MINNESOTA
ENVIRONMENTAL QUALITY BOARD

October 2026 Environmental Quality Board meeting

Wednesday, October 21 from 1 – 4:00 p.m.

Join in person or online

- In person: 520 Lafayette Road, St. Paul, MN 55155, lower level conference rooms
- Online: For the meeting link and more information, visit the board meeting webpage

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Participating in board meetings

Attending in person

The Environmental Quality Board (EQB) will convene its meeting in person at the Minnesota Pollution Control Agency St. Paul office building. All visitors must sign in at the front desk.

Transportation options:

- Bicycle: Visit the Saint Paul Bike Map webpage for route information. Outdoor bicycle parking is available to the left of the front doors near the loading dock.
- Transit: Use Metro Transit's Trip Planner to determine the best routes and times.
- Car: You may park in a Visitor Parking space in the parking lot just outside the front door, or park in one of the visitor lots. The visitor lots are the Blue Lot (Olive St. and University Ave.) and the Jupiter Lot (on Grove St. across from the Ramsey County Law Enforcement Center); please see the parking map. Parking in these lots is free of charge. You must register your vehicle at the front desk upon arrival.

Attending virtually

Members of the public may join the meeting virtually using the Teams link at the board meeting webpage link above. Please review the Guide to Teams Participation for additional information.

Accessibility

Please contact Environmental Quality Board (EQB) staff at least one week prior to the event at info.EQB@state.mn.us to arrange an accommodation. Meeting materials can be provided in different forms, such as large print, braille, or on a recording.

Public engagement opportunities at EQB meetings

EQB encourages public input and appreciates the opportunity to build shared understanding with members of the public. The opportunities for public engagement for this meeting are below.

Public comment opportunities at EQB meetings

EQB encourages public engagement and appreciates the opportunity to build shared understanding with members of the public. There are multiple ways to engage with staff and board members. One important way is to provide public comment at a board meeting.

The public comment period(s) at a board meeting provide an opportunity for members of the public to inform the board about their views related to the specific item under discussion or something related to the board's purview or authority. Tips for providing comments:

- Ensure that your comments are relevant and specific to the topic you are addressing.
- Say what you want the board to know or consider in moving forward with a piece of work.
- Identify a specific action that you want the Board to take.

If you have a question for the board or EQB staff, it will be noted by staff who will get back to you at a later time. This ensures that we have enough time at a meeting for all commenters to provide input to the board and that your questions can be fully considered.

Oral public comment

At each meeting, the agenda will show when the board will accept oral public comment. The chair will use their discretion to direct public comment and ensure the board's ability to effectively conduct business.

Procedure for giving oral public comment:

- **Virtual:** when prompted, use the "raise hand" feature in Teams, located at the top of your screen.
- **In person:** sign up at the welcome table before the meeting starts.
- When the chairperson calls on you to speak:
    - Introduce yourself before beginning your comment.
    - Please keep your remarks to the agenda item at hand.
    - Please be respectful of board members, staff, and other meeting participants. The chair, vice-chair, or other presiding officer will not tolerate personal attacks.
- The chairperson may limit commenters' time for remarks to ensure there is equal opportunity for the public to comment. Generally, your remarks will be limited to two (2) minutes.
- The chairperson may discontinue a commenter's time to speak if the comments are not reasonably related to the agenda item at hand.

Written public comment

You may submit written comment to EQB by emailing your letter to info.EQB@state.mn.us or mailing to: Environmental Quality Board, 520 Lafayette Road, Saint Paul, MN 55155. Comments must be received by EQB staff **by noon the day before the meeting**.

Staff will compile letters, make them available to members and the public, and attach them to the public record. Any written comments received after this deadline will be included in the next meeting packet.

Please only submit information that you wish to make available publicly. EQB does not edit or delete submissions that include personal information. We reserve the right to not publish any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior.

Agenda

Note that all listed times are estimates and are advisory only.

1. Welcome and roll call (1:00 pm)

Nancy Daubenberger – Chair, EQB; Commissioner, Department of Transportation

2. Approval of consent agenda (1:10 pm)

- Meeting minutes from the August 19, 2026, Environmental Quality Board meeting on packet page 5
- Preliminary agenda for the October 21, 2026, Environmental Quality Board meeting

3. Executive Director's report (1:15 pm)

Catherine Neuschler – Executive Director, EQB

4. Adoption of mandatory categories for gas resource development projects (1:20 pm)

Type of item: Decision

Summary: In 2024, the Minnesota legislature directed or allowed multiple state agencies to "adopt rules governing gas and oil exploration or production." (Minn. Stat. § 93.514). On April 15, 2026, the board reviewed draft rules for gas resource development projects prepared by the EQB staff and authorized the Executive Director to move forward with a notice of intent to adopt expedited rules.

The notice of intent to adopt rules establishing mandatory environmental review categories for gas resource development projects was published in the Minnesota State Register on May 18, 2026, with a public comment period ending July 2, 2026.

In response to public comments, and to legislation (Laws of Minnesota 2026, Chapter 127, Article 2), the EQB staff have drafted modifications to the proposed rules as published. The staff recommend that the Board adopt the rules as modified, and delegate authority to the Executive Director to complete the process of adopting the rules.

This packet includes:

- A resolution to adopt the rules and allow the Executive Director to complete the rulemaking process
- The Rule Summary and Justification document, dated April 2026, prepared when the rules were proposed
    - An addendum describing and justifying the rule modifications and including a response to comments
- A draft of the modified rule language prepared by the Revisor (AR4945, dated October 5, 2026)
- The proposed Order Adopting Expedited Rules

Public comment: EQB will take public comment specifically on this item.

Outcome: The Board adopts the rule or directs necessary changes.

Presenter: Jesse Krzenski – Environmental Review Program Director, EQB

Break (2:20 pm / 5 minutes)

5. Application for variance for Hillview Business Park (2:25 pm)

Type of item: Decision

Summary: Maplewood Development and Construction is proposing to construct the Hillview Business Park, a 62-acre, 972,200 square foot warehouse/distribution/office park development in Arden Hills. An environmental impact statement (EIS) is required for the project because it exceeds the threshold for industrial, commercial, and institutional facilities set forth in Minn. R. 4410.4400, subp. 11. The City of Arden Hills is the Responsible Governmental Unit (RGU) for the EIS.

Under Minn. R. 4410.3100, no governmental approvals can be issued and no construction can begin until the EIS is complete, unless the proposer applies for, and is granted, a variance from the prohibition. On August 6, 2026, the proposer submitted an application for a variance requesting to commence certain construction activity – namely the demolition of various structures.

As required, on behalf of the EQB chair, the staff published a notice of variance application in both the EQB Monitor (Volume 50, Number 24) and in the public notices section of the Shoreview Press on August 25, 2026, commencing a 20-day comment period that ended September 14, 2026. The staff also made the variance application and additional materials available on the EQB website. Several public comments were received.

Based on the contents of the application and the public comments, the staff recommend that the board deny the request for a variance.

This packet includes:

- A memo explaining the staff's recommendation
- A proposed resolution adopting the Findings of Fact, Conclusions of Law, and Order denying the request for a variance
- A proposed Findings of Fact, Conclusions of Law, and Order denying the request for variance

Public comment: EQB will take public comment specifically on this item.

Outcome: The Board adopts the Findings of Fact, Conclusions of Law, and Order; or rejects them and directs further action.

Presenter: Jesse Krzenski – Environmental Review Program Director, EQB

6. Determinants of health (3:10 pm)

Type of item: Informational

Summary: The Minnesota Department of Health will provide a high-level overview of public health frameworks and social determinants of health, the non-medical conditions that profoundly shape lifelong health, well-being, and quality of life. This presentation is part of a series of health-related presentations to help establish a shared understanding of health impacts. This supports EQB's FY27 work to research ways to more consistently encourage gathering information on human health in environmental review documents.

Outcome: Board members will have the opportunity to learn and discuss information on determinants of health.

Presenter: David Bell – Environmental Review Planning Director, MPH, Minnesota Department of Health

7. Public comment (3:45 pm)

The board welcomes any additional oral public comment. Please see guidance and procedures on packet page 2.

8. Closing and adjournment (4:00 pm)

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

August 2026 Environmental Quality Board meeting

Wednesday, August 19, 2026 | 1:00-4:00 p.m. | 520 Lafayette Road, St. Paul, MN 55155, lower level conference rooms and online via Teams.

Minutes

1. Welcome and roll call

Chair Nancy Daubenberger called to order the regular meeting of the Environmental Quality Board (EQB).

Members present: Peter Bakken, Joseph Barten, Nancy Daubenberger, Brian Dingmann, Tamar Gronvall, Rebecca Haug, Daniel Katzenberger, Katrina Kessler, Nicholas Martin, Angie Smith, Sarah Strommen

Members excused: Brooke Cunningham, Julia Dreier, Todd Holman, Robin Hutcheson, Emily Larson, Thom Petersen, Matt Varilek

Proxies present: Forest Eidbo (for Dreier), Myra Kunas (for Cunningham), Peter Lindstrom (for Hutcheson), Stephan Roos (for Petersen)

EQB staff present: Catherine Neuschler, Stephanie Aho, Rebeca Gutierrez-Moreno, Hazel Houle, Jesse Krzenski, Sarah Lerohl, Sophia Musiak, Kayla Walsh

Approval of consent agenda

- Meeting minutes from June 17, 2026, Environmental Quality Board meeting
- Proposed agenda for August 19, 2026, Environmental Quality Board meeting

Motion: Board Member Kessler moved to approve the consent agenda; Board Member Katzenberger seconded.

In favor: Barten, Daubenberger, Dingmann, Gronvall, Haug, Katzenberger, Kessler, Martin, Smith, Strommen

Opposed: none

Excused: Bakken, Cunningham, Dreier, Holman, Larson, Petersen, Varilek

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2. Executive Director's report

Catherine Neuschler – Executive Director, EQB

- AUAR
  - AUAR guidance on the EQB website has been updated and a training was held on July 29.
- Pesticide Management Plan status report
  - Under Minn. Stat. 18B.045, by September 1 of each even-numbered year, the Minnesota Department of Agriculture (MDA) must submit a status report on the state's pesticide management plan to the EQB for review and then to the House of Representatives and Senate committees with jurisdiction over the environment, natural resources, and agriculture. This report was added to the packet materials. Rebeca will review the report, and MDA has requested feedback by Tuesday, August 25.
- Variance application
  - EQB recently received a variance application. A project undergoing an EIS is requesting a variance from the prohibition on construction in order to do some demolition prior to the EIS being complete. This is the first variance application EQB has received since 2004. The variance process is laid out in rule. A notice will be published in the August 25 Monitor, which will start a 20-day comment period. Then the Board will have to vote to grant or deny the variance at the October meeting. Staff are reviewing and will have a recommendation for the Board at that time.
- Events
  - Staff will be at the State Fair in the Department of Natural Resources (DNR) building on Thursday, September 3 for Pollinator Day, and there's a pollinator presentation at the Eco Experience at 1:00 p.m.
  - Staff will be at the Minneapolis Monarch Festival on September 12.

Discussion: Board member Smith stated that she will recuse herself from any discussion or actions related to the variance, as she is working on that project in her professional capacity.

3. Office of Enterprise Sustainability annual update

Presenter: Marcus Grubbs – Director, Office of Enterprise Sustainability, Minnesota Department of Administration

Type of item: Informational

Summary: Executive Order 19-27 directs Minnesota's state government to "make efficient use of water and energy, reduce greenhouse gas emissions, and ensure that goods and services procured by the government are sustainable". The Office of Enterprise Sustainability is required to publish an annual report that is shared with the public and presented to the EQB. Sustainability metrics can be found at the Office of Enterprise Sustainability webpage.

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Discussion:

- This is an excellent example of cross agency collaboration so that agencies don't have to invent individual programs and new methods.
- Governor Walz noted that the Department of Administration has saved state agencies more than $100 million in energy costs.

Outcome: The Board is informed and the requirements of the executive order are met.

4. EQB FY27 Workplan

Presenter: Catherine Neuschler – Executive Director, EQB

Type of item: Decision

Summary: The Executive Director presented the proposed organizational workplan for FY27.

Public comment: There were no comments

Motion: Board Member Katzenberger moved to adopt the resolution approving the FY27 Workplan. Board Member Kessler seconded.

In favor: Bakken, Barten, Daubenberger, Dingmann, Gronvall, Haug, Katzenberger, Kessler, Martin, Smith

Opposed: none

Excused: Cunningham, Dreier, Holman, Larson, Petersen, Strommen, Varilek

Outcome: The Board reviewed and approved the organizational workplan and approved authority to implement it, fulfilling the requirement under Minn. Stat. 116C.03, Subd. 6, to adopt an annual work program.

