citizenry and to give them a voice in the process.

11 And I would also like to speak on behalf of
12 the brothers and sisters across Minnesota that are
13 within the vicinity of your refineries and say that
14 there should be a more rigid review process for the
15 refineries and any modifications. That there
16 should be some oversights that can take into
17 consideration their impact on the region in terms
18 of climate change, in terms of air quality and so
19 on and so forth, and that it should always be more
20 rigid and that careful consideration one way or
21 another in the language should be given to having
22 oversight over chemicals that they use on sites
23 such as hydrogen fluoride gas.

24 To the best of my knowledge, no region in
25 Minnesota nor the Duluth/Superior region which was

1 impacted by the refinery explosion had adequate
2 evacuation standards and people are given mixed
3 messages by various levels of government of whether
4 or not they should evacuate or remain in place.
5 And then people don't know the standards for
6 hydrogen fluoride gas for remaining in place or any
7 process that can expose to the public the chemicals
8 that are used and their danger and give us a chance
9 to do greater oversight would be desirable. And I
10 think there should be environmental review, an EAW
11 for altering the plants and that it should be more
12 strict, not less.

13 THE JUDGE: Okay. Thank you very much
14 for your statement. Is there another person
15 waiting in Brainerd?

16 MR. TUMMINELLO: Yes, Your Honor, we
17 have one more person here in Brainerd who would
18 like to make a comment for the record.

19 THE JUDGE: Why don't we move to that
20 person in Brainerd then.

21 MR. WILM: Are we ready to start, Your
22 Honor?

23 THE JUDGE: Yes, I think we are. If you
24 could state your name and spell it, please.

25 MR. WILM: My name is Dan Wilm, D-a-n

1 W-i-l-m. My first question would be on line 17.10
2 of subpart 37, Recreational Trails. It says if a
3 project listed in items A through F will be built
4 on state-owned land. Does this also include county
5 tax court wetlands, which are actually state lands
6 held in trust by the county? Can anybody answer
7 that question?

8 THE JUDGE: Mr. Cedarleaf Dahl, are you
9 able to answer that?

10 MR. CEDARLEAF DAHL: Thank you, Your
11 Honor. I would need to consult with some of our
12 technical experts. I can check and get back to
13 you.

14 MR. WILM: Okay. Thank you. I want to
15 say, first of all, you know, 1:30 p.m. on a Friday
16 afternoon seems like a silly time to have this.
17 Especially with the busy summer season upon us.
18 But I also would like to say that it shows how
19 serious and interested people are that there are so
20 many people that are attending today.

21 There has been a lot of talk about the
22 definition of a recreational trail. Now I'm not
23 speaking today as a DNR forester, even though I am
24 a retired DNR forester of 34 years. My definition
25 of a recreational trail is this. Definition of a

1 trail is vague. It should be defined as this. A
2 trail is defined by it being specifically
3 constructed for use. Simple use by OHVs does not
4 define a trail.

5 Item line 17.15, Constructing a trail at
6 least 25 miles long, in other words, increasing
7 exponentially from the 10 miles, there is
8 significant impacts that have not been addressed.
9 Invasives, disrupting nesting and hatching bird
10 species. If anything, it should be left as is or
11 decreased.

12 You know, when I retired from the DNR in
13 2011, we had been given foot brushes, high-pressure
14 hot water heaters, and the logging community was
15 asked to work on trying to minimize the spread of
16 invasive species. Yet the OHV, the ATV, the ORV
17 crowd has not. So why is it that one is asked to
18 make a difference to try to and the other is
19 ignored. It's, like, yeah, we can't do anything
20 about it. That's puzzling to me.

21 Again, on line 17:20, designating at least
22 25 miles of an existing trail for a new motorized
23 recreational use other than snowmobiling. Again,
24 invasive, nesting and hatching disruptions. This
25 should be held to a much lower distance than 25

1 miles.

2 And, in summary, I thank you for the honor
3 to speak today. To the two younger gentlemen who
4 spoke about how Minnesota has been a leader in the
5 environment, we used to be a leader. We used to be
6 a leader. We are far from being a leader anymore.
7 It is not unreasonable to demand and expect our
8 precious environment to be protected. You can and
9 you should be able to say no. Please progress, not
10 regress, and quit treating our environment like
11 it's a cat's litter box. Thank you.

12 THE JUDGE: Thank you, Mr. Wilm. I
13 believe we are at Mr. Crocker. George Crocker.

14 MR. CROCKER: Thank you, Your Honor. My
15 name is George Crocker, C-r-o-c-k-e-r. I'm the
16 executive director of the North American Water
17 Office which is located in Lake Elmo, Minnesota.

18 I'm here today to talk about part 4410.4400,
19 subpart 8, metallic mineral mining and processing.
20 Staff is to be commended for withdrawing this
21 proposed change. The reason they withdrew it in
22 significant part was because of comments from the
23 North American Water Office documenting beyond
24 doubt that there is, in fact, significant uranium
25 mineral in Minnesota, therefore, they withdrew the

1 proposed change. However, what this does is point
2 out a desperate need for adequate protection,
3 considering that the state of Minnesota, people in
4 Minnesota are now about to embark on the extraction
5 of the metallic mineral. The metallic mineral is
6 laced with the uranium. They are commingled. They
7 are in the same deposits. Which means that when
8 you are site extracting the metallic minerals you
9 will be releasing radionuclides. Which means that
10 there must be rules promulgated. And it should not
11 be up to citizens to do this. It should be part of
12 state government at a very minimum to establish the
13 rules that identify the proper monitoring and
14 isolation of radioactive materials that are
15 extracted in the course of metallic mineral mining.
16 Thank you.

17 THE JUDGE: Thank you. I think we have
18 one person left in Duluth, is that correct? Is
19 there anyone in any of the other locations at this
20 time?

21 (No response.)

22 THE JUDGE: Why don't we go to the
23 person in Duluth. Good afternoon.

24 MS. ANDREWS: Good afternoon. Carol
25 Andrews. My last name is spelled A-n-d-r-e-w-s.

1 The first name is C-a-r-o-l, without an E. I'm a
2 registered professional engineer currently working
3 as an environmental project manager at the
4 St. Louis County Public Works Department.

5 I'm speaking today on behalf of the
6 St. Louis County Public Works Department headed by
7 county engineer Jim Foldesi as well as the
8 Minnesota County Engineers Association for which
9 county engineer Foldesi is the chair of the
10 environmental committee.

