



# Grand Portage Band of Lake Superior Chippewa

## TRUSTLANDS AND NATURAL RESOURCES DEPARTMENT

27 Stevens Road, PO Box 428  
Grand Portage, Minnesota 55605

April 10, 2026

Minnesota Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155  
Submitted via [info.EQB@state.mn.us](mailto:info.EQB@state.mn.us)

**RE:** Written Public Comment; April 15, 2026 Board Meeting, Agenda Item 5: Gas Resource Development Projects Mandatory Category Rulemaking

Dear Environmental Quality Board Members:

The Grand Portage Band of Lake Superior Chippewa submits this written comment in advance of the Board's April 15, 2026 consideration of the proposed mandatory category rules for gas resource development projects (Agenda Item 5). We appreciate the EQB's work developing these rules and the genuine collaborative process staff maintained throughout. The draft rules include provisions specifically requested by Tribal parties (mandatory EAW/EIS triggers for well count, underground injection, and hydraulic fracturing) and we thank the Board and EQB staff for taking those recommendations seriously.

We also recognize that several Tribal requests fall outside the scope of this expedited rulemaking. The Grand Portage Environmental Department is committed to addressing those priorities in future proceedings and looks forward to that continued collaboration.

Within the scope of this rulemaking, we urge the Board to direct staff to make two specific modifications, both of which can be accomplished within the current expedited framework and the May 22, 2026 deadline.

### **I. A Remaining Regulatory Gap the Board Should Address Before Publication**

Two gaps remain in the proposed rules, and they share the same structural defect. First, the proposed rules establish a mandatory EAW threshold at five or more gas wells. A project with one to four conventional extraction wells, no underground injection, and no high-volume hydraulic fracturing - and which does not independently trigger any other existing mandatory category - will trigger no mandatory environmental review of any kind. Second, neither the proposed EQB mandatory category rules nor the DNR's draft gas resource development rules (Minn. R. ch. 6300) include any EAW trigger based on proximity to a drinking water supply management area (DWSMA) with a vulnerable aquifer. A project could be located directly above a DWSMA where the aquifer has been identified as vulnerable to contamination and proceed to DNR permitting without that proximity triggering any environmental review.



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This matters for northeastern Minnesota in particular. The known gas resource near Babbitt is located in Precambrian basaltic rift geology (ancient fractured volcanic rock) within the Lake Superior watershed, a formation for which no peer-reviewed literature exists characterizing water quality impacts from gas extraction. No pre-project baseline water quality data exists for the affected aquifers, and this is not an incidental omission: the fractured crystalline bedrock aquifers of northeastern Minnesota fall outside the geographic scope of Minnesota's statewide ambient groundwater monitoring programs, which focus on sedimentary aquifers in the Twin Cities metropolitan area and southeastern Minnesota. Lake County's County Geologic Atlas has only completed Part A covering geology; Part B, which would include groundwater chemistry, aquifer flow direction, and pollution sensitivity, remains incomplete. No statewide monitoring network samples the deep fractured basalt aquifers of the Duluth Complex. The Pulsar Helium Jetstream #1 well confirmed a gas composition of approximately 75–80% CO<sub>2</sub> and 7–8% helium, with methane present, in a pressurized system at depths exceeding 2,100 feet - a gas system operating in a formation with no documented water quality baseline. The peer-reviewed literature on gas well drilling in fractured rock settings documents consistent risks of brine mobilization, stray gas migration, and aquifer disruption through casing failures and fracture networks. Where no baseline exists, post-project water quality changes cannot be detected, attributed, or remedied. The absence of site-specific science for this formation makes mandatory environmental review more essential, not less - it is the only mechanism that would require baseline characterization before drilling begins.

In both instances, the factual record presents precisely the conditions that trigger environmental review obligations under Minn.Stat. § 116D.04 - potential for significant environmental effects in a sensitive, unstudied formation with no baseline data. The absence of a mandatory category threshold does not eliminate that potential, it simply means it goes unexamined.

Both gaps share the same critical defect. Throughout this process, EQB's responses to Tribal requests pointed to "the EAW form" as the mechanism that would address groundwater impacts, drinking water proximity, cultural resources, and cumulative effects. The Grand Portage Band does not dispute that the EAW form requires those analyses. The problem is that the EAW form is only completed when a mandatory threshold is triggered. A project with four conventional wells may never trigger a threshold. A project located within a vulnerable DWSMA may not trigger any threshold at all under the proposed rules. For those projects, the EAW form is never filled out. The groundwater assessment is never conducted. The drinking water proximity is never formally evaluated. The protections EQB described exist on paper, but they are conditional on a threshold that these projects never meet. That is the gap we are asking the Board to close.