5. Public comment

- Patrice DeGray: Asked about the timeline of an EAW appeal of denial of a petition. Town residents where the project is proposed have hired an attorney, but they are unsure about what the next steps are.
  - EQB response: the usual timeline for appeals is that they need to be filed within 30 days after the notice of the decision is published in the EQB monitor. For additional questions, reach out the EQB's Environmental Review staff at 651.757.2873 or by email at env.review@state.mn.us.

6. Closing and adjournment

Having reached the end of the agenda, the Chair asked if there was any further business.

Adjournment:

With no further business, the Chair adjourned the meeting.

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MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Memo

Date: October 9, 2026

To: EQB Members

From: Jesse Krzenski, Environmental Review Program Director

RE: Gas resource development projects environmental review mandatory category rulemaking

EQB staff recommend that the board approve and adopt the final rules to require mandatory environmental review for certain gas resource development projects.

Specifically, the staff recommend that the Board approve the attached resolution approving and adopting the rules and allowing the Executive Director to move forward with the process of submitting the rules to the Court of Administrative Hearings for review and to take all other actions to adopt the rules.

Background and procedural history

In 2024, the Minnesota legislature passed a law that prohibited the production of gas or oil in the state unless a permit was obtained from the Department of Natural Resources (DNR). (Laws of Minnesota 2024, chapter 116, Art. 3, Sec. 23, codified as Minn. Stat. § 93.513). The legislature also directed or allowed multiple state agencies to "adopt rules governing gas and oil exploration or production." (Minn. Stat. § 93.514).

The EQB was authorized to "adopt or amend rules to establish mandatory categories for environmental review as they pertain to oil and gas production." The legislature provided that any agency adopting rules under this authority was to use the expedited rulemaking procedure in Minn. Stat. § 14.389, and that the agency must publish the notice of intent to adopt expedited rules within 24 months (May 22, 2026).

The Minnesota Environmental Policy Act (MEPA) gives the EQB the authority to adopt rules for the environmental review program. More specifically, Minn. Stat. § 116D.04, Subd. 2a, paragraph (b) directs the board to, "by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets must be prepared as well as categories of actions for which no environmental review is required under this section."

On April 16, 2025, the board resolved to use the authority granted in Minn. Stat. § 93.513 to "adopt or amend rules to establish the mandatory categories for environmental review for gas production using the expedited rulemaking process" and directed staff to begin the process of developing the rules. (Board members may wish to refer to the April 2025 board packet or meeting video.)

On April 15, 2026, the board resolved to "initiate expedited rulemaking under Minn. Stat. § 14.389 to amend the environmental review rules to establish mandatory categories for gas resource development projects" and authorized the Executive Director to move forward with the notice of intent to adopt expedited rules. (Board members may wish to refer to the April 2026 board packet or meeting video.)

The notice of intent to adopt rules establishing mandatory environmental review categories for gas resource development projects was published in the Minnesota State Register on May 18, 2026, with a public comment period ending July 2, 2026.

On May 27, 2026, while the comment period was in progress, new legislation (Laws of Minnesota 2026, Chapter 127, Article 2; aka "2026 Gas Law") became effective that revised multiple laws related to gas resource development.

Work since close of comment period

EQB received multiple comments (public comment, comment attachments) suggesting changes to the proposed rules. Since the close of the comment period, staff reviewed and evaluated the comments, including coordinating with other agencies as needed.

Staff also held two meetings with Tribal environmental staff to provide information on the rulemaking process.

Proposed modifications

Based on the legislative changes, EQB staff recommend that the rules be modified to reflect certain changes made in the 2026 Gas Law. Based on input received during the public comment period, EQB staff also recommend the addition of a threshold requiring an EAW for any project located in a groundwater DWSMA.

These recommendations were provided and discussed at the September 2026 ERIS meeting, and Board members may wish to refer to the ERIS packet or meeting video.

Several proposed modifications are made in response to the 2026 Gas Law. This includes replacing the proposed definition for a "gas well" with the definition for "gas well" created by legislation. It also includes removing the proposed EAW and EIS thresholds for gas resource development projects that undertake activities that have now been prohibited by legislation. The mandatory category thresholds for which staff are recommending be removed from the proposal are:

- Proposed mandatory EIS for high-volume hydraulic fracturing
- Proposed mandatory EAW for underground injection for waste disposal
- Proposed mandatory EAW for gas production of gas created in the subsurface via underground injection

One additional modification is proposed specifically in response to the comments, particularly the comments made by the Grand Portage Band and the Intertribal Helium Task Force. This modification is to add a location-based threshold requiring a mandatory EAW for gas resource development projects located within groundwater-based drinking water supply management areas.

Implementation of the staff recommendations would result in a final rule that requires EAWs for projects of the following type:

- Any gas resource development project consisting of five or more gas wells
- Any gas resource development project (of any size) that will be located in:
    - Areas where DNR prohibits certain kinds of activities (surface disturbance or surface disturbance and directional drilling)
    - A groundwater DWSMA

Detailed explanation of the staff-recommended modifications and a justification for each is provided in the response to comments addendum to the Rule Summary and Justification memo. The response to comments also explains why EQB staff are not recommending other changes that were suggested in the public comments.

Next steps in expedited rulemaking

Following Board approval of the resolution to adopt the rules, the EQB Executive Director will prepare the required rulemaking documents and send them to the CAH for review. The Administrative Law Judge (ALJ) has 14 days to approve or disapprove the rule. If the ALJ requires or recommends changes in order to approve the rule, the judge must state the reasons for disapproval. The Executive Director would then make the changes needed for approval and re-submit the rule. Once no changes are required, the Executive Director will sign and file the Order Adopting Rules with the CAH. Various administrative processes will follow, ending with publication of the Notice of Adoption in the State Register. The rules become effective upon publication.

Staff recommendation

EQB staff recommend the Board vote to pass the resolution to adopt the rules and allow the Executive Director to complete the rulemaking process. Attached to the resolution are the materials that would be submitted to the CAH if the Board approves the resolution. Those include:

- The proposed Order Adopting Expedited Rules
- The Rule Summary and Justification document, dated April 2026, prepared when the rules were proposed
    - An addendum describing and justifying the rule modifications and including a response to comments
- A draft of the modified rule language prepared by the Revisor (AR4945, dated October 5, 2026)
- All comments received from public comment period

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

Amendment to rules governing the environmental review program, Minnesota Rules Chapter 4410, establishing mandatory categories for gas production

The Minnesota Environmental Policy Act, Minnesota Statutes §§ 116D.04 and 116D.045, authorizes the Environmental Quality Board ("EQB" or "Board") to adopt rules governing the environmental review program.

In 2024, the Minnesota Legislature gave the EQB and other agencies permissive authority to adopt rules governing gas and oil production. *See* Laws of Minnesota 2024, chapter 116, article 3, section 23, codified as Minnesota Statutes, § 93.514.

The EQB was given the authority to adopt or amend rules "to establish mandatory categories for environmental review as they pertain to gas and oil production." Minn. Stat. § 93.514(a)(3). The statute also provided that "[a]n agency adopting rules under this section must use the expedited procedure in section 14.389" and that the agency must "publish notice of intent to adopt expedited rules within 24 months of May 22, 2024." Minn. Stat. § 93.514(b).

Pursuant to this grant of authority, on April 16, 2025, the Board resolved to initiate rulemaking to establish mandatory categories for environmental review applicable to gas production. In response to this resolution, EQB staff developed draft rule amendments and the Rule Summary and Justification Memo, a document summarizing the overall nature and effect of the draft rules (hereinafter, the "justification document").

On April 15, 2026, the Board reviewed the proposed draft rule (Revisor of Statutes file number R-04945) and resolved to initiate expedited rulemaking under Minn. Stat. § 14.389 to amend the environmental review rules to establish mandatory categories for gas resource development projects. The resolution authorized the Executive Director to sign the EQB's Notice of Intent to Adopt Expedited Rules Without a Public Hearing, based on the proposed rule and the justification document.

On May 18, 2026, the EQB published the Notice of Intent to Adopt Expedited Rules in the *State Register* (50 *SR* 1313), with a public comment period closing on July 2, 2026.

While the public comment period was open, the Legislature adopted new legislation affecting gas resource development projects, and the Governor approved this legislation on May 26, 2026. Laws of Minnesota 2026, chapter 127, article 2, hereinafter "2026 Gas Law." The 2026 Gas Law did not change the EQB's rulemaking authority but established other new conditions pertaining to gas production projects.

The EQB received multiple written comments on the proposed rules.

The EQB staff reviewed the 2026 Gas Law and the public comments, prepared a supplement to the justification document that included a response to the comments, and recommended revisions to the proposed rules. EQB Board members on the Environmental Review Implementation Subcommittee (ERIS) reviewed the proposed revisions at a meeting September 16, 2026, and the Board reviewed the proposed revisions at the October 21, 2026, Environmental Quality Board meeting.

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Based on the above:

The Board resolves to approve and adopt the Expedited Permanent Rules in the Revisor of Statutes draft, file number AR4945, dated October 5, 2026 under the Board's authority as described above.

The Board further resolves that Catherine Neuschler, the Executive Director of the EQB, is hereby authorized to submit the rules to the Court of Administrative Hearings for review, sign the Order Adopting Rules, to modify the rules as needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rule, and to perform other necessary acts to give the rules the force and effect of law.

The Board approved and adopted this resolution on October 21, 2026.

_____ Date: _____

Nancy Daubenberger, Chair
Minnesota Environmental Quality Board

Attachments:

- Proposed Order Adopting Rules (unsigned)
- Rule summary and justification (including an addendum with EQB staff's recommended revisions and response to comments)
- Expedited Permanent Rules (AR4945, dated October 5, 2026)
- All comments received

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MINNESOTA
ENVIRONMENTAL QUALITY BOARD

(Proposed) Order Adopting Expedited Rules

Minnesota Environmental Quality Board

Adoption of Rules Relating to the Environmental Review Program, establishing mandatory categories for gas resource development projects, Minnesota Rules, Chapter 4410, Revisor's ID Number R-4945, CAH Docket Number 23-9008-41570

BACKGROUND INFORMATION

1. The Minnesota Environmental Policy Act, Minnesota Statutes §§ 116D.04 and 116D.045, authorizes the Minnesota Environmental Quality Board to adopt rules governing the environmental review program

2. In 2024, the Minnesota Legislature authorized the Minnesota Environmental Quality Board ("EQB") to adopt amendments to its rules to establish mandatory categories for environmental review for gas and oil production. (Minn. Stat. § 93.514)

3. The Legislature directed EQB to use the expedited rulemaking process in Minn. Stat. § 14.389, exempted rules adopted under this authority from the 18-month time limit in Minn. Stat. 14.125, and required the EQB to publish notice of intent to adopt expedited rules within 24 months of May 22, 2024. (Minn. Stat. § 93.514(b) (2025)).

4. The EQB has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law, that are applicable to expedited rules under Minn. Stat. § 14.389.

5. The EQB authorized proposing the rules at its meeting on April 15, 2026. A quorum was present. A copy of the EQB's authorization to propose the rules is attached. Attachment 4.

6. The attached Rule Summary and Justification memorandum, including an addendum responding to comments, describes the rule changes and reasoning. Attachment 2.

7. The EQB published the proposed rules for public comment in the *State Register* on May 18, 2026 (50 SR 1313), with a public comment period closing on July 2, 2026.

8. On May 26, 2026, the Governor approved legislation adopted as Laws of Minnesota 2026, chapter 127, article 2 ("2026 Gas Law") which made changes to the gas regulatory program, but which did not change EQB's rulemaking authority.

9. The EQB received comments through the Court of Administrative Hearings comment portal. These included five written comments on the rules from interested organizations; 199 comments from members of the public that were gathered by Water Legacy and identified substantially similar specific problems with the proposed rule; and five separate e-comments from members of the public. No person requested notice of submission to the Court of Administrative Hearings. While some commenters asked for a public hearing, the authorizing legislation did not reference Minn. Stat. § 14.389, subd. 5. Attachment 3.