11 The part of the rule that I am addressing
12 today is part 4410.4300, subpart 27, item B. And
13 that's the mandatory EAW wetland category. The
14 existing rule before the modifications had very
15 confusing language as to what the threshold is, at
16 which point it had to prepare an EAW. It refers to
17 the trigger being impacts of 40 percent or more or
18 five or more acres --

19 THE JUDGE: Ms. Andrews, could you go
20 back and say the number of acres. The court
21 reporter couldn't hear you.

22 MS. ANDREWS: And this is where my main
23 point is that the existing rule is very confusing.
24 It says the trigger threshold is 40 percent or more
25 or five or more acres of types 3 through 8 wetland

1 of 2.5 acres or more. And then it goes on to say
2 in certain areas like shorelands and floodplains.
3 And my point is to support the change to this
4 category, because if anybody can understand what
5 that existing rule meant here, probably as the rest
6 of us, basically it can be interpreted different
7 ways. And that doesn't work well with the rule.
8 So the county engineers concurs that it is an
9 improvement to clarify the rule. Can the
10 clarification changes it to being one acre of all
11 the wetlands other than the public water wetlands
12 that are covered under item A. So it goes to one
13 acre across the board.

14 That reduction from the range basically of
15 one to five acres of the thresholds as stated in
16 the statement of need and reasonableness will
17 increase the number of projects requiring an EAW.
18 And there is a significant potential for some of
19 those additional projects to be highway projects.
20 And so the county engineers are following this
21 closely. We support preparing environmental
22 assessment documentation for projects where it
23 serves a benefit.

24 I'm working on one such project right now
25 with a two-mile road realignment where it's been

1 very beneficial to go through the depths of
2 considering all the possible impacts and the
3 outreach. So that's been useful. But we want to
4 make sure that the change results in preparing EAWs
5 only in cases where it provides benefit. Where the
6 existing process that we go through of working with
7 the Department of Natural Resources, the wetland
8 regulatory agencies, adjacent landowners, where
9 that does not already cover the alternatives and
10 the impacts. We just want to make sure it's
11 focused to get the most benefit out of that.
12 Otherwise, essentially, we currently support the
13 rule that's on the docket before you today for this
14 matter.

15 THE JUDGE: Thank you. It is 3:30,
16 by the clock in here. We are going to take a
17 10-minute break and give the court reporter a
18 chance to rest her hands and everybody a chance to
19 stretch. We will come back in 10 minutes.

20 (At this time a brief recess was taken.)

21 THE JUDGE: We are going to go ahead and
22 get started. The next person on my list -- I just
23 want to say if there is anybody in the overflow
24 room who wants to move in here, we do have some
25 seats available, about a half dozen seats or even a

1 little more. Maybe nine or ten seats available in
2 here, if you want to come into the main hearing
3 room at this point. The next person on my list is
4 Alan Muller, M-u-l-l-e-r.

5 MR. CEDARLEAF DAHL: It appears he is
6 not here.

7 THE JUDGE: He is not in the other room?

8 MR. CEDARLEAF DAHL: Folks also said he
9 did travel with Carol.

10 THE JUDGE: So Ms. Overland left, as far
11 as you know? Okay. Then I'm going to assume that
12 he is not going to be speaking. Dan -- I think
13 it's S-a-u-v-e maybe?

14 MR. SAUVE: Yes.

15 THE JUDGE: Okay. And I will let you
16 pronounce that. But I have already spelled it.

17 MR. SAUVE: You spelled it correctly.
18 My name is Dan Sauve. French word. Thank you for
19 letting me talk. I don't need to spell it again,
20 do I?

21 THE JUDGE: No. Thank you.

22 MR. SAUVE: I represent Clearwater
23 County, who is an LGU and a local government. But
24 I'm the county engineer there. Our big concern is
25 the wetland issue. I did write a letter back in

1 September. I don't know if that gets entered into
2 the record. Or should I give it to you now?

3 THE JUDGE: If it's already been filed,
4 it's probably already in the record.

5 MR. SAUVE: I did see it on the thing,
6 so it's there. So I'm not going to read that
7 letter. So I'm just going to talk a little bit.

8 THE JUDGE: Okay.

9 MR. SAUVE: Also, I want to refer to
10 Carol Andrews in St. Louis County, her testimony.
11 I will mimic that. Just so you can put that in.
12 Whatever she said, I would also go for. I'm not
13 going to repeat what she said either, to save some
14 time here.

15 You know, the big thing I look at is, you
16 know, thank you for making the changes on part
17 4410.4300, subpart 27, the wetlands and adding
18 item B. I might make one more suggestion on that
19 is, you know, where you say item B does not apply
20 to projects exempted, but part 4410.4600, subpart
21 14, can you add "or projects below the threshold in
22 part 4410.4300, sub part 22."

23 You know, as a highway engineer, most of my
24 projects are just grade widening existing roads and
25 it's pretty rare that we rebuild a road and not

1 impact wetlands. I would say most of our projects
2 impact one to five acres, and the change by
3 lowering the standard could cause a lot more of our
4 projects having to write an EAW. Actually, I've
5 never wrote one for Clearwater County. We've
6 always fell under that threshold. But to change
7 that threshold is going to have quite a change to
8 us. We are a really small county. It would be
9 hard for us to implement and writing those and it
10 would be costly for us. And I don't believe it
11 would cause any more information to be presented.
12 Right now, we do get wetland permits, the Corps of
13 Engineers. And I know the Corps of Engineers they
14 go through the MEPA process on our permitting.
15 Most of our projects fall under the general permit,
16 and that already has had an EAW done, so there
17 would be no reason for us to do another EAW. This
18 falls under a permitting process that already had
19 one done for a general permit. I saw one of the
20 criteria was to eliminate duplication, and I think
21 this would be a good opportunity for you to
22 eliminate duplication. I would contend that the
23 whole wetland section, subpart 27, could be
24 eliminated because of the other regulatory
25 conditions that apply. We have the Corps of

1 Engineers that are covering it all. And it's quite
2 extensive. Most of the time it takes maybe a year
3 to get a permit. We also have BWSR looking at it.
4 We have the LGU looking at it and other regulatory
5 people.