The DNR's own draft permitting rules make this gap visible. DNR Rule 6300.1000, Subpart 5(D) requires permit applicants to submit "a copy of any environmental review documents for the project completed prior to submission of the application, if applicable." That phrase - if applicable - captures exactly the problem. For sub-threshold projects, environmental review documents are never applicable, because no EAW is ever required. DNR Rule 6300.3000, Subpart 8 provides 30-day Tribal notice before a draft permit is published - a genuine protection - but notice of a pending permit is not a substitute for the groundwater assessment, cumulative impacts analysis, and cultural property review that an EAW



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provides. The DNR permitting process proceeds, the Tribal notice goes out, and the permit issues, all without the independent environmental analysis that an EAW would require. Separately, DNR Rule 6300.2000, which lists the protected areas where gas operations are prohibited or restricted, does not include DWSMAs with vulnerable aquifers. They receive the same treatment as any other project location.

## II. Two Specific Modifications Requested Before Publication

### A. Lower the Mandatory EAW Threshold from Five Wells to Three Wells

The Grand Portage Band urges the Board to direct staff to lower the mandatory EAW threshold in Minn. R. 4410.4300, Subpart 38(A) from five wells to three wells. The Band has advocated for a one-well threshold, which is legally available to the Board: every gas resource development project requires a DNR permit under Minn. Stat. § 93.513, and a DNR permit constitutes a “governmental action” under Minn. Stat. § 116D.04, giving the EQB authority under MEPA to set the threshold at one well. The five-well threshold is a policy choice, not a legal constraint.

EQB’s rationale for five wells over three rested on revised per-well production estimates. That reasoning does not address the risks that exist regardless of production volume: well casing integrity failures, produced water generation, groundwater connectivity in fractured Precambrian basalt, and methane and brine migration. The peer-reviewed literature identifies well casing and cementing failures as the primary contamination mechanism in analogous settings, a risk present at the first well drilled, not the fifth. Lowering the threshold to three wells is the only way to ensure that these risks are formally evaluated before drilling begins rather than after.

### B. Add a Mandatory EAW Trigger for Projects Within Drinking Water Supply Management Areas

We ask the Board to direct staff to add a mandatory EAW trigger for any gas resource development project located wholly or partially within sensitive locations such as shoreland, delineated flood plains, resurgent springs, or a DWSMA where the underlying aquifer has been identified as vulnerable to contamination under Minn. R. ch. 4720. This language already exists in Minnesota environmental review rules: Minn. R. 4410.4300, Subpart 29(B) requires a mandatory EAW for animal feedlot facilities in a DWSMA where the aquifer is identified as vulnerable, or within 1,000 feet of a resurgent spring. The proposed gas development rules contain no equivalent provision. There is no principled regulatory basis for applying a sensitive-location trigger to animal feedlots while omitting it for gas extraction projects operating in the same hydrogeological setting.

This modification closes a gap that exists in both regulatory frameworks simultaneously. It requires no change to the DNR siting rules and no new legal authority - it applies a standard already embedded in Minn. R. ch. 4410. It would simply mean that proximity to a vulnerable drinking water source, on its own and regardless of well count, is sufficient to require that an EAW be completed before the DNR permit issues.



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### III. Both Modifications Are Achievable Before the May 22 Deadline

Both modifications involve adjustments to threshold language within the mandatory category framework EQB staff have already developed. Neither requires a change in the scope of the rulemaking, the project type definition, or the responsible governmental unit designation, and both are consistent with the legal authority EQB has exercised throughout this process. We respectfully urge the Board to incorporate these changes before approving publication of the Notice of Intent.

The Grand Portage Band deeply appreciates the substantial effort the EQB staff have invested in this rulemaking and the genuine collaborative process they have maintained throughout. We submit these comments in that same spirit and commit to continuing this work together through the formal public comment period and beyond.

Respectfully submitted,

Krishna Woerheide  
Environmental Director, Grand Portage Band of Lake Superior Chippewa



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**From:** Darren Vogt <[Dvogt@1854treatyauthority.org](mailto:Dvogt@1854treatyauthority.org)>

**Sent:** Tuesday, April 14, 2026 9:53 AM

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**Cc:** Vallen Cook; Krishna Woerheide; cholm; amy.mason; Sonny Myers; Steve Shier; Alaina Bryant

**Subject:** EQB gas rulemaking - Tribal coordination

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Comments on the Environmental Quality Board (EQB) gas rulemaking:

Tribal governments need the opportunity to review and understand draft gas rule language before things move forward into a public process, which is not the proper place to address tribal input in an early and meaningful way. Finalized draft rule language was not made available to tribal staff until 3/19/25, only after multiple requests and expressing concern for the lack of opportunity to review the language. Tribal staff took considerable initiative (thanks to individual staff for taking the lead) by providing comments on 3/24/25. Appropriate time has not been provided for review and to work through tribal staff comments and concerns on final draft rule language, with only a window of 3/19/25 - 4/1/25 (10 business days total for review, comment, and discussion).

It is my understanding that the draft rule addresses few tribal staff concerns and suggestions. A variety of issues remain unresolved, perhaps most importantly for us is the concern for impacts to ceded territories where treaty rights exist. These rights are guaranteed by treaty with the United States. Rule language needs to be strengthened in relation to requirements for environmental review in ceded territories (and near reservations). More work is needed to address and resolve tribal input.

Thank you.

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