10. The EQB made the following changes to the proposed rules in response to the comments and to address the changes made by the 2026 Gas Law, for the reasons described in the attached Rule Summary and Justification memorandum addendum. Attachment 1.

    a. Proposed Minn. R. 4410.0200, subp. 32d (the definition of "gas well") is revised to refer to the new statutory definition (Minn. Stat. § 103I.005, subd. 10b).

    b. Proposed Minn. R. 4410.0200, subp. 38a, a definition of "high-volume hydraulic fracturing" is struck in its entirety.

    c. Proposed Minn. R. 4410.4300, subp. 38, item D, requiring an environmental assessment worksheet for a gas resource development project designed to include one or more class II underground injection wells, was struck and replaced by a requirement for an environmental assessment worksheet for any project with was wells located within a groundwater drinking water supply management area delineated under chapter 4720.

    d. Proposed Minn. R. 4410.4300, subp. 38, item E, requiring an environmental assessment worksheet for a gas resource development project designed to produce gas created by injecting a substance into the subsurface to create or stimulate a chemical reaction, is struck in its entirety.

    e. Proposed Minn. R. 4410.4400, subp. 29, requiring an environmental impact statement for construction of a gas resource development project designed to use high-volume hydraulic fracturing techniques, is struck in its entirety.

11. The Revisor of Statutes has incorporated these changes into a copy of the rules (AR4945) dated [October 5, 2026]. Attachment 1.

12. The EQB finds that final rule is not substantially different from the proposed rules under the standard in Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c).

13. The Board adopted the rules with the proposed changes at its meeting on October 21, 2026. At this meeting, a quorum was present, and the undersigned was authorized to sign this order. A copy of the EQB's authorization is attached. Attachment 4.

14. The rules are needed and reasonable.

ORDER

The above-named rules, in the form published in the *State Register* on Monday, May 18, 2026 (50 SR 1313), as modified by the EQB, are adopted under the authority of the EQB in Minnesota Statutes §§ 116D.04 and Minn. Stat. § 93.514.

Date

Catherine Neuschler
Executive Director

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Environmental review: Mandatory category for gas resource development projects

Rule summary and justification

Purpose of rulemaking

The purpose of this rulemaking is to establish new mandatory categories requiring the completion of environmental review – either an environmental assessment worksheet (EAW) or environmental impact statement (EIS) – for certain projects that involve the production of gas.

Legislative Directive

In 2024, the Minnesota legislature passed a law that prohibited the production of gas or oil in the state unless a permit for such production was obtained from the Department of Natural Resources. (Minn. Law 2024, Art. 3, Sec. 24, codified as Minn. Stat. § 93.513).

The legislation also recognized the need to develop a regulatory framework for gas and oil exploration and production. It established a Minnesota Gas and Oil Resources Technical Advisory Committee (GTAC), to develop recommendations "to guide the creation of a temporary regulatory framework" for permitting gas and oil production in the state, and directed or allowed multiple state agencies to "adopt rules governing gas and oil exploration or production." (Minn. Stat. § 93.514).

The Environmental Quality Board (EQB) was authorized, but not required, to "adopt or amend rules to establish mandatory categories for environmental review as they pertain to oil and gas production." The legislature provided that any agency adopting rules under this authority was to use the expedited rulemaking procedure in Minn. Stat. § 14.389, and that the agency must publish the notice of intent to adopt expedited rules by May 22, 2026.

Background on mandatory categories in environmental review

The Minnesota Environmental Policy Act (MEPA), Minnesota Statutes, chapter 116D, established Minnesota's environmental review program. MEPA gives EQB the authority to adopt rules; specifically, Minn. Stat. § 116D.04, Subd. 2a., paragraph (b) directs the board to, "by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets must be prepared as well as categories of actions for which no environmental review is required…".

The rules that lay out these "categories of action" are referred to as the mandatory category rules and are found in Minn. R. 4410.4300 for environmental assessment worksheets (EAWs) and Minn. R. 4410.4400 for environmental impact statements (EISs). If a project is of a type listed within the mandatory categories and meets or exceeds the thresholds defined by the rules, then environmental review is required. According to a Statement of Need and Reasonableness (SONAR) for rule amendments adopted in 1982, the establishment of these mandatory categories was "to establish greater predictability to the process, i.e. if parties know at the onset that an EAW or an EIS must be prepared, they can proceed with environmental review immediately."

The mandatory categories require completion of an EAW or EIS depending on the project's potential for significant environmental effects. For projects that the EQB has determined *have* the potential for significant environmental effects, an EIS must be completed. An EAW must be completed for projects that *may* have the potential for significant environmental effects. In addition, the mandatory category rules establish the responsible governmental unit (RGU) that is to prepare and review the environmental documents for each project type.

The environmental documents (whether an EAW or EIS) are meant to be "guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid and minimize adverse environmental effects and to restore and enhance environmental quality" (Minn. R. 4410.0300, subp. 3).

The scope of this rulemaking is, per the legislative direction, *solely* the establishment of mandatory categories for environmental review, and per the Board resolution, *solely* for gas production. All other parts of the environmental review process – including content, form, preparation, publication and distribution, decisions, etc. – are not changing.

Other components of the regulatory framework for gas production

This mandatory category rulemaking is being conducted at the same time as the Department of Natural Resources (DNR) is developing rules to establish a permitting system for gas production, based on the same legislative directive. Because of the interaction between environmental review and permitting actions, the environmental review rules need to effectively coordinate with the regulatory program for gas resource development.

Changes to those proposed regulations could impact the types of projects that should undergo environmental review, or how those are identified in rule, and also potentially who should be the RGU responsible for reviewing those projects. Acknowledging these interactions, EQB staff have been closely collaborating with staff from the DNR.

Rulemaking Process

Minnesota's environmental review program does not currently contain any mandatory categories related to gas production. This is likely because traditional gas production – i.e., extraction of natural gas – has not occurred or been seen as likely to occur within the state. The legislative directive permitted, rather than required, EQB to adopt rules to establish mandatory categories for gas and oil production.

In April 2025, the board passed a resolution "to use the authority granted in Minn. Stat. § 93.514 to adopt or amend rules to establish mandatory categories for environmental review for gas production using the expedited rulemaking process."[1] The board then directed staff to begin the process of developing the rules and to bring forward a notice of intent to adopt expedited rules in order to meet the timelines laid out in Minn. Stat. § 93.514.

Coordination and Engagement

Following the board direction, EQB staff began to gather information to develop mandatory category rules. The staff conducted coordination with Tribal staff, stakeholder engagement, and provided updates to the board throughout the rule drafting process. Details on this coordination and engagement are provided in Attachment 1 (Tribal coordination) and Attachment 2 (engagement).

[1] No oil production is expected or likely in Minnesota, and EQB has and retains the authority to develop categories for oil production in the future as needed.

Proposed Rule Amendments

In documentation for the 1982 rule amendments, the EQB identified that when developing mandatory categories, "four major questions must be considered:

1. Is there a need for a mandatory category relating to that type of project or that impact;
2. What is the proper qualitative measure of that type of project or that impact (for example, should size of industrial facilities be measured in sq. ft. of ground area occupied, sq. ft. of floor space, cost of the facility, type of end product, type of waste products, number of employees, etc.);
3. What is the proper quantitative measure of that type of project or that impact, i.e. how many units of whatever was selected as the basis of measurement…; and,
4. Is the threshold administratively manageable?"

In addition, developing a mandatory category requires establishing an RGU to complete the review.

These questions remain relevant and this memo lays out how EQB staff considered them.

Recent mandatory category revisions and additions

When beginning development of this rule, EQB staff reviewed rule documents for the establishment of existing mandatory categories, to understand the environmental effects that were considered and how any numeric thresholds were developed.

It is relatively rare in recent years for EQB to establish an entirely new mandatory category type *and* develop thresholds.

Amendments to mandatory categories

Most updates to mandatory category thresholds have been revisions that relied on data and information from the application of the existing rules; made modifications based on existing thresholds; or aligned with levels set in other rules or permitting programs. For example:

- In 2019, EQB amended the highway projects mandatory category (Minn. R. 4410.4300, subp. 22, item B), changing the threshold for construction of additional through lanes or passing lanes on an existing road from one mile to two miles, based on a historical data review (conducted by the Minnesota Department of Transportation) of projects that completed an EAW, which found that projects between one mile and two miles did not have the potential for significant environmental effects.
- In 2011, EQB added a threshold to the air pollution mandatory category (Minn. R. 4410.4300, subp. 15) requiring review at 100,000 tons per year of greenhouse gas emissions. The thresholds in the air pollution category have been set based on the U.S. Environmental Protection Agency's Clean Air Act permitting requirements.
- In 2006 and 2007, EQB made amendments including adding mandatory categories for projects in shoreland, varying the thresholds based on existing thresholds applicable to the same project types in non-shoreland. EQB also updated thresholds in the wastewater mandatory category based on the Minnesota Pollution Control Agency's experience implementing that category.

New mandatory category creation

In 2019, EQB added thresholds specific to silica sand projects into some existing mandatory categories, making permanent the thresholds established by the legislature in Minn. Stat. § 116C.991.

In adding the thresholds within the existing mandatory categories for transfer facilities (Minn. R. 4410.4300, subp. 8, item C) and storage facilities (Minn. R. 4410.4300, subp. 10, item H), EQB identified the following potential environmental impacts in the rulemaking SONAR:

- *[P]rocessing, transloading and storage of silica sand have the potential for causing environmental impacts relating to land use, transportation, noise, facility lights, air quality, recreation, economic, and water quality and water quantity…transloading, processing and storage facilities may be very large-scale, which in some cases may increase the potential for environmental impacts including fugitive dust emissions, transportation related issues and water pollution issues.*

In adding thresholds for silica sand within the existing mandatory categories for nonmetallic mineral mining (Minn. R. 4410.4300, subp. 12, item D), EQB identified the following potential environmental impacts:

- *The extraction, mining, and ancillary features associated with extraction and mining of silica sand deposits have the potential for significant environmental effects relating to land use, transportation, noise, air quality, water quality and vibrations. Activities and features associated with the extraction and mining processes and mine area land disturbance directly relate to the need for environmental review due to the potential for significant environmental effects caused by these activities. Specifically, the activities include truck transport…which has the potential to result in increased traffic impacts, road degradation, increased noise, safety concerns and increased dust…Additional activities and features associated with the extraction and mining process that have the potential to change the way-of-life include lights, noise, and hours of operation… Mine activities and features with the potential for significant environmental effects include: clearing the mine site, removal of vegetation, compaction, stripping, grading, grubbing, filling, storing materials, settling ponds, berms, constructed buildings associated with mine activities, haul roads and refuse piles.*

In both categories, EQB identified the specific thresholds as being reasonable because they were established by the legislature and because a 2015 EQB survey of local governments identified general agreement with the specific thresholds.

Mandatory category rulemaking considerations

In developing mandatory category thresholds, EQB has made reasonable choices based on the available information concerning environmental effects. Because gas production does not yet exist in Minnesota, information is limited and there are not any existing thresholds that can be used. EQB's proposed mandatory category thresholds therefore rely on multiple factors, including:

- An understanding of the environmental effects identified as important or significant in past mandatory category rulemakings.
- Available information about gas production projects and their environmental effects, both quantitative and qualitative.
- The likelihood of public interest in gas production projects.
- The program's objectives (as laid out in Minn. R. 4410.0300) to: provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project; provide the public with systematic access to decision makers; delegate authority and responsibility for environmental review to the governmental unit most closely involved; reduce delay and uncertainty in the environmental review process; and eliminate duplication.

Need for a mandatory category for gas production

EQB staff have determined that there is a need for a mandatory category for gas production due to the likelihood of these types of projects; the types of environmental effects that could result; and the need for an approach specific to gas production.

Gas production potential

There is demonstrated potential for production of both helium and hydrogen gases within the state. In February 2024, a helium exploration company (Pulsar Helium) confirmed that the site of a previous accidental discovery of helium gas in the northeastern part of the state appeared to contain commercial quantities of helium gas. Pulsar suggested that it might be able to start commercial production of helium, along with carbon dioxide, within twelve to eighteen months.

At the same time, state agency staff became aware that other exploration companies were identifying drilling targets for geologic hydrogen in Kansas and Nebraska. These targets were located along a geologic formation known as the Midcontinent Rift System. The Midcontinent Rift System extends northwards into Minnesota, from the Iowa border up to Lake Superior. The United States Geological Survey has identified the Midcontinent Rift System as one of the top two prospective regions for geologic hydrogen production in the United States.

Minnesota has not previously been the site of industrial extraction of gas, although it has a long history of other extractive industries, i.e., mining of sand, gravel, and iron ore. Because gas production is new to Minnesota, the need and desire for information about the possible impacts, especially of larger projects, is likely to be high among both the public and permitting authorities at all levels of government. The environmental review process is intended to inform decision makers and the public, and adding a mandatory category threshold for these projects helps ensure this objective is accomplished.

Environmental effects of gas production

The environmental concerns or effects from a gas production project are critical in determining if and when these types of projects should be required to do environmental review. These environmental effects result from the actions undertaken during gas production.