6 THE JUDGE: Could you just say what BWSR
7 is.

8 MR. SAUVE: The Board of Soil & Water
9 Conservation.

10 MR. CEDARLEAF DAHL: The Board of Water
11 & Soil Resources.

12 THE JUDGE: Thank you.

13 MR. SAUVE: Thank you. I'm so used to
14 just saying the acronym.

15 THE JUDGE: I know.

16 MR. SAUVE: Then we also have the DNR
17 permitting if we are in the public waters. We have
18 the watershed districts. So we are highly
19 regulated and highly looked over. Do you have any
20 questions of me?

21 MR. CEDARLEAF DAHL: No.

22 MR. SAUVE: Okay. Then I will be done.

23 THE JUDGE: Thank you. Okay. Kate
24 Fairman. Ms. Fairman. Is Ms. Fairman in the
25 overflow room? Oh, I'm sorry, no, she did not --

1 Kathy Hollander.

2 UNIDENTIFIED SPEAKER: Kathy is walking
3 those dogs that were mentioned earlier. She said
4 when she is back she would love to testify, but not
5 right now.

6 THE JUDGE: And I called Ms. Fairman
7 accidentally. I will come back to Ms. Hollander.
8 So the next person is Susan Schubert, I think.

9 MS. SCHUBERT: It's Susan, S-u-s-a-n,
10 Schubert, S-c-h-u-b, as in boy, e-r-t, as in Tom.
11 I'm talking about Rule 4410.4300, subpart 37,
12 Recreational Trails.

13 Thank you, Your Honor, for this opportunity
14 to respond to the proposed changes in the rules for
15 mandatory review regarding motorized recreational
16 trails.

17 In the 1982 statement of need and
18 reasonableness, general rulemaking authority is
19 given to the Environmental Quality Board. The
20 concept of the environmental review was and is to
21 implement environmental protection as a matter of
22 public policy.

23 In this same 1982 SONAR of need and
24 reasonableness under the history of environmental
25 review in Minnesota --

1 THE COURT REPORTER: Could you slow
2 down, please.

3 MR. SCHUBERT: Oh. I was trying to get
4 my time in. The intent of the environmental review
5 is to prevent environmental degradation by wise and
6 informed decisions. The statement of general
7 reasonableness given by the EQB for the current
8 proposed changes of items A and B under
9 recreational trails is that because the legislature
10 has requested these changes be made three separate
11 times to support review efficiency and streamline
12 the environmental process they are generally
13 reasonable.

14 I do not agree and do not think this
15 justifies the changes proposed in items A and B.
16 Proposed changes in items A and B would facilitate
17 the degradation of the environment, waters,
18 wildlife and not protect them. This does not
19 fulfill the spirit, intent or reason or purpose for
20 the creation of the Minnesota Environmental Review
21 program and the Environmental Quality Board to
22 protect our natural resources.

23 The solution the EQB has proposed --

24 THE JUDGE: Ms. Schubert, really, slow
25 down a little bit. You sped up again.

1 MS. SCHUBERT: I'm sorry. I'm such a
2 quick reader. The solution the EQB has proposed is
3 not appropriate. I believe the proposed changes of
4 items A and B regarding recreational trails are not
5 feasible because they are in direct conflict with
6 the Environmental Quality Board's responsibility
7 and the stated purpose of environmental policy in
8 the 2017 Minnesota Statutes Chapter 116D to promote
9 efforts to prevent or eliminate environmental
10 damage under 116D.01. And in 116D.03, action by a
11 state agency, subdivision 1, Requirement --

12 (Brief interruption to fix microphone.)

13 MS. SCHUBERT: And in 116D.03, action by
14 state agency, subdivision 1, Requirement, the
15 legislature authorizes and directs that to the
16 fullest extent practical the policies, rules and
17 public laws of the state shall be interpreted and
18 administered in accordance with the policies set
19 forth in sections 116D.01 to 116D.06.

20 I also take issue with the statement of need
21 for these proposed changes regarding recreational
22 trails. The stated need and desired outcome of
23 these current proposed rule changes is to provide
24 clarity and specificity, to reduce ambiguous and
25 confusing application of the environmental rules.

1 In my view, the language in item B remains
2 vague and too broad. Quote, "When designating an
3 existing motorized trail or existing corridor in
4 current use by motor vehicles, the designation does
5 not contribute to the 25 mile threshold under this
6 item." This language is not specific and not
7 clear. What exactly compromises an existing
8 corridor in current use by motor vehicles? Does
9 this mean that any public roadway could be used?
10 A public road could be defined as an existing
11 corridor in current use by motor vehicles. The
12 language regarding road types in item B needs to be
13 very specific and precise to not allow
14 interpretation by the proposer to take advantage of
15 this proposed vague wording and use roads that are
16 known to be more environmentally damaging than
17 other road types, such as all logging roads and
18 unmaintained United States Forest Service
19 Operational maintenance level 2 roads without
20 requiring mandatory environmental review. The
21 proposed language does not establish a standard to
22 control and guide administrative officers, but
23 leaves the door wide open for any project manager
24 to completely disregard environmental concerns in
25 choosing roads types.

1 The other stated need for the current
2 proposed changes to a mandatory rule is that
3 changes are needed to streamline the environmental
4 review because the majority of the EAW and the EIS
5 categories were established in the 1980s and 1990s
6 and do not reflect the modern regulatory system or
7 project types.

8 Regarding motorized recreational trails, I
9 would argue this stated need is not applicable.
10 The environment, waters and wildlife demand the
11 same protection from recreational trail impacts
12 that they did when the environmental review program
13 was created in 1973. In fact, they demand even
14 more environmental protection and review and
15 oversight today due to the dramatic increase in the
16 off-road vehicle industry, commerce and ridership
17 and the concurrent significant budget cuts of
18 oversight agencies such as the Department of
19 Natural Resources and the United States Forest
20 Service, which itself has seen a 60 percent cut in
21 its road maintenance since 2000.

22 In item B, the proposed rule changes
23 historically established the mileage rule
24 application with the potential to add significant
25 unaccounted mileage to a route without an

1 environmental review simply because the road
2 already has motorized use. Item B states that any
3 already motorized route should not count towards
4 the mileage threshold as long as it does not expand
5 the width. This assumes established motorized
6 roads have no environmental impacts and therefore
7 should not be counted in the proposed threshold.
8 This is not true.