A typical gas production project begins with exploration. During exploration, a project proposer gathers information about a site and its gas deposit. The goal of exploration is to identify a suitable location for drilling a well to extract the desired gas. This step includes research to determine if the geology is likely to result in sufficient extractable gas to warrant development. This research may include drilling exploratory borings to collect samples and make subsurface measurements. From there, the next steps or actions for development of a gas project include drilling, completion, and production. These steps typically involve the processes and time periods described below:

- **Drilling** of a gas well typically takes 30-60 days, but that time can vary. Drilling starts with preparing the site (clearing and leveling) and setting up a drilling rig to drill a well and feed steel pipe into the well bore. Drilling mud may be needed to manage downhole pressures, provide information about the rock layers being drilled through, and keep the drill bit cool. Casing and cementing are performed to stabilize the well bore and to prevent contamination. Safety equipment, such as a blowout preventer, is installed to prevent the gas from being released in rare, unexpected, overpressure situations.
- **Completion** is a one-to-five-week process of bringing a gas well into production after initial drilling has been completed. Completion steps may involve: removal of the drill string; casing, cementing, and perforating the well bore; hydraulically fracturing the reservoir to stimulate production; expelling drilling and fracturing fluids; and installing the production valves. Additional equipment is then installed to allow for extraction of the gas.

- **Production** of gas from a completed well can last from 20 to more than 50 years. During production, the well is monitored, maintained, and managed. When a gas stream is extracted, it is typically made up of a combination of gases.[2] For example, the gas stream in Pulsar's exploratory wells has been identified as being comprised of helium, nitrogen, carbon dioxide, and methane. The target gas resource is typically separated from the rest of the gas stream and sent to an end user.[3] The process of sending gas to an end user varies; it may be transported in a gaseous state or may be liquefied. It can then be shipped via trucks or piped to off-site processing facilities. The unwanted gas components are disposed of according to applicable rules and regulations.
- The **closure and reclamation** phase occurs after the underground gas reservoir has been depleted and the site must be closed. Any equipment is removed, wells are sealed to protect groundwater resources, and the land is returned to a natural state. While removal of equipment and well sealing can be completed within a relatively short period of time (months), restoration of impacted natural resources may take much longer, depending on the setting and scale of the gas production operation.

EQB staff then reviewed the potential for environmental impacts from all stages of a gas production project. Based on available information, there are the following potential environmental impacts:

- **Surface impacts**. Initial development of the project location and ongoing operations may lead to environmental effects from clearing land for construction of drilling pads, facilities to process and ship gas, roads to access extraction sites, and construction of "flowlines" to transfer gas from multiple wells to a collection or processing area. Land clearing can impact surface water quality, wildlife habitat, and threatened and endangered species. There may also be surface impacts due to spills or leaks from material storage. There may be noise, light, and odor from both construction and ongoing operations.
- **Subsurface impacts**. Well drilling, gas extraction, injection of drilling waste (if proposed), and spills or leaks from material storage have the potential to cause pollution of groundwater and drinking water. Additionally, depending on the type of operations, there may be potential for impacts to the geology or groundwater due to fracking or other gas production methods.
- **Air impacts**. Extracting and processing gas can lead to air pollution. Gas reservoirs may contain a variety of components such as helium, hydrogen, methane, carbon dioxide, and nitrogen. Some of these components may need to be disposed of, which could include processes such as venting and flaring. Potential air impacts also come from the operating equipment, which is often powered by generators, as well as from vehicle traffic.

Supporting documentation for the existing mandatory categories (such as the documentation of environmental impacts from silica sand described above) demonstrates that these types of impacts have long been considered reasons to require certain projects to undergo environmental review.

Existing categories or specific approach

Gas production projects could, in some cases, exceed *existing* mandatory category thresholds (particularly impact-based thresholds such as air pollution or land use conversion) and be required to undergo review without a new mandatory category applicable to gas production projects. However, EQB anticipates that gas production projects that have a potential for significant environmental impacts will generally not be covered by

[2] The well can also produce waste waters (called "produced water") that require management due to the presence of contaminants.

[3] Separation or purification can be accomplished through multiple different methods.

the existing categories because the categories most likely to be applicable generally focus on one particular impact source, and not the variety of impacts associated with gas production.[4]

Not establishing project-specific categories under the assumption that a gas production project will fit within the existing rules is likely to result in projects that may or do have the potential for significant environmental effects not being properly reviewed.

The potential for environmental effects from gas production demonstrates the need for mandatory environmental review.

Project type and definition

Having established that there is a need for a mandatory category, the next step is to consider how to define the project type and the actions that require review.

The existing mandatory categories largely require review when there is construction or expansion of a specific project type. EQB is proposing to maintain that structure here, proposing that environmental review be required for construction or expansion of a "gas resource development project."[5]

To implement this, EQB is proposing multiple definitions in the amended rules.

Minn. R. 4410.0200, subp. 32a. Gas. "Gas" has the meaning given in Minnesota Statutes, section 93.514.

> This definition incorporates the identical legislative definitions of "gas" in Minn. Stat. § 93.513, subd. 1 and Minn. Stat. § 93.514(c). These provisions establish the prohibition on production of gas and oil from consolidated or unconsolidated formations (geological sources as opposed to gas generated by other processes such as anaerobic digestion) without a permit from the DNR commissioner and issued pursuant to rules adopted by the DNR, and the authority or requirement for various agencies to adopt rules. The statutes do not define "oil." Because geological sources of "oil" are not known to exist in the state, it is reasonable to limit this rulemaking to "gas."

Minn. R. 4410.0200, subp. 32b. Gas production. "Gas production" means production, as defined under Minnesota Statutes, section 93.514, of gas.

> The legislation establishing the permitting program defines "production" as including the extraction and beneficiation of gas or oil in the state. Minn. Stat. § 93.513, subd. 1; Minn. Stat. § 93.514(c). To clarify that a facility that involves any of these activities is subject to the environmental review requirements described in this rule and to simplify drafting, it is reasonable for the EQB to use this definition, but without reference to oil.

Minn. R. 4410.0200, subp. 32c. "Gas resource development project" means an operation that is designed for gas production from consolidated or unconsolidated formations and that is required to hold a permit from the DNR under Minnesota Statutes, section 93.513, and rules adopted by the DNR under Minnesota Statutes, section 93.514.

> The requirement for a project to be subject to environmental review relies on whether that project involves a major "governmental action…which would cause physical manipulation of the environment…"

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[4] One exception may be a stand-alone or off-site gas processing facility for liquefying gas. These are larger industrial facilities that are more likely to involve pipelines and to process a larger volume of gas and are quite rare. A facility of this type would likely be reviewed under the existing industrial facility or pipeline mandatory categories, and therefore no mandatory category is proposed for these types of projects in this rulemaking.

[5] Gas resource development is the definition of a gas production project that EQB is proposing to utilize as this is the terminology being utilized in DNR's draft regulations.

as defined by Minn. R. 4410.0200, subp. 65 and as required by Minn. Stat. § 116D.04. Here, the main governmental action required will be a permit from the DNR, and the legislature has required DNR to adopt rules before it may grant a permit. (Minn. Stat. § 93.513.) It is reasonable for the EQB to reference the legislative definitions of "gas production" and DNR's permitting authority in establishing a definition that will be used to describe the type of facility that may be subject to environmental review requirements. DNR's rules will further establish the specifics of what types of projects need a permit.

Minn. R. 4410.0200, subp. 32d. Gas well. "Gas well" means a well that is intended for gas production and that is included as part of a gas resource development project.

To access gas for production, it is necessary to drill or bore a shaft into the geological formations containing the gas. In the gas industry, these openings are called "wells." The legislature has not defined "wells" in this context, although other "well" definitions exist in state law, in particular definitions adopted by the Minnesota Department of Health in rules intended to ensure proper construction and sealing of water wells used for water supply and environmental wells used for monitoring and remediation. Because the number of gas wells is related to the environmental impacts from a gas resource development facility, the EQB proposes to use the number of wells involved in a gas resource production facility to determine when environmental review is necessary. As a result, EQB needs to define what is meant by a "gas well." EQB has limited the gas well definition to those wells that are included in the gas resource development project. This is reasonable to ensure that other borings (for example, exploratory borings that are not ultimately used for production) do not trigger environmental review requirements.

Defining the project type as gas resource development is meant to broadly capture the actions that involved in extracting and producing gas.

Thresholds

The next step is to determine the thresholds that should be imposed for environmental review of gas resource development projects. This requires determining a metric that corresponds with the level of effects EQB concludes requires environmental review.

An EAW is required for projects that **may** have the potential for significant environmental effects, while an EIS is required for projects that **do** have the potential for significant environmental effects. Thresholds must align with potential for significant environmental effects and be easy to apply so that project proposers and permitting authorities know early on which projects require environmental review, and of what type (EAW or EIS).

Developing reasonable thresholds for the mandatory categories requires understanding, to the extent possible, the potential for significant environmental effects from projects of this type, while recognizing that there are always going to be limitations in the available data. In the case of gas resource development, because these are new project types to this state, many unknowns are present. This highlights the need to utilize an evidence-based but conservative approach when developing environmental review thresholds.

The goal of mandatory category thresholds is to ensure, to the extent possible, that the right projects are reviewed so that permitting authorities have the environmental information necessary to support their permitting decisions, and the public has an opportunity to participate in the process of developing that information. The environmental review rules recognize that the mandatory categories may not always capture projects that should require environmental review. If the thresholds fail to trigger environmental review for a particular project that poses unique impacts, the environmental review rules provide for discretionary review or review by petition.

Many of the existing project-based mandatory categories require review when a project reaches a certain size, such as the capacity of a storage facility, acres of land excavated for mining, or the square feet of a building.

Therefore, EQB staff began by evaluating at what size the environmental effects from a "basic" gas resource development project may or do become potentially significant. EQB staff then considered whether there were specific instances where the effects from smaller gas resource development projects may or do become potentially significant, due to specifics of their location or operations.

Size-based threshold

The EQB is proposing that an EAW be required for any gas resource development project that is proposing a project consisting of five or more production wells, either as a new project or an expansion of an existing facility. (See proposed rule part **Minn. R. 4410.4300, subp. 38, item A**.)

This size-based threshold, applicable statewide, is intended to capture gas resource development projects that may have the potential for significant environmental effects, based on the total effects to the surface, air, and subsurface.

EQB staff determined that the best metric for the "size" of a gas resource development project is the number of production wells. Each additional well adds to the impacts of the project generally. While EQB staff considered other possible metrics – such as the volume of gas extracted - the number of wells is a metric that is easily applied by permitting authorities and regulated parties to assess whether a project requires environmental review.

As discussed below, a gas resource development project utilizing a **single** production well (assuming it does not incorporate techniques discussed in other sections below), generally would have limited environmental effects that do not reach the threshold for environmental review. However, the potential impacts increase as project size increases – i.e., as more production wells are developed. This is mainly due to the **combined** impact of surface disturbance, noise, light, truck traffic, and air emissions that come with increases in gas production.

This size-based threshold is based on understanding the impacts from a "basic" gas resource development project of the type anticipated in Minnesota, consisting of a development or production area with production wells and a centralized processing facility connected to each individual production well via flow lines.

EQB staff reviewed projects in other states to understand the development of the typical gas production project like those expected to occur in Minnesota. For example, a helium gas production project in Colorado began with two production wells and a single production facility; it has added wells over time and is to be comprised of 11 production wells, all of which will be connected to a centrally-located processing facility. The gas stream is predominantly nitrogen, with smaller percentages of helium and carbon dioxide. The processing facility purifies the gas to around 90% helium by removing the other gas components.

Assuming gas production projects are likely to consist of multiple production wells within a single general area, with all wells connected to a centralized processing area, it is logical to use a project's number of production wells to create an environmental review threshold. Such a threshold can encompass the impacts of a project as a whole. The number of wells will directly influence the level of the likely environmental effects, namely the collective impacts to the surface, subsurface, and the air from the activities at the site.

The section below expands upon the analysis and supports the reasonableness of a mandatory EAW for a gas resource development project consisting of five production wells.

Analysis

EQB staff's analysis began by looking at the potential for environmental effects from a single production well and then extrapolating the potential impacts as a project increases in size in order to determine at what level the environmental effects may have the potential to be significant.

At a minimum, viable commercial gas production must include:

- A way to extract the gas, necessitating drilling at least one well.
- A way to process or beneficiate the gas after extraction.
- A way to deliver or ship the purified gas to an end user.

Subsurface Impacts

A single, basic, gas well that is designed to produce gas without enhanced or specialized techniques is unlikely to have significant subsurface impacts. EQB proposes to classify projects that propose to use enhanced or specialized techniques for production differently with regard to environmental review (as noted in sections below).