9 My own road of Pine Mountain in Cook County,
10 Minnesota is a perfect example. It was started in
11 1875, completed by 1916, and widened in the early
12 1930s to accommodate a fire lookout tower. In
13 those eras, there were no concerns that this
14 unpaved road runs right by what we now know is an
15 exceptional stream, the highest ranking possible by
16 the Minnesota Pollution Control Agency, or right by
17 the tributary that directly feeds this exceptional
18 stream, or by wetlands, or by a now protected wild
19 rice lake. To add another motorized use to a road
20 like this with historically low traffic volume
21 would expose these resources to increased fugitive
22 dust, pollution and sedimentation that could have
23 significant detrimental environmental impacts and
24 even extricate sensitive cold water species that
25 are pollution intolerant from streams such as brook

1 trout.

2 I strongly believe that today's science in
3 road ecology and its material environmental
4 advocates dictate that an added motorized use to
5 such roads now demands an environmental review to
6 protect natural resources. Therefore, I strongly
7 believe all mileage for a new motorized use should
8 count towards a threshold.

9 In conclusion, Your Honor, I strongly feel
10 that items A and B should remain unchanged
11 regarding the requirements for motorized
12 recreational trails and mandatory review. This is
13 in direct conflict with the 2017 Minnesota statute
14 of environmental policy's stated purpose and the
15 stated requirement of action by state agencies in
16 Chapter 116D.

17 The purpose of environmental review is to
18 provide the necessary information to government
19 units to make wise and informed environmentally
20 sensitive decisions in the best interest of the
21 public, rather than making the current proposed
22 changes which would base rulemaking for motorized
23 recreational trails on administrative streamlining
24 and category updating directed by the legislature.
25 Neither of which are germane to the motorized

1 recreational trail use category and its
2 environmental issues and needs, nor are they in the
3 best interest of the environment or of the public.
4 Thank you for your time.

5 THE JUDGE: Thank you. Is Kathy
6 Hollander back?

7 UNIDENTIFIED SPEAKER: Not yet.

8 THE JUDGE: Ms. Foushee?

9 UNIDENTIFIED SPEAKER: I think she has
10 chosen not to comment. Yes, she has left.

11 THE JUDGE: Thank you. Then John
12 Munter.

13 MR. MUNTER: J-o-h-n M-u-n-t-e-r. I
14 would like to first join the chorus that we should
15 have harmonization between Fond du Lac's water
16 quality standards and the laws of the state of
17 Minnesota and the 1800s treaties. And maybe we can
18 do more update on the 1988 law that was mentioned.

19 But mainly I would like to talk about Number
20 9, the performance-based rules, mentioned proposed
21 rules, such that we shouldn't be, quote, "making
22 rules that emphasize the achievement of an agency's
23 regulatory objectives." And then farther down it
24 talks about "environmental review is not a
25 regulatory program, and hence the EQB has no

1 regulatory objectives in this rulemaking." What?
2 I'm incredulous. Are we just making useless
3 information like that last EIS for the line 3? In
4 the end, the decisions were made for pressure from
5 the legislature and from industry and wanting to
6 push the line farther north and not going farther
7 south through white communities. So information is
8 not an end in itself. What about MEPA? Shouldn't
9 we be adhering to MEPA? Doesn't the government,
10 the state government have any responsibility for
11 climate change and for maintaining certain
12 standards?

13 I would like to also echo the need for --
14 the whole basis of this rule change is economy and
15 efficiency. These shouldn't be the guiding
16 principles here. So I think we should have
17 mandatory EISs for oil facilities and wind
18 facilities, because we are going to have a lot more
19 wind facilities, as well as for Husky, and also
20 rules for monitoring and isolation uranium. I also
21 want to add in we should have a mandatory EIS for
22 natural gas facilities as well.

23 Fossil fuels, these natural gas facilities
24 some scientists say are more fossil fuel intensive
25 than coal burning because of the leakage happening

1 at the point of production and transfer and also
2 because of the importance of calculating its effect
3 on the atmosphere over a 12 or 20-year period
4 instead of over a 100-year period. Which is what
5 EPA and other agencies have been doing. So in this
6 regard, we need a social cost of methane standard
7 in Minnesota along with our social cost of carbon.

8 I would like to ask if the Attorney
9 General's Office might possibly request a rule
10 change for a social cost of methane standard in
11 Minnesota maybe under the Department of Commerce
12 rubric there?

13 THE JUDGE: So, Mr. Munter, I want to
14 say that's really outside the scope of this
15 hearing. You are welcome to contact the Attorney
16 General's Office and request that or the Department
17 of Commerce or whoever, your legislature. But it's
18 really outside the scope of this hearing.

19 MR. MUNTER: Thank you. That is the end
20 of my comment. Thank you.

21 THE JUDGE: Thank you very much.

22 UNIDENTIFIED SPEAKER: Kathy Hollander
23 is here now.

24 THE JUDGE: Ms. Hollander.

25 MS. HOLLANDER: Thank you for waiting.

1 I was outside trying to de-escalate a situation so
2 we didn't have to have the police and angry people.
3 We could just talk about dogs and how we all love
4 dogs. So I'm back. Thank you very much for giving
5 us a chance to comment on the rules. As you know,
6 I have a few comments. I've never met you, Erik.
7 Nice to meet you in person. I just only know
8 Denise.

9 My first comment is that when I read through
10 a lot of these documents -- I spent hours and
11 hours, but, anyway, when I read through the SONAR
12 and I clicked on the links, which you conveniently
13 provided to the statutes you were citing, I agree
14 with you -- I saw on the slide that there was one
15 statute about recreational trails, there was
16 another statute about Silica Sand and then you
17 cited 2015 special statute -- special session law.
18 And then when I clicked on that, I noticed that it
19 was an appropriation rather than a statute
20 citation. It was a one-time appropriation in 2015
21 to supply the EQB board with about \$500,000 for
22 streamlining environmental review. That's what it
23 said, the environmental review process. And my
24 question before you for the Administrative Law
25 Judge is what is the wording in connection with a

1 one-time appropriation? Does that convey the same
2 power as the statute law? Is that codified in law?
3 Because I believe it is not.