Surface Impacts

Gas resource development projects require a proper working space for drilling wells, installing flowlines, and constructing a processing facility, all serviced by appropriate roads. These actions will cause surface impacts from land use change, construction, and ongoing operations. Due to the potential remote locations of these projects, land use conversion and land cover changes are anticipated.

Land use conversion involves environmental impacts related to construction from removal of natural vegetation and cover – including loss of habitat, erosion, and runoff – and is associated with increased light, noise, and traffic impacts. Increased light and noise may lead to impacts on both people and the environment. Existing environmental review categories recognize that changes to land use can cause environmental effects that justify environmental review. Land use conversion (typically acreage) and facility size (building square footage or gross floor space) are common considerations in mandatory category development and existing thresholds.

Noise levels from gas production projects are also important environmental effects.[6] The main sources of noise from oil and gas operations can be grouped into the following two categories: (1) construction and preparation (e.g., road construction, site and well pad preparation, truck traffic) and (2) production and completion (e.g., flaring operations, drilling, hydraulic fracturing, compressor stations). It is difficult to assume all operations will exhibit the same noise impacts; but, for comparison, the State of New York completed a Generic Environmental Impact Statement (GEIS) for the oil and gas sector. This study notes composite noise levels at a distance of 15 to 610 m (50 to 2000 ft) ranged from 57 dBA to 89 dBA for access road construction, 52 dBA to 84 dBA for well pad preparation, 44 dBA to 76 dBA for horizontal drilling, and 52 dBA to 104 dBA for hydraulic fracturing.

Operations at these types of facilities are typically 24 hours a day and therefore require lighting. Development of oil and gas fields has been shown to increase light pollution, especially in rural areas.[7] Impacts from lighting may have the potential to negatively impact people's way of life in areas where gas resources are developed, especially as they grow in size. Impacts from lighting have been shown to have negative impact on animals and insects, disrupting circadian and seasonal behavior.

Gas resource development facilities will require equipment necessary to produce and beneficiate the gas and may incorporate industrial equipment as well as generators to power such equipment. Land use conversion will be necessary for accessing a space to drill a gas well and construct a processing facility. Road access to these sites will be necessary as well as installing flow lines to connect the well(s) to the processing facility.

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[6] State noise standards, industrial facilities such as gas production are likely to be classified as NAC 3.

[7] Boslett, A., Hill, E., Ma, L., & Zhang, L. (2021). Rural Light Pollution from Shale Gas Development and Associated Sleep and Subjective Well-Being. *Resource and energy economics*, *64*, 101220. https://doi.org/10.1016/j.reseneeco.2021.101220

Based on available information, a single-well gas resource development project including these components would potentially result in two to five acres of land conversion although that total is dependent on location and other project circumstances.

As a project grows in size and continues to add production wells, the amount of land disturbance will grow, the amount of road access will increase, and the flowline distances will increase. Additionally, the amount of equipment and potential industrial development that the production space would require to facilitate more production can be expected to increase.[8]

Traffic impacts and air impacts

Traffic impacts and air pollution are also key components of the anticipated environmental impacts from a gas resource development project. The overall impacts of these two components are connected and are dependent upon the volume of gas that is available to extract from each well (flow rates) and the composition of the gas that is being targeted.

Once gas is extracted from the subsurface, that gas must be managed. The amount of gas production per day will be a key factor in the amount of gas shipped, which will vary based on the methods that a project uses to manage and ship the gas (likely via trucks). The composition of the gas and unwanted components will influence how much gas is shipped and any waste gas disposal (which could include venting or flaring) potentially causing air pollution, including climate pollution.

Data from Minnesota[9] and Colorado[10] show that gas wells are capable of producing 500,000 cubic ft/day of gas, made up of multiple components. Pulsar's published test data estimates that the gas deposit it is evaluating for production consists of 10.5% helium (ranging from 5.6% to 13.8%), 13.2% nitrogen, 2.4% methane, and 73.8% carbon dioxide. This information can be used to understand the range of potential environmental effects from shipping the desirable gas and managed unwanted components.

The targeted gas (such as helium or hydrogen) must be transported to end users. Shipment of gas can be done in a variety of ways. Gases are typically shipped via "tube trucks," which come in various sizes and can transport various volumes of gas in liquid or gaseous states. There are numerous factors that impact truck sizing for shipment (production levels, road restrictions, shipping contracts, etc.). The truck selection used in this analysis is an 80,000-pound truck, which would represent the largest load allowed on Minnesota roads. Local jurisdictions and seasonal road restrictions would likely impact the amount of product that can be shipped and may not allow for an 80,000-pound truck; if lighter loads are required to meet the road limitations this would result in increased truck trips.

Existing environmental review categories identify traffic as a significant driver of environmental impacts due to safety concerns from road congestion, but also to the degradation of the roads. Truck traffic also may have air pollution and other impacts.

If *all* of the produced gas were shipped (assuming a flow rate of 500,000 cubic ft/day), EQB estimates that shipping the gas from one well could require 1022 trucks per year (2044 total trips) for non-liquified gas; if the

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[8] This is assuming a scenario where new production wells are being added to sites where existing production wells continue to produce. When production wells are no longer producing, DNR's rule will likely require them to be sealed and reclaimed. In some cases, a new production well may replace a sealed well, keeping the total number of wells constant.

[9] Pulsar Helium has published test data showing flow rates as low as 21,000 cubic ft/day (unpressurized) and as high as 1.3 million cubic ft/day (pressurized).

[10] Data from the helium project in Colorado shows flow rates for wells operating in 2025 that range from 140,000 cubic ft/day to 526,000 cubic ft/day, all of which are pressurized flow rates.

facility is shipping liquified gas, many fewer trucks would be needed – about 1/5th of the initial estimate.[11] Although producers are unlikely to ship all produced gas due to gas streams having components that are not marketable, this is a reasonable upper or worst-case estimate for truck traffic, especially considering that under some estimates a single well could produce more than the 500,000 cubic ft/day amount used here.

Non-targeted or undesirable components of the gas stream also have to be managed and/or disposed of. Looking across the country at gas concentrations in projects producing helium, the gases present are similar to those reported by Pulsar, but with a wide variety in the relative percentages. Projects in Colorado have reported gas compositions of 77% nitrogen and 15% CO_2 but companies have reported wells consisting of up to 98% CO_2. There are also wells in Colorado that mostly produce methane with helium making up one to six percent of the overall gas composition. Information on hydrogen gas production is more difficult to find. However, the associated gases are anticipated to be of similar composition (nitrogen, carbon dioxide, helium, methane) but (as with helium) the percentages are expected to vary significantly. Hydrogen exploration projects in Kansas, for example, have reported gas compositions of up to 96% hydrogen.

Existing environmental review categories identify air pollution as a significant source of environmental impacts.

If *all* of the gas extracted were released to the atmosphere, using the amount of CO_2e from Pulsar's gas evaluation at the same 500,000 cubic ft/day, one well could emit 10,461 tons CO_2e/year from the entire gas stream. Again, although not all gas would ever be released, this calculation provides a reasonable upper or worst-case estimate for climate pollution impacts from production at this level (again considering that under some estimates a single well could produce more than the 500,000 cubic feet/day amount used here) and demonstrates the potential for increased emissions for projects where more greenhouse gases require management or disposal.

The calculations of potential truck traffic and air emissions combined with the likely degree of other potential impacts discussed above (surface disturbance, light, and noise) from a gas resource development project suggest that a project consisting of a single well generally should not require mandatory environmental review. However, as wells are added, the aggregate effects increase. The aggregate impacts (surface disturbance, light, noise, traffic, and air) from a project with five or more wells justify a mandatory EAW.

Size threshold conclusion

The existing mandatory categories established in rule, and their supporting documents, provide useful comparisons about the relevant potential for environmental effects. For example, multiple mandatory categories include thresholds based on acres of clearing for land use conversion or the amount of space necessary for operating facilities. These include required EAWs for projects that convert 80 acres of natural land, 20 to 40 acres of land in shoreland, or incorporate structures totaling 100,000 – 600,000 square feet. As discussed above, a gas resource development project with five wells could result in a wide range of total land clearing potentially 10 – 25 acres from road development, flowline installation, and well pad construction,

The air pollution mandatory category requires an EAW for projects generating 100,000 tons per year of greenhouse gas emissions. The estimates provided above, based on estimated flow rates and Pulsar's specific gas composition data, show that a gas resource development with five wells could result in levels of greenhouse gas emissions approaching half this threshold.

The supporting documents for the inclusion of the silica sand mandatory category note a particular concern for truck traffic at transfer facilities, with the threshold of 200,000 tons per year of silica sand resulting in truck traffic of 7,692 loaded trucks per year. From the estimates above based on estimated flow rates, at five wells the

[11] However, this would require more operating equipment to liquify the gas product, which would likely result in increased surface disturbance and potential air emissions.

potential truck traffic from a gas production project may reach 5,110 trucks per year, about 2/3 of the figure considered for silica sand transfer facilities.

Not all of the potential environmental effects can be quantified; the impacts of noise, light, and similar effects must be judged more qualitatively. In addition, none of these effects stand alone; evaluation of potential for environmental effects must incorporate all potential impacts.

At five production wells, the amount of truck traffic, land use conversion, construction requirements, potential air emissions, potential noise levels, and lighting requirements combine together to indicate that a project of this size *may* have the potential for significant environmental effects. Although much of the analysis is based on information from the one known potential project – Pulsar Helium – the potential environmental concerns relating to air pollution, traffic, noise, lighting, land conversion, all remain no matter the type of gas being produced.[12]

A size of five wells also strikes a reasonable regulatory balance. In the GTAC process, which was to recommend a *temporary* framework for regulation of gas production, EQB staff recommended that all gas production projects go through an EAW, due to the newness of the project type and the unknowns. Some comments on the GTAC report felt that this requirement would be too burdensome. The research conducted since that report, described above, shows that the smallest projects are unlikely to require mandatory review based on their potential for significant environmental effects. This is consistent with many project-based mandatory categories which have thresholds that exclude the smallest projects.

Based on EQB's understanding of the gas production project in Colorado noted above, a five well threshold is likely to align with potential projects expected to occur in Minnesota. At a higher size threshold, mandatory environmental review becomes less likely. The public interest in the impact of gas production – demonstrated by comments on the GTAC report that raised concerns about drilling noise, lighting, dust, traffic, carbon dioxide emissions, PFAS in drilling mud and materials, and threatened and endangered species – supports the need for environmental review.

There is insufficient information to set an EIS threshold – i.e., to determine that a basic gas resource development project, particularly of the types of projects expected to be located in Minnesota, *does* have the potential for significant environmental effects – based solely on the size of the project. If the EAW finds the potential for significant environmental effects (applying the decision criteria under Minn. R. 4410.1700), an EIS would be required.

The weight of evidence demonstrates that setting a mandatory category threshold requiring an EAW for a gas resource development project consisting of five wells is appropriate, based on data from potential production levels from comparable helium projects while recognizing the variabilities that may arise from other gas resource development projects. This threshold recognizes the potential for significant environmental effects utilizing project specific data while incorporating the potential variations that may arise on a project-to-project level.

Location-based threshold

The proposed size-based threshold would apply across the state. The next evaluation is whether there is a need for a different (lower) threshold in certain areas. Some existing mandatory category thresholds vary by location. For instance, there are separate mandatory categories for certain kinds of development (residential,

[12] Some interested party input has suggested that EQB develop categories that are differentiated based on the type of gas being extracted. EQB believes that this would make the rules overly complicated, highlighted by the variabilities in flow rates and gas compositions. Setting a threshold for requiring environmental review based on the number of production wells, regardless of targeted gas, is appropriate for all gas extraction projects

campgrounds) in shoreland, and the feedlots EAW mandatory category has a lower threshold for projects located in certain sensitive areas.

Based on known geology, gas resource development projects have the potential to be located across the state. EQB is proposing certain thresholds that would require environmental review for gas resource development projects that are located on or near certain sensitive areas. This mandatory category threshold (see proposed rule **Minn. R. 4410.4300, subp. 38, items B and C)** is meant to align with DNR's rules.

EQB staff understand that the DNR plans to identify locations where gas production would not be allowed (excluded) and those where certain kinds of actions will be prohibited or restricted. While environmental review would not be required in areas where production is completely excluded because no projects would occur in those areas, it is reasonable to require environmental review in those areas where DNR will allow a gas production project to be sited but the DNR will impose limitations on the type of operations to reduce potential impacts to sensitive environmental areas.

In these areas, gas production may have the potential for significant environmental effects and therefore an EAW should be required. Where DNR rules place restrictions on the location of projects, or the actions that can be taken within certain locations, it is reasonable to assume that the projects pose particular risks to the environment, suggesting that environmental review should be conducted to ensure that all risks are understood and addressed through the permitting process.