4 So when I was reading the SONAR, there were
5 at least six references to the words "streamlining"
6 or that specific reference to the special session
7 law in 2015. Again, which was, when I click on it,
8 on the article and the chapter and everything, was
9 simply a one-time appropriation. Which I'm just
10 saying how does that apply in 2019 when it was a
11 2015 appropriation? Are we running biennium, so
12 presumably that would apply to 2016 and 2017, but
13 it wouldn't have the force of law now? So I
14 questioned the underlying basis for this concept of
15 we need to streamline environmental review.
16 Because it's not based soundly in statute. Or at
17 least it wasn't documented in statute in the SONAR.
18 So that's my first comment.

19 My other comment is I would like to talk a
20 little bit more about the refineries. I was out
21 for a while, so I don't know what was all said
22 about the refineries. I know several people
23 mentioned the Husky Refinery, but I would like to
24 point out that one of our representatives
25 discovered that the same kind of hydrogen fluoride

1 is used at one of our refineries here in the Twin
2 Cities area at St. Paul Park. So the people who
3 actually lived through that experience of the Husky
4 Refinery blowing up, that same thing could be
5 happening here at the St. Paul Park Refinery. So I
6 would advocate for stronger language in the
7 petroleum refinery section, which is 4410.4300,
8 subpart 4. The Pollution Control Agency is the
9 RGU for expansion of a petroleum refinery of 10,000
10 barrels or more per day.

11 I would also point out that there is new
12 information now. We have an IPC report about the
13 urgency of climate change. We know that today
14 parts per million carbon dioxide in the atmosphere
15 are approaching 415. We know that 350 is a safe
16 level for humankind. So I would say that there is
17 new evidence on the books that no longer supports
18 the idea that a refinery increasing their capacity
19 by 10,000 barrels per day should only be an EAW. I
20 think it should be an EIS. And, also, I would like
21 to say that new evidence is that when a refinery
22 blows up and has a major problem and there is tanks
23 of this hydrogen fluoride nearby, which we didn't
24 know about as citizens before, that also now should
25 create a new type of thing in this rule. The rule

1 just talks about construction of a new refinery is
2 an EIS or expansion is an EAW. So I think we need
3 to have another category called major alteration,
4 major rebuilds. And people smarter than I can
5 define that as either being installation of a new
6 cracker or a distillation unit or however you want
7 to make it more specifically defined. But
8 certainly a rebuild of a refinery should require an
9 EIS in this day and age. And, obviously, the
10 Pollution Control Agency then could look at
11 hydrogen fluoride.

12 I would also like to point out in the rule
13 on hazardous materials storage 4410.4300, subpart
14 10B, C and D, again, I support keeping the language
15 that exists there existing. The language is
16 "designed for or capable of storing." Instead it's
17 been substituted for "designed storage capacity."
18 And my concern is that if someone puts on an EAW,
19 well, it only has a designed storage capacity of
20 999,000 ,which is less than the 1,000,000 threshold
21 but it actually has a larger storage capacity, that
22 unless somebody is tracking very carefully that
23 storage facility of hazardous materials could
24 easily fall out of the category of the EAW.

25 Also, I think if the public knew -- my last

1 comment -- that a facility holding less than a
2 1,000,000 gallons of hazardous materials does not
3 have to have environmental review, I think they
4 would be pretty shocked. And I'm going to do all I
5 can to help make sure the public knows that
6 currently in our rules that that would be the case.

7 And I forgot to spell my name. Sorry. Did
8 you need that? K-a-t-h-y H-o-l-l-a-n-d-e-r. I am
9 a volunteer with Minnesota 350. And I will be
10 submitting more comments to you in writing. Thank
11 you very much.

12 THE JUDGE: Thank you very much. Robert
13 Tammen.

14 MR. TAMMEN: Thank you, Your Honor. I'm
15 Robert Tammen. R-o-b-e-r-t T-a-m-m-e-n. My wife
16 Pat and I live in Soudan, Minnesota, home of
17 Minnesota's first iron mine. And I worked in
18 several of the mines in northern Minnesota as well
19 as upper Michigan, Montana, North Dakota, Wyoming.
20 I've been around in my life and I'm familiar with
21 mining economies, and I'm surprised by the lack of
22 healthy economies of mining areas.

23 I know we are here talking about
24 environmental regulations. I think we understand
25 we are balancing environmental protection against

1 economic returns from the mining industry. And I
2 would like to make a point that Minnesota is
3 approaching the point where we have no net benefit
4 from hard rock mining in Minnesota. And I base my
5 opinion on data from the Bureau of Economic
6 Analysis Department of Commerce. Periodically they
7 publish a gross domestic product. They break it
8 down by state and by industry. And these are the
9 numbers for 2018, the last full year we have.
10 Minnesota has a pretty good size economy. \$368
11 billion. Mining contributes 2.386 billion. Round
12 it up to 2.4 and you can do the math in your head.
13 It's way less than 1 percent. Mining is maybe
14 two-thirds of a percent of Minnesota's economy,
15 according to these official numbers.

16 And I would like to point out that these
17 numbers do not include the externalities. The
18 babies born in northern Minnesota with elevated
19 mercury are roughly 10 percent, my fellow miners
20 that are dying at elevated rates from mesothelioma
21 and other lung diseases, the \$250 million bridge we
22 built over the Rochleau pit for the benefit of the
23 mining industry, the production taxes we rebated
24 over the last 20 years approaching again \$250
25 million.

1 And so that's the main point I want to make
2 today that when we have these debates about
3 balancing environmental protection and the economic
4 benefits of mining, the economic benefits are
5 dwindling away. It's time for us to look for
6 diversification in northern Minnesota, to realize
7 that mining has had its day and for us to go on to
8 better things.

9 I will submit this little download of
10 Minnesota's economy for the record. Thank you,
11 Your Honor.

12 THE JUDGE: Thank you. And I'm going to
13 mark this as Exhibit P4 for Mr. Tammen. The next
14 person is Sierra Erickson.

15 UNIDENTIFIED SPEAKER: I think Sierra
16 left.

17 MS. HOLLANDER: No, she has to be
18 outside with the dogs.

19 The JUDGE: I will call someone else in
20 the meantime. That would be Andy Pearson. Please
21 state and spell your name.

22 MR. PEARSON: Your Honor, my name is
23 Andy Pearson, A-n-d-y P-e-a-r-s-o-n. I'm speaking
24 today from the organization Minnesota 350, which
25 Kathy Hollander was also representing. So my

1 comments are in addition to hers.

2 We represent around 20,000 climate concerned
3 members across the state of Minnesota and are
4 grateful for the chance to comment here today. I'm
5 also impressed technically by having a meeting
6 that's happening in about six rooms at once here
7 today. So a note of appreciation for that.

8 We also support the decision to drop many of
9 the proposed revisions to the pipeline rules and
10 are grateful for the thoughtfulness that staff
11 exercised in making that decision in response to
12 the initial round of comments.

13 Part of my comments today are informed by a
14 recent meeting with the Minnesota Environmental
15 Quality Board. It was a retrospective conversation
16 with many of the original authors of the Minnesota
17 Environmental Policy Act or MEPA. And one of the
18 issues that was raised by these original authors,
19 who are more familiar -- I would venture more
20 familiar than anybody else with the intention of
21 the laws that the EQB is charged with implementing,
22 was an overreliance on EAWs in lieu of EISs. We
23 were shown a breakdown of the preponderance of EAWs
24 and very few EISs in reviewing state projects. And
25 we were told very clearly by the people who had

1 written the laws that the intention was to be in
2 the other direction, that there should be more
3 environmental impact statements, that should be the
4 norm with the environmental assessment worksheet as
5 a possibility in certain cases, but not the
6 default.

7 So it gets down to a question of
8 implementation. Right? Which is the point of
9 rules, to implement the law as written and as
10 intended. And so that's the main point I'm
11 wanting to make today. Because we should be
12 increasing the mandatory EIS categories across the
13 board. But the specific places I want to limit my
14 commentary to is fossil fuel infrastructure. Like
15 I said, Minnesota 350, we are a climate change
16 organization, a climate justice organization. This
17 is our main concern. And, as we know, one of the
18 major differences between an EIS and an EAW
19 procedurally is the identification of alternatives
20 and an analysis of ways that you could do it
21 differently, rather than just whether or not the
22 project on the table should proceed or not. So
23 alternatives analysis is very valuable. Also, an
24 EIS gives more consideration of major impacts such
25 as climate change. Which is, obviously, a very,

1 very major concern of our times, and water quality,
2 species loss, other associated effects.

3 To get to specific sections. Two sections I
4 wanted to call out. 4410.0500, subpart 4, Refinery
5 Expansion. I will second the comments that Kathy
6 made around that we should make sure that those
7 types of projects of refinery expansion actually
8 need mandatory EISs not EAWs.

9 One of the points there is the ripple
10 effects of expanding oil infrastructure usually go
11 far beyond just the physical footprint of the
12 infrastructure that's being expanded as we think
13 about material flows into the refinery and out. We
14 also think about the climate impacts. Which is, of
15 course, usually an externality, since we are not
16 incorporating it right now into market systems.
17 But it means that the impact is again often larger
18 than the footprint there.

19 And the same concern would apply to that
20 same Section 4410.0500, subpart 7 on pipeline
21 infrastructure with the same proposed change. To
22 make that a mandatory EIS rather than a mandatory
23 EAW category. Again, looking beyond the physical
24 footprint of the infrastructure into the larger
25 intent of protecting Minnesota's natural resources

1 and the need to be conscious, increasingly so, of
2 how our interaction with the world's climate
3 systems that is so well shown by science at this
4 point demands that we take a closer look at maybe
5 things that we didn't have to previously.

6 So I just want to close with saying I'm glad
7 for the chance to speak here today. I appreciate
8 that. And the full room, very full room plus
9 overflow room at the start of the day I think is
10 encouraging. I think that around these questions
11 of infrastructure and environment in the times we
12 are in, we may be seeing more full rooms like this
13 and look forward to spaces that can have everybody
14 in one place where we can maybe all see each other
15 and not have to go into overflow. I think we may
16 see the crowds for these kinds of conversations
17 getting larger. Thank you.

18 THE JUDGE: Thank you very much. I just
19 wanted to let people in here know that the front
20 doors automatically lock at 4:30, but there is
21 somebody out there to let people in if they knock.
22 If you know anybody who is going to be showing up
23 after 4:30, text them, let them know that they can
24 knock and they will be let in. If people are going
25 in and out with dogs, you know, knock and you can

1 be let in. I just wanted to give you all that note
2 for folks who are here at 520 Lafayette.

3 So, Ms. Erickson.

4 MS. ERICKSON: Hello. For the record,
5 it's S-i-e-r-r-a E-r-i-c-k-s-o-n. So just for the
6 record, dogs are fine, buses, they are sitting
7 outside with plenty of water.

8 THE JUDGE: Thank you.

9 MS. ERICKSON: So I would just first
10 like to take a moment to say my appreciation for
11 having this open comment period. It is very
12 critical that we make this space and the time for
13 the public to come and share their thoughts and
14 feelings about the laws that are being adjusted or
15 put into place revolving infrastructure, fossil
16 fuels, mining, any of that, water quality,
17 wetlands.

18 And so one of my first thoughts is that, you
19 know, any body of water or wetlands should have the
20 what is it, EIS --

21 THE JUDGE: EIS.

22 MS. ERICKSON: -- in my opinion, because
23 water is a basic human right. And if you look in a
24 lot of places, there isn't good quality water. We
25 are very fortunate here in Minnesota to have some

1 of the most pristine water around, available, and
2 we need to -- we need to lead the way in making
3 sure that it stays that way. That people have that
4 right to clean water.

5 In my opinion, and I know a lot of people
6 would agree, there should be a law that enforces
7 the rights of nature. That enforces the rights of
8 water specifically. Because that is a human right.
9 It's a divine birthright. We all need it to
10 survive. So that should be at the top of the
11 platform for laws. I would really encourage you
12 that make these laws, that secure these laws, that
13 that is something that is looked at as being the
14 utmost concern. Because we can't drink oil. We
15 cannot drink poisonous water that's contaminated
16 with fluoride. It's just not possible. And the
17 animals, they drink it, too. So those of us that
18 can speak need to stand up and speak for the
19 animals. And that's why I'm here. It's not just
20 us that rely on it. And I'm seeing more and more
21 fossil fuel industry mining that all is
22 jeopardizing some of the cleanest water that we
23 have.

24 I went out to the West Coast a couple of
25 years ago and I was completely appalled at how

1 dried up some of their rivers are. You know, you
2 don't see them flowing like they used to. And why?
3 It's because industry is coming in and they are
4 contaminating them. They are pulling water and
5 bottling it and selling it back to the public.
6 That's not okay. We all have this right.