EQB is proposing that an EAW be required for a gas resource development project if it is to be located within or intended to incorporate directional drilling methods to extract gas from underneath areas of the state that are recognized as needing special protection. Specifically, EQB is proposing a mandatory category threshold that requires an EAW:

- For any gas resource development project proposing to produce gas from beneath a location where the DNR imposes regulations to prohibit both surface disturbance and directional drilling.
- For any gas resource development project proposing to directionally or horizontally drill underneath areas where the DNR imposes siting regulations to prohibit only surface disturbance, if that drilling is within ¼ mile of the surface.

The vertical buffer for directional drilling (less than ¼ mile below the surface) is added based on potential for shallow drilling to impact the subsurface, in particular the potential to impact drinking water aquifers. These aquifers are more likely to be encountered when drilling horizontally at depths less than ¼ mile, and environmental review will ensure that detailed information identifies the potential effects of drilling.

EQB staff considered other ways of incorporating location – such as listing out specific sensitive locations – but ultimately determined that alignment with DNR's siting locations would be more efficient and take advantage of DNR's expertise in understanding the protections required for different areas (such as state and national parks, scientific and natural areas, etc.)

EQB staff also considered whether different thresholds were needed in proximity to Tribal reservations and communities. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited rule to define a boundary that:

1. Is relevant to Tribal resources;
2. Fits with the program's requirements for significant environmental effects; and
3. Is repeatable and easily implemented.

Although EQB is not proposing a mandatory category based on proximity to Tribal lands, EQB understands that DNR's rules will provide Tribes with early notice of projects. This will support consultation and coordination under Minn. Stat. § 10.65. As the RGU, DNR has the authority to order discretionary review, and members of the public can file a petition for an EAW on a project.

Project-specific techniques thresholds

The size and location-based thresholds are meant to capture "basic" gas resource development projects, regardless of the type of gas they are extracting or how they intend to extract it. However, certain kinds of project techniques are likely to influence a project's potential for significant environmental effects. EQB is proposing three specific thresholds where environmental review would be required, based on whether the gas resource development project would include injection of substances in the subsurface for waste disposal, to enhance the recovery of the gas, or in order to create a gas to eventually extract. Projects that involve these techniques pose special concerns due to the potential subsurface impacts, such as to groundwater and drinking water, in addition to the potential effects discussed previously.

Underground injection techniques, or the process of placing fluids underground via a well, are common in parts of the oil and gas sector and may be utilized by a gas resource development project in a few different ways.[13] In general the process of injecting a substance or a fluid in to the subsurface presents environmental concerns including the potential contamination of drinking water and induced seismic activity. Injecting fluids may contain wastes that when injected into the subsurface offer a direct path to then contaminate underground sources of drinking water. Injecting fluids underground may lead to induced seismic events.[14] In Minnesota underground injection is prohibited within water wells and borings, apart from a few exceptions per Minn. R. 4725.2050. Because these prohibitions and regulations are limited to water wells and borings, they are unlikely to apply to gas production. The existing regulations and prohibitions on certain types of underground injection demonstrate a long-standing awareness that these actions have the potential for significant environmental effects; this understanding applies even within this new industry that was not considered at the time existing regulations were developed.

The types of underground injection that EQB staff believe should require environmental review and the potential environmental effects are discussed below.

Class II injection wells for waste disposal

EQB is proposing that an EAW should be required for any gas resource development project proposing to incorporate underground injection for waste disposal. (See proposed rule **Minn. R. 4410.4300, subp. 38, item D).**

Underground injection control (UIC) is a federal program that regulates the construction, operation, and closure of injection wells across the nation. States can apply to be given regulatory authority over this program ("primacy"); to date, Minnesota has not done so. One type of injection well that falls within this federal program

[13] While underground injection is common, projects may be designed not to use or require these techniques. For example, Pulsar Helium has indicated no need to use these techniques in producing helium.

[14] The largest earthquake induced by fluid injection that has been documented in the scientific literature was a magnitude 5.8 earthquake in Oklahoma. Four magnitude 5+ earthquakes have occurred in Oklahoma, three of which occurred in 2016. In 2011, a magnitude 5.3 earthquake was induced by fluid injection in the Raton Basin, Colorado. Earthquakes with magnitudes between 4.5 and 5.0 have also been induced by fluid injection in Arkansas and Kansas. See USGS, How large are the earthquakes induced by fluid injection?

is Class II oil and gas related injection wells. These wells are used for waste disposal from oil and gas projects utilizing underground injection as well as underground injection for enhanced recovery of oil and gas.

Enhanced recovery methods ultimately are meant to achieve the same thing as fracking (increased recovery of gas), just under less intense pressures and volumes. (Fracking is discussed in a section below.) Liquid is pumped underground with pressures low enough that the geology will not be forced into fracturing, but still improve displacement of the target substance underground, allowing for increased extraction rates.

Underground injection waste disposal is utilized in many oil and gas wells to dispose of waste encountered during the drilling process and is often used for produced waters (typically brine waters).

The volumes of water and anticipated impacts from enhanced recovery (without fracking) utilizing a federally-permitted Class II injection well are anticipated to be relatively similar to that of hydrofracturing water wells, which is currently allowed in Minnesota and does not require environmental review (further discussion of hydrofracturing is provided in the section below). However, if project-related waste is incorporated into the enhanced recovery process, there may be potential for significant environmental effects. The prohibition on using water wells or borings for injection of waste disposal provided in Minn. R. 4275.2050 clearly demonstrates the environmental concerns by limiting what is allowed to be injected in order to protect drinking water sources. This argues that regulated injection under the federal Class II program might have the potential for environmental impacts. Waste disposal into the subsurface by injection has the potential to create a direct pathway for pollution of drinking water resources. Additionally, there is the potential for seismic events occurring from prolonged and high-volume disposal from underground injection wells.

For these reasons, EQB staff propose that any project that includes a Class II injection well for project-related waste disposal should require an EAW prior to approval. This threshold would only apply for enhanced recovery Class II injection wells if the injection materials include project-related waste.

Stimulated gas production

EQB is proposing an EAW be required for any gas resource development project that will produce (i.e. extract and beneficiate) gas created in the subsurface as a result of a chemical reaction from underground injection. (See proposed rules **Minn. R. 4410.4300, subp. 38, item E)**

This type of underground injection is the type of process used to create "stimulated hydrogen." Geology in certain areas of Minnesota may allow hydrogen gas to be created in the subsurface by injecting a solution to induce a reaction between that solution and the minerals within a targeted geologic formation.[15]

This type of project is mostly theoretical and there is limited information available on real world implementation. Despite the lack of available data, there is a conceptual understanding of what is included in these projects. This project type and its potential impacts are different from that of a typical gas resource development project; the techniques used along with the necessary fluids combined with potential additives (underground injection to create a gas in the subsurface) present an increased potential for impacts to the subsurface with the potential to significantly impact drinking water and groundwater sources.

Geologically these projects have an opportunity to occur in areas of the state where drinking water aquifers are present. Similar to waste disposal, underground injection leading to the creation of a gas in the subsurface presents environmental concerns due to potential for pollution of drinking water via direct pathways to aquifers

[15] EQB staff note that the regulatory framework for the *creation* of a gas using these techniques is unclear; these types of projects may be federally regulated or may need ongoing development of a state regulatory framework. However, it is not clear that such projects are absolutely prohibited, and it is clear that a permit from DNR would be required for production (extraction and beneficiation) of the resulting gas.

utilized for drinking water as a result of the underground injection. Additionally, there are concerns regarding induced seismic activity associated with injecting potentially large volumes of water in the subsurface.

Therefore, EQB believes that a project of this nature may have the potential for significant environmental effects and should require a mandatory EAW.

Hydraulic fracturing (fracking)

EQB is proposing an EIS should be required for any gas resource development project proposing to utilize high volume fracturing methods to produce gas. (See proposed rule **Minn. R. 4410.4400, subp. 29)**

Hydraulic fracturing (fracking) is a process of gas extraction that involves injecting fluids (a combination of mostly water with proppants (usually sand) and other chemical additives included) underground at high pressures to create new pathways (fractures) for trapped gas within the geologic formations to ultimately be released, allowing for improved extraction of the gas.

Hydrofracturing of a water supply well is allowed in Minnesota and regulated under Minn. R. 4725.5475 as one of the exceptions to the prohibition of underground injection within water wells and borings. Hydrofracturing can be done using potable water only, with a chlorine residual or certain approved additives;[16] it is also only allowed within certain geologic settings (igneous or metamorphic bedrock). Additional restrictions regarding the process and setbacks are listed within the rules. Based on information from the Department of Health, hydrofracturing in Minnesota typically utilizes 2,000 to 4,000 gallons for a single well, potentially reaching volumes of up to 10,000 gallons. Rough estimates from the Department of Health are that 145 to 270 water supply wells in the state are hydrofractured each year. This process does not require environmental review.

Modern (high-volume) fracking techniques associated with gas resource development differ from hydrofracturing. These modern fracturing techniques are typically associated with well drilling that results in deeper/longer wells, leading to increased potential impacts to water quality at the surface and groundwater as well as potential impacts to water quantity. These techniques are typically associated with greater pressures, increased water volumes, and addition of a variety of chemicals needed to facilitate the fracturing of the rocks.

Other states have noted environmental concerns from these activities and have responded with regulations due to concerns from high-volume hydraulic fracturing.[17] Research of these other states with oil and gas regulations provided a definition of “high volume hydraulic fracturing” (HVHF). The definition included in the proposed rules is based on the Michigan definition which says HVHF is hydraulic fracturing using a combined total of 100,000 or more gallons of water during all stages in a well completion,[18] whether the well is vertical or directional, including horizontal, and whether the water is fresh or recycled and regardless of the chemicals or other additives mixed with the water. These definitions are intended to capture projects employing modern fracking techniques utilizing high volumes of water and incorporating chemical additives for which environmental concerns are present. Projects that require high volume fracking can result in millions of gallons of water being used and are known to incorporate a variety of chemicals into the fluids presenting known environmental concerns.

EQB is proposing a definition of HVHF at **Minn. R. 4410.0200, subp. 38a.** “High-volume hydraulic fracturing” means injecting fluid, with or without proppants, into the subsurface under pressure to create fractures within a

[16] Additives must meet the requirements of ANSI/NSF Standard 60, ANSI/NSF Standard 60 is a standard that sets minimum health effects for chemicals added to drinking water.

[17] Michigan and New York have regulations and information regarding high-volume hydraulic fracturing.

[18] Well completion is the process of bringing a gas well into production after initial drilling has been completed. Completion steps may involve removal of the drill string, casing, cementing, perforating, hydraulically fracturing in the reservoir to stimulate production, expelling drilling and fracturing fluids, and installing the production valve.

geologic formation for the purpose of improving the deliverability and production of gas for a gas resource development project, using a combined total of 100,000 gallons or more of any fluids.

To describe gas resource development projects that require a higher level of environmental review as the result of their use hydraulic fracturing under EQB's environmental review rule, a definition is needed. This definition is reasonable because it describes what is meant by "hydraulic fracturing" using terms found in rules successfully adopted and used by other states (New York, Michigan) and specifies the volume that triggers the "high-volume" designation (based on a Michigan definition). EQB staff evaluated if high-pressure (as opposed to the volume of water used) would work as a way to identify projects that require environmental review. However, the available information showed that the pressures required for fracturing are highly variable, and there were no existing definitions based on pressure.

HVHF has the potential for significant environmental effects due to the potential impacts in the subsurface. HVHF has the potential to significantly impact drinking water and groundwater sources as well as potential seismicity concerns.

The process of creating fractures within geologic formations has the potential of creating direct pathways to drinking water aquifers. Not only would the fluids utilized for the fracking process have a direct connection to drinking water aquifers, increasing the potential for contamination, but the gas reservoirs will also have increased potential for connectivity due to the creation of new pathways for the gas to travel. While a project proposer can control the injection (fluid volumes and pressures), the geologic response is a variable that cannot be controlled. The precise location and extent of fractures is unknown and can lead to impacts on drinking water. The injection of water to the subsurface for HVHF also results in increased wastewater because the injected fluid sometimes returns to the surface. In addition to drinking water impacts, high volume underground injections have been linked to induced seismicity events felt at the surface. Because fracking requires large volumes of water, the potential for induced seismic events must also be considered when making determinations for potential for significant environmental effects.

Therefore, EQB staff believe that any gas project proposing to utilize HVHF does have the potential for significant environmental effects and therefore should require an EIS.

Responsible government unit

EQB is proposing that the mandatory categories designate the DNR as the responsible government unit (RGU) for conducting the review. The DNR is the appropriate choice for serving as the RGU as they have the greatest responsibility for supervising or approving a gas resource development project as a whole. This determination is based upon the authority given to the DNR to regulate gas production. This proposal is in keeping the general procedures for RGU selection currently laid out in Minn. R. 4410.0500, subp. 5.

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Environmental review: Mandatory category for gas resource development projects

Attachment 1 to rule summary and justification

Tribal coordination

The Environmental Quality Board (EQB or Board) seeks to foster and facilitate positive government-to government relations between EQB and all federally recognized Tribal Nations that share geography with the state of Minnesota. To help fulfill this goal, EQB adopted a Tribal Coordination and Consultation Policy that aligns with Minn. Stat. § 10.65. This statute encourages and allows all agencies and boards to "engage in consultation and communication with the Minnesota Tribal governments for all matters that have Tribal implications."

This document provides a summary of the Tribal coordination that took place from June 2025 to March 2026, prior to publishing the notice of intent to adopt rules for the environmental review of gas production projects.[1]

Coordination summary

The EQB's Tribal Coordination and Consultation Policy focuses largely on staff-to-staff coordination, defined as "an affirmative process where EQB staff will proactively identify and seek input from Tribal government staff in a timely and meaningful manner as part of its decision-making process on projects, programs, policy developments, and similar items..."

Coordination generally proceeds through multiple steps: identification, notification, information sharing, listening to and considering input, and communicating decisions.

Prior to the rulemaking of developing mandatory categories for gas projects, EQB was part of an interagency team, called the gas resources technical advisory team (GTAC) led by the Department of Natural Resources (DNR). GTAC was tasked with developing recommendations for a temporary regulatory framework for gas production in Minnesota. From the start of this work, it was clear that gas production is a matter with significant Tribal interest. Tribes expressed concerns over potential impacts to cultural resources and treaty-protected hunting, fishing, and gathering rights.

Therefore, once the Board directed staff to begin rulemaking for environmental review mandatory categories for gas production projects, staff conducted coordination with Tribal environmental staff.

[1] This document does not cover the communication with Tribes that happened as part of the development of the GTAC recommendations, though EQB staff participated in that process and were informed by Tribal comments on that document.

EQB staff recognize the matters that are important to Tribes include potential impacts from gas production projects on cultural resources and treaty-protected hunting, fishing, and gathering rights. EQB staff began to reach out to appropriate Tribal staff (coordinated via the Minnesota Tribal Environmental Committee, MNTEC) early in the rule development process and had discussions that are documented below.

EQB staff also sent an annual update and offer of consultation to Tribal leaders on July 1, 2025. It included a summary of this rulemaking requirement and outlook and offered consultation if requested. No formal consultation requests have been received to date.

After the initial notification, EQB staff provided regular updates on the rule process to MNTEC, which meets on a regular basis (approximately monthly). EQB also heard comments from Tribal staff at ERIS and Board meetings. EQB staff had regular communication with any interested Tribal staff (particularly members of MNTEC and the Tribal gas extraction task force) in order to discuss issues and ongoing development of the rule concepts. The following table illustrates the main points of communication between Tribal and EQB staff between June 2025 and May 2026.

Table 1. Dates of coordination

June 2025	EQB staff invited all MNTEC members to a meeting to share information with Tribal environmental staff regarding: the rule process; gas production projects; what EQB needs to consider in developing environmental review mandatory categories.
July 2025	Tribal staff (the Tribal Gas Extraction Task Force) provided draft rule language to EQB staff. EQB held a meeting to discuss that draft rule language. There was general discussion on the language and how mandatory category rules are structured. EQB staff identified portions of the draft language that could be considered in scope for mandatory category rules moving forward and identified portions that would be difficult to implement or out of scope for EQB to implement.
September 2025	EQB staff participated in a meeting organized by Tribal staff, where all state agencies that participated in the GTAC process could provide an update on their rulemaking for gas resource development projects. Prior to this meeting, revised draft rule language written by a group of Tribal staff (the Tribal Gas Extraction Task Force) was shared with all GTAC participating agencies. This Tribal Gas Extraction Task Force document contained suggested rule language pertaining to topics ranging across the entire framework development for gas resource projects, including permitting and environmental review. One goal of this meeting was to communicate how DNR and EQB's rulemakings were distinct, but inter-related.
October 2025	EQB staff met with Tribal staff and talked through EQB's responses to the Tribal draft language document. EQB staff provided draft rule language and a detailed response to each item of the Tribal Gas Extraction Task Force's language in advance and discussed this language at the meeting. The response document included responses to each item of the Tribal draft language pertaining to environmental review, including why any language could not be used as provided. Simultaneously, EQB staff provided draft rule language for review and input and requested input by November 20, in order to help inform the upcoming December board meeting. No additional input was received by that time.
November 2025 through January 2026	EQB staff shared updates on the gas rulemaking at the November MNTEC meeting highlighting the October discussion and that EQB staff were working on terminology clarifications, incorporating underground injection thresholds, and are still evaluating all previously discussed thresholds. EQB staff noted they would update ERIS on December 17. After the ERIS meeting, EQB staff provided brief updates to MNTEC at their early January meeting and shared out a draft discussion document regarding the development of thresholds and a rulemaking summary memo with MNTEC.
February and March 2026	Additional meetings were held between EQB staff and Tribal environmental staff to provide updates on the rulemaking process and discuss the ongoing evaluation of potential environmental review thresholds and resulting rule language. In the February meeting, EQB staff walked through the rulemaking timeline, recent changes based on uncovering new data, and asked Tribes to request consultation if desired. On March 19 a finalized draft rule version was shared with Tribal environmental staff for review. Meetings were held March 26 and April 1 to discuss.

Specific input

The following section summarizes what EQB staff heard from Tribal staff and how EQB staff considered and used the information, or how it may be used in the future. Please refer to the summary and justification document for evaluations of the potential for significant environmental effects from gas resource development projects. The available data supported an EIS threshold for high-volume hydraulic fracturing and an EAW for any other proposed thresholds.

Table 2. Initial input received and EQB response

Area of input	Summary of Tribal input	EQB response
Programmatic definitions	"Culturally significant area" means any mapped or discovered location of ceremonial, spiritual, subsistence, burial, or historic significance to Tribal Nations, including but not limited to historic properties (such as traditional cultural properties) eligible for listing on the federal National Register or as recognized under state historic properties laws.	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
Programmatic definitions	Various proposed definitions of "Cumulative Impacts", related to the combined, incremental effects of multiple projects or activities over time (past, present, reasonably foreseeable) on the same environmental, cultural, or public health resources, including effects on natural resources subject to Treaty-reserved rights in ceded territories	Cumulative impacts and cumulative potential effects are concepts with existing definitions within the environmental review rules that have been subject to past litigation. Changes affect the entirety of the program and are beyond the scope of this rulemaking.
Programmatic definitions	"Treaty-Ceded Territory" means all lands and waters within the State of Minnesota that were ceded to the United States by Indian Tribal Nations under Treaties, within which Tribes retain reserved rights.	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
Programmatic definitions	Tribal Governments and Indian Country. "Tribal Governments" has the meaning given in Minnesota Statutes section 10.65, subdivision 2. "Indian Country" has the meaning given in United States Code, title 18, section 1151, and means all land within the limits of any Indian Reservation, dependent Indian communities, lands held in trust, and Indian allotments	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
Environmental review process	The scope of environmental review must include the full footprint of the project, including roads, pipelines, well pads, compressor stations, processing plants, and any other supporting infrastructure	RGUs are responsible for identifying all aspects of the project and any connected or phased actions, in order to review the project as a whole and determine potential environmental effects. The definition of "project" is inclusive of all parts of a project, but the rules do not list the specific aspects of each project type that must be included; it is up to the RGU to determine. Writing specifics in rule could be limiting, preventing the review from capturing all pertinent information.

Area of input	Summary of Tribal input	EQB response
Environmental review process	Environmental review notices and scoping documents must be sent directly to affected Tribal governments for comment and consultation	The distribution of ER documents affects all projects and is out of scope for this rulemaking. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Environmental review process	Require evaluation of cumulative environmental impacts and potential effects on culturally important species, subsistence resources, and overburdened communities. Require cumulative impact analysis for projects near sensitive or cultural resources.	Cumulative potential effects analysis is required for any environmental review. The EAW form includes a prompt to identify culturally significant properties that may be impacted. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Environmental review process	Co-lead review authority. Upon request, an affected Tribal Nation may serve as a co-lead agency for purposes of scoping, public engagement, or impact analysis under Minn. Stat. § 116D.04.	The environmental review rules do not support multiple RGUs for a single project. However, working collaboratively to complete review is encouraged.
Environmental review process	Each application must include a lifecycle greenhouse gas emissions assessment consistent with best practices under EPA and state climate policy	The EAW form includes greenhouse gas emission analysis and guidance for completing it. EQB also has a climate calculator that can be used.
Environmental review process	Any proposed permit, regulatory action, or amendment affecting lands within 10 miles of a Reservation, Treaty-Ceded Territory, or culturally significant area shall be accompanied by a Tribal Impact Statement (TIS). A TIS must include: assessment of impacts to Treaty rights and subsistence resources; cultural, historical, and health impacts; cumulative effects on Tribal interests; alternatives considered to avoid or mitigate harm	This is beyond the scope of this rulemaking. The EAW form prompts information on traditional cultural properties on or near the project's site. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Project-related definitions	"Gas resource development" means exploration, drilling, extraction, production, transport, development of well pads, pipelines, roadway expansions, compressor stations, or storage of natural gas or associated substances, and all associated infrastructure.	The rules must define the project for environmental review purposes; the proposed rule aligns with the definitions being proposed by the DNR for permitting.
Project-based environmental review thresholds	All gas resource development projects must undergo environmental review consistent with Minn. Stat. § 116D.04.	As described in the justification document, EQB staff do not believe all gas production projects need to undergo review. Any projects triggering any mandatory categories do undergo review consistent with Minn. Stat. § 116D.04.

Area of input	Summary of Tribal input	EQB response
Project-based environmental review thresholds	EIS for projects that construct three wells within a 5-mile radius, if the total projected production exceeds 5 million cubic feet/day	EQB staff considered the concept of "wells within a given radius". However, the threshold for which EQB staff are pursuing would not be bound by a defined distance. As described in the justification document the number of wells threshold would be determined by the design of the project/permitting action. EQB staff have determined a threshold for number of wells constrained by a defined radius would prevent effective consideration of a project as a whole and would create difficulties in implementation for environmental review needs determinations. The number of production wells is a more reliable indicator of environmental impacts due to the size of a project. At the higher flow rates published by Pulsar, 5 wells would be near 5 million cf/day. In combination with other environmental impacts, EQB staff believe this is significant to trigger review.
Project-based environmental review thresholds	EIS for projects that construct three wells within a 5-mile radius, if the project uses hydraulic fracturing, acid stimulation, or any enhanced recovery technique	Discussions with Tribal staff helped inform and support EQB's decision to include thresholds for projects that use certain kinds of production techniques that involve underground injection. The proposed rule includes an EIS for a project using high-volume hydraulic fracturing, as well as EAW thresholds for projects that use other types of underground injection.
Location-based environmental review thresholds	EIS for projects that construct three wells within a 5-mile radius, if the project occurs within the 1854, 1837, or 1855 Treaty Territories	As discussed in the justification document, the only type of gas production projects that EQB staff have determined align with the need for an EIS based on the potential for significant environmental effects is projects that incorporate high-volume hydraulic fracturing. The proposed rule does not include any location-based thresholds for these treaty-ceded territories. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.

Area of input	Summary of Tribal input	EQB response
		Arguably many different project types could impact treaty-reserved resources if located in ceded territory. When environmental review is completed for a project, the review does consider historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Impacts to treaty-reserved resources can also be included when considering other effects – such as water resources, air pollution, land use changes, etc. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Project-based environmental review thresholds	EIS for the construction and operation of gas processing, storage, or injection facilities that emit more than 25,000 tons of carbon dioxide equivalent (CO2e) per year	The proposed rule does not include separate mandatory categories for gas processing or storage facilities, as these are incorporated into the definitions of what must be permitted as a gas resource development project (and therefore part of the gas production project for which environmental review would be required). If not co-located, these facilities would likely be subject to one of the existing industrial mandatory categories. There is an existing mandatory category for CO_2e emissions requiring a mandatory EAW at 100,000 tons of CO_2e emissions per year.
Project-based environmental review thresholds	EIS for the construction and operation of gas processing, storage, or injection facilities that require a state air permit.	This is not included in the proposed rule; it is not consistent with other categories. Many facilities require a state air permit but not environmental review. The existing air pollution category, which requires an EAW for construction of a stationary source facility that generates 250 tons per year or more of an air pollutant (above the EPA's major source threshold of 100 tons per year) may be applicable.
Location-based environmental review thresholds	EIS for the construction and operation of gas processing, storage, or injection facilities that are located within 50 miles of ceded territories and Indian Lands (including Lake Superior); exterior boundaries of any reservation; or Tribal Government buildings, schools, nursing homes, or residential areas	The proposed rule does not include separate mandatory categories for gas processing or storage facilities, as these are incorporated into the definitions of what must be permitted as a gas resource development project (and therefore part of the gas production project for which environmental review would be required). If not co-located, these facilities would likely be subject to one of the existing industrial mandatory categories. The proposed rule does not include any location-based thresholds for ceded territories or Indian Lands.