7 You know, I would really encourage looking
8 into coming up with some laws that are going to
9 give the rights of nature the rights that we as
10 humans have. Because that's important if we are
11 going to continue as a species. You know, this
12 climate crisis is -- it's now. We need to focus on
13 it now. And some of these proposed corporations
14 that are coming in and trying to put in mines or
15 pipelines, that threatens not just our livelihood,
16 but -- you know, science tells us we have 10 years.
17 If certain infrastructures are put out that's
18 guarantying 50, 60 years of this, we are not going
19 to last. So, anyway, I was getting a little
20 sidetracked.

21 Yes, I would support that we make sure that
22 it is not just one person changing the laws. I
23 forget which piece that is.

24 THE JUDGE: The Board versus the chair.

25 MS. ERICKSON: Yes. Yes. I would be in

1 full support of keeping it in the Board allowing,
2 you know, for public comment. Because that is
3 really important. I am also in support of the
4 wetlands. The -- what is it? The 1 -- or 5 to 1
5 for the wetlands. I think that it all needs to be
6 assessed.

7 And then I would also encourage and fully
8 support and stand in solidarity with my indigenous
9 brothers and sisters that the treaty rights get,
10 you know -- some kind of law in there or just
11 bringing them to the table and really consulting
12 with them. Not just consulting, but really hearing
13 what they have to say. Because, again,
14 consultation is not consent. So I would be very
15 appreciative of that and I know many others would
16 be too.

17 You know, a lot of us are just here standing
18 up and speaking up for nature and for our water. I
19 know you guys know that. But coming from somebody
20 who is a little younger, you know, I've got to
21 stand up. And you are seeing a lot more young kids
22 that are in grade school, in high school standing
23 up and speaking for our water. And that's because
24 they are seeing the law is not doing it for us
25 anymore. And it needs to. Something has got to

1 change. We need to give nature the rights. We
2 need to give the wild rice rights.

3 Again, thank you so much for opening up this
4 space and allowing us time to express our opinions
5 and our thoughts and our feelings. I'm grateful
6 for that.

7 THE JUDGE: Thank you very much. Are
8 there people in any remote locations at this point
9 who want to speak?

10 (No response.)

11 THE JUDGE: Okay. I will continue on
12 this list. Is it Mr. Mattison?

13 MR. MATTISON: Thank you, Your Honor.
14 My name is Willis Mattison. W-i-l-l-i-s. Mattison
15 is M-a-t-t-i-s-o-n. I'm going to depart a little
16 bit from the peer remarks because of the comments
17 that were made here before.

18 I'm a professional ecologist and I want to
19 underscore some impressions the young people have
20 given here, especially the folks from Mn 350 and
21 the Native Americans, with regard to the continuing
22 degradation of our climate and our water resources
23 and natural ecosystems. This is in spite of MEPA,
24 this is in spite of the environmental quality rules
25 in place, this is in spite of the agencies that

1 carry out these rules. My point earlier that I
2 made that the EQB apparently wants to exempt itself
3 from having to demonstrate exemplary improvement or
4 achievement by the administration of its laws as
5 prescribed by the Administrative Procedures Act,
6 the SONAR makes no mention of whether or not the
7 proposed changes will result in superior attainment
8 of the objectives stated in MEPA. MEPA has very
9 clear instructions to all state agencies in terms
10 of the duties and responsibilities. By MEPA, I'm
11 referring to the Minnesota Environmental Policy
12 Act. The EQB is pretending -- excuse me, that's a
13 rather confrontive word, and I don't mean to do
14 that -- proposes to operate just within 116D.04 and
15 4410, but the statute, in fact, instructs all
16 agencies to comply with the provisions from 116D.01
17 through 06. In 01, 02 and 03 are listed specific
18 goals, responsibilities and duties which I believe
19 translate directly into objectives that must be
20 attained in a superior way any time the Agency
21 revises its rules.

22 Your hearing here today is a unique
23 opportunity for citizens to point out the Agency's
24 failures to achieve those objectives. We have
25 raised, I have and my fellow citizens have raised

1 numerous times to the agencies and to the EQB in
2 general the issues of climate change and ecosystem
3 degradation to no avail. We see these rules not
4 addressing, these proposed rule changes not
5 addressing those at all. So when the proposed
6 rules came out, many people asked for a contested
7 case hearing not so much to talk about the proposed
8 changes, but as I mentioned before, the proposed
9 changes not being made that are sorely needed.
10 There is no other venue, Your Honor, for a citizen
11 to come and have an independent person such as
12 yourself look at the instruction of MEPA and the
13 objectives that are there and then look at the
14 proposed rules and show that there is a
15 dysjunction, a disconnect, a failure to be
16 responsive to changing conditions that are well
17 known. None of the agencies that are members of
18 the EQB would deny that climate change is rapidly
19 advancing and it is an existential threat. Yet do
20 you see in any of the proposed rules anything that
21 would be commensurate with the threat of climate
22 change? No. That's unacceptable.

23 As an ecologist, I can tell you and I will
24 submit with my written comments documentations from
25 the United Nations Panel on biodiversity that is

1 confirmed by the Department of Natural Resources
2 that we are experiencing a crash in species on
3 existence and extinction around the globe. Right
4 here in Minnesota it's going on as well. Yet do
5 you see anything in the proposed rules that is in
6 any way commensurate with the urgency of that
7 threat? You will see the urgency of that threat,
8 like the IPC pointed out, that we have 10 years to
9 turn the corner on climate change. We have even
10 less time to turn the corner on species extinction.
11 Yet, there is somehow a disconnect that the EQB
12 seems that it is unaware of or has no authority to
13 address those issues.

14 We plead with Your Honor to admonish the
15 Agency to be more responsive to what's the emerging
16 science when it proposes these rule changes. They
17 can't just be doing housekeeping anymore. We need
18 to do housekeeping out there in the environment,
19 not here in the bureaucracies and in the halls of
20 the agencies.

21 So I will submit additional evidence to
22 support the contention of the urgency of the
23 changes and that the EQB must commence immediately
24 rulemaking or changes in administration of their
25 laws such that they will begin to address these

1 urgent problems. Thank you.

2 THE JUDGE: And thank you. Brian
3 Pastarr.

4 MR. PASTARR: B-r-i-a-n. Pastarr is
5 P-a-s-t-a-r-r. I would like to say thanks for
6 having agencies like the EQB and the Pollution
7 Control Agency and to kind of further to what was
8 just said is say that agencies like that need to
9 go -- we need you to go further. We need you to be
10 champions for the environment. And I don't think
11 you have done that. That Intergovernmental Panel
12 on Climate Change that came out did state the
13 urgency that we are down to the last 10 or 11 years
14 reversing this climate change stuff. And with
15 that, I think we need to do more than just rule
16 changes. We need to kind of really get to the
17 urgency that was just talked about.

18 And one of those agencies that's not listed
19 here is PHMSA, which is the Pipeline and Hazardous
20 Materials Safety Agency. An agency that is charged
21 with taking care of -- making sure that pipelines
22 are safe and are not leaking. And we have an
23 existing line 3 that actually is leaking. And I
24 don't see much being done about that except
25 Enbridge using that to leverage getting a new

1 pipeline. So I would like something in the rules
2 that deal with something like that and strengthen
3 an agency like PHMSA so they actually work.

4 I would also like to further what Sherry
5 Couture and Nancy Beaulieu talked about and really
6 recognizing the treaties that are out there.
7 Article 6 of the constitution says that those are
8 binding articles, the 1826 and 1854 treaties. And
9 to even go further, EQB, you know, I know you guys
10 designate what is an RGU, what is a Responsible
11 Governmental Unit. I think that we have got to
12 look at the indigenous people as an RGU. They
13 should be a recognized and Responsible Governmental
14 Unit and recognized as such in all these things
15 that are written now.

16 Okay. The rule that I'm here to look at is
17 4410.0500, subpart 6. And that is the one that
18 basically says two things. It says the EQB chair
19 would be the one that would single handedly
20 designate what is the RGU for a project. And the
21 second thing is, you know, the time period of five
22 days would be eliminated. And I propose we go to
23 letting the whole Board make the decisions on
24 things rather than just one person. Because the
25 EQB chair is appointed by the governor. So when

1 there is a change in governor, you know, there
2 could be a change in political atmosphere and we
3 could get somebody who is not so good with the
4 environment. We've seen that with some of the
5 administrations we have nationally.

6 And the SONAR document says that any change
7 in the RGU would be published in the EQB Monitor
8 for a week. So the public does have contact, you
9 know, with a board member to make a request, but
10 the public doesn't often know the board members.
11 And how could a public member effectively even
12 challenge a rule once it's in place anyway. It's a
13 rule, but rules basically have the force of law.

14 And, also, why eliminate that time period?
15 You know, perhaps you could make the time period 30
16 days so it matches the board meetings. And I would
17 like to finally add that there were 44 comments out
18 of the 190 that asked for this change to be
19 discarded.

20 Again, thanks to the EQB and agencies like
21 the Pollution Control Agency, but we need you to
22 step forward and do even more and really be
23 champions for the environment. Thank you.

24 THE JUDGE: Thank you very much. And
25 Mysti Babineau?

1 (At this time a discussion was held off the record.)

2 MR. CEDARLEAF DAHL: She's not here.

3 THE JUDGE: I'm going to look through my
4 list one more time here. Could you check one more
5 time at the remote locations.

6 MS. HOLLANDER: And I forgot to hand in
7 things I wanted to for my testimony.

8 THE JUDGE: One minute. I will be with
9 you in a minute here.

10 MR. TUMMINELLO: No people are remaining
11 in Brainerd who wish to speak.

12 THE JUDGE: Is there anyone waiting to
13 speak in Duluth?

14 MS. CALE: No, the remaining people here
15 are just interested in listening. All the folks
16 that wanted to comment had the opportunity to.

17 THE JUDGE: What about Detroit Lakes?
18 Nobody there. Okay. Rochester?

19 MS. PRATT: There is no one in
20 Rochester.

21 THE JUDGE: Marshall?

22 MS. KROGSTAD: No one in Marshall, Your
23 Honor.

24 THE JUDGE: Thank you. Is there anyone
25 in this room who has signed up to speak and has not

1 had the opportunity to speak?

2 (No response.)

3 THE JUDGE: And is there anyone in this
4 room who did not sign up to speak but who has
5 decided that you would like to speak?

6 (No response.)

7 THE JUDGE: And is there anyone in this
8 room who has already spoken and feels a strong need
9 to speak again?

10 (No response.)

11 MS. HOLLANDER: I want to add to --

12 THE JUDGE: Right, I understand you have
13 exhibits. And we will do that. Then,
14 Ms. Hollander, before I adjourn, I'm going to grab
15 exhibits from you. And what do you have for me?

16 MS. HOLLANDER: Copies of the pages from
17 the SONAR that reference that 2015 special session
18 that I referenced. And then also a copy of the
19 special session bill that shows the one-time
20 appropriation.

21 THE JUDGE: We certainly have those.
22 But, sure, I'll --

23 MS. HOLLANDER: You also have a copy
24 here now of the special session bill that was
25 referenced in the SONAR. And then also an article

1 on hydrogen fluoride and the dangers.

2 THE JUDGE: So I'm going to call those
3 P5, P6 and P7.

4 MS. HOLLANDER: Thank you. Why are
5 there three? I stapled them together.

6 THE JUDGE: Oh. They are stapled
7 together?

8 MS. HOLLANDER: Yes.

9 THE JUDGE: Then I'm just going to call
10 it P5. So this is P5, Kathy Hollander exhibit.

11 I believe having heard from everybody who
12 wants to speak, I'm reminding everybody that we do
13 have another hearing on June 26th in St. Cloud.
14 And I will also remind you that the comment period
15 for initial comments ends July 16th. The rebuttal
16 period will end July 23rd. The end of business on
17 each of those days in our office is considered
18 4:30. So anything received after 4:30 on those
19 days will not be considered. So 4:30 on July 16th
20 and 4:30 on July 23rd. Thank you for all of your
21 comments. The hearing is adjourned.

22

23 (Whereupon, at 4:47 p.m., May 31, 2019
24 the Public Hearing was adjourned.)

25

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 31st day of May, 2019, at
6 St. Paul, 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 121.

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 4th DAY OF
22 JUNE, 2019.

23 _____
SUSAN M. STROM
24 Court Reporter
25

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