Area of input	Summary of Tribal input	EQB response
		Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.
Location-based environmental review thresholds	EIS for the projects that cross or impact key resources, including: wild rice waters or wetlands; critical habitat; culturally sensitive areas; for any project that affects treaty-reserved resources (such as wild rice, sugarbush, medicinal plants, hunting/fishing grounds, or traditional subsistence activities) or culturally significant areas (such as traditional cultural properties, ceremonial sites or cultural landscapes)	When environmental review is completed for a project, that review needs to consider historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site (EAW item 15). Impacts to treaty-reserved resources can also be considered in other items of the form – such as consideration of water resources, air pollution, land use changes, etc. EQB staff's expectation would be that these kinds of impacts would be clearly laid out in the completed EAW form. RGUs also have discretion to order environmental review based on the potential for significant environmental effects to these resources.
Project-based environmental review thresholds	EIS for projects that generate or handle radioactive by-products	This is not included in the proposed rule as it was determined unlikely to ever be encountered as a part of a gas resource development project.
Location-based environmental review thresholds	An EIS for projects located within Treaty-Ceded Territory, or within 10 miles of a culturally significant area	The proposed rule does not include any location-based thresholds for ceded territories or culturally significant areas. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.

Area of input	Summary of Tribal input	EQB response
Project-based environmental review thresholds	An EIS for projects that require a state air emissions permit, water discharge permit, or any other environmental permit under Minn. Stat. § 116.07 or Minn. R. ch. 7007, 7008, or 7050.	This is not included in the proposed rule; EQB staff find it to be too broad, as many facilities require these permits but not environmental review.

Specific rule language input

February and March 2026, EQB staff presented an update on the development of the mandatory category concepts (what projects need review at what size). Also in March 2026, EQB staff shared draft final proposed rule language. Tribal input was received, and that input and EQB's response is documented below.

Table 3. Rule language input received and EQB response

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
Definition of gas resource development project and gas well	Include citations to DNR rule	The proposed rule aligns with DNR's draft rules. Although it would be preferable to cite specific definitions in DNR's rules this is not feasible because those rules are also still in development. EQB will work with DNR to see if citations can be improved as the rules are adopted.
N/A	Include definition of Tribal Governments and Indian Country. "Tribal Governments"	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
N/A	Include suggested definition of cumulative impacts.	There is a definition of cumulative impacts in Minn. R. 4410.0200.
N/A	Add a definition of injected fluid or material.	This is not needed; "substance" is sufficiently specific.
N/A	Include definition of Treaty-Ceded Territory.	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
EAW required for construction of a gas resource development project designed to include 5 or more gas wells or expansion of an existing gas resource development project by the addition of 5 or more wells.	The threshold should be three wells	EQB staff had considered a three well threshold based on preliminary information on gas production levels per well in Colorado. However, later updated information changed the EQB staff's understanding of the potential range of production. Production per well was less than previously thought, raising the appropriate threshold to five wells as discussed in the justification document.

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
EAW for construction of a gas resource development project designed to produce gas by injecting a substance into the subsurface to create or stimulate a chemical reaction	Change substance to injected fluid or material	Not needed. Substance is sufficiently specific.
N/A	EAW for construction of a gas resource development project that will result in surface disturbance of 40 or more acres or cumulative total of 40 or more acres	EQB staff believe the five well threshold will ensure that projects with this level of surface disturbance will be reviewed.
N/A	EAW for construction of a project where any part is located within one mile of a designated trout stream, public water, or public water wetland; or within one mile of a municipal or community public water supply well, wellhead, or delineated wellhead protection area.	The draft proposed rule aligns location-based environmental review thresholds with DNR's siting rules. EQB staff understand that water resources and siting within a certain distance of water resources were discussed with DNR as part of siting and were ultimately not included.
N/A	The RGU must not segment a gas resource development project into smaller components; all parts of a single coordinated gas production operation must be considered together in determining whether a mandatory EAW threshold is met.	This concept is part of the overall EAW process, and is articulated in the rules around "connected actions" and "phased actions" defined in Minn. R. 4410.0200. Minn. R. 4410.1000, subp. 4 specifies that "multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EAW, preparing the EAW, and determining the need for an EIS."
N/A	Early Tribal notification. When an EAW or EIS is required, there should be specific requirements for notification of Tribal governments whose reservation, Trust lands, or ceded territory may be affected by the proposed project.	As noted above, the distribution of ER documents affects all projects and is out of scope for this rulemaking process. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
N/A	Phased development. When a gas resource development project is proposed to be constructed or expanded in phases, all phases must be considered together in determining whether a mandatory EAW or EIS threshold under this subpart is met.	This is not needed in the proposed rules. The first subparts of Minn. R. 4410.4300 pertain to all EAW mandatory categories and reiterate that, "Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400" (part 4410.4400 is the mandatory EIS categories rule).

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
N/A	Cumulative impacts assessment. An EAW or EIS prepared for a gas resource development project under this subpart must assess the cumulative environmental effects of the proposed project	This is not needed in the proposed rules. As noted above, this is a required part of all environmental review.
N/A	Groundwater and Drinking Water Assessment. An EAW or EIS prepared for a gas resource development project under this subpart must include a groundwater and drinking water assessment that addresses certain key components	This is not needed in the proposed rules. The EAW form includes groundwater and drinking water assessment; the RGU determines what specific information to include. Writing specifics in rule could be limiting, preventing the review from capturing all pertinent information.
EIS for construction of a gas resource development project designed to use high volume fracturing	Add “or expansion”; identify that HVHF thresholds apply to the cumulative total volume of fluid injected across all wells within a gas resource development project	The proposed definition of HVHF incorporates this as noted “using a combined total of 100,000 or more gallons of any fluids”. The 100,000 gallons threshold for the definition of HVHF is meant to identify the degree of hydraulic fracturing that is needed for gas production. Based on EQB staff’s research, this volume of fluid is best indicative of the type of hydraulic fracturing for which potential for significant environmental effects are anticipated.
N/A	EIS for a cumulative well count of 10 or more	The proposed rule does not include any cumulative threshold for number of wells. EQB staff considered whether some kind of cumulative threshold was appropriate, but upon review of existing mandatory categories, including one in this rule would be difficult to implement. (For example, if an EIS was done when a gas resource development facility expanded to 11 wells, it would also need to be done if one well was added for an expansion to 12 wells.)
N/A	EIS for a cumulative well count of 5 or more and total new surface disturbance of 5 acres or greater	This is not included. It is difficult to aggregate two thresholds together, and an additional surface disturbance of 5 acres is well below any existing EIS thresholds.
N/A	EIS for construction of a new compressor, processing, dehydration, or produced-water facility (excluding routine wellsite equipment), or any on-site facility that would be a major source of air emissions as defined by the EPA	This is not included. The existing air pollution category, which requires an EAW for construction of a stationary source facility that generates 250 tons per year or more of an air pollutant (above the EPA’s major source threshold of 100 tons per year) may be applicable.

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
N/A	EIS for more than 5 miles of new above – or below-ground pipeline associated with the project	This is not included. The existing pipeline categories may be applicable and are more appropriate.
N/A	EIS for total projected combined lateral well length of 20,000 feet or more	The number of production wells threshold analysis did not identify differences in environmental effects based on the length of well.
N/A	EIS for any project element that the commissioner determines is likely to cause significant adverse environmental effects based on location, intensity, or reasonably foreseeable cumulative impacts	This is not included. The RGU (in this case the DNR) can order an EAW under Minn. R. 4410.1000 if they determine that the project may have the potential for significant environmental effects, and an EIS if the EAW demonstrates that the project does have the potential for significant environmental effects.
N/A	EIS for a project with 2 or more gas wells and any portion of the project is located within one mile of a designated trout stream, public water, public water wetland, or municipal public water supply wellhead protection area	The draft proposed rule aligns location-based environmental review thresholds with DNR's siting rules. EQB staff understand that water resources and siting within a certain distance of water resources were discussed with DNR as part of siting and were ultimately not included.
N/A	EIS for a project with projected greenhouse gas emissions of 25,000 tons of carbon dioxide equivalent (CO_2e) or more per year.	This is not included. There is an existing EAW threshold that is applicable to projects with greenhouse gas emissions of 100,000 tons of CO_2e or more per year.
N/A	For the construction or expansion of a gas resource development project any portion of which is located within five miles of the boundary of a federally recognized Tribal Nation's reservation or trust lands, or within one mile of a water body identified in the Minnesota DNR's Native American Sacred Sites and Burial Grounds inventory or the Section 106 area of potential effects for an affected Tribal Nation as documented in prior federal consultation, or within an area where a federally recognized Tribal Nation has notified the commissioner in writing that it actively exercises treaty-reserved harvesting, fishing, or gathering rights, the DNR is the RGU.	The proposed rule does not include any location-based thresholds for ceded territories or culturally significant areas. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.

Conclusion

EQB staff greatly appreciate the time and effort spent by Tribal staff in coordinating and discussing these issues. EQB thoroughly considered Tribal input and appropriate concepts were integrated into the draft rule.

Additionally, many of these discussions supported the need for big-picture consideration of the way Tribes, Tribal sovereignty, and important resources are considered in the Environmental Review Program. Defining such areas and incorporating this concept into the program should be considered more broadly than just gas production. This is likely to include a variety of ideas that will need additional coordination. The EQB and staff may consider such work in future organizational workplans.

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Environmental review: Mandatory category for gas resource development projects

Attachment 2 to rule summary and justification

Pre-publication engagement

The EQB was authorized to "adopt or amend rules to establish mandatory categories for environmental review as they pertain to oil and gas production." Following the board direction to pursue rulemaking for gas production projects, EQB staff began to gather information in order to set appropriate mandatory category thresholds. The staff also conducted coordination with Tribal staff, stakeholder engagement, and provided updates to the board throughout the rule drafting process.

This memo provides a summary of the engagement that took place amongst stakeholders or interested parties prior to publishing the notice of intent to adopt rules. A separate document summarizes the Tribal coordination.

Interested parties

A memo was sent out to interested parties in October 2025 providing an update about the rule development process to date, including the concepts for mandatory category thresholds. EQB staff also offered the opportunity to provide input regarding determinations about what type of gas production projects should require environmental review.

A written response was received from Pulsar Helium, and additional stakeholders (Minnesota Center for Environmental Advocacy, Water Legacy) asked for a short meeting where they could ask questions and provide feedback. In addition, EQB staff held short meetings with The Nature Conservancy, Pulsar Helium, and Koloma Hydrogen in early 2026 to discuss the rule development; comment letters from both The Nature Conservancy and Pulsar Helium were received and incorporated into Board meeting materials in February and March 2026.

The following table summarizes the input from interested parties and considerations from EQB staff.

Table 1. Input received and considerations

Interested party	Input received	EQB staff response
Pulsar Helium	Three-Tier Gas Categories: Clearly distinguish gas projects by type of gas extracted. Create separate categories for hydrocarbon gas; hydrogen (with/without inert gases); and helium (with/without inert gases). Each category can have its own size or production triggers for an EAW or EIS.	EQB staff decided that creating multiple mandatory categories for distinct gases will make the rules overly complicated. Available information, highlighted by the variabilities in flow rates and gas compositions, would make it difficult to determine separate thresholds. In addition, many of the environmental effects identified are associated with the process of drilling, extracting, and producing any gas. Therefore, setting a threshold for review based on the number of production wells, regardless of targeted gas, is appropriate for all gas extraction projects and considers the impacts of extraction that are shared across gas types.
Pulsar Helium	Helium exploratory and appraisal wells should not require mandatory EAW or EIS review when no stimulation or enhanced recovery techniques are used.	Environmental review applies to projects for which there is one or more "governmental action" (defined in Minn. R. 4410.0200, subp. 33 and generally constituting a permit or approval decision). The typical notification process for exploratory drilling is not seen as a governmental action, and so, to date, exploratory borings generally have not been subject to environmental review.
Pulsar Helium	Minnesota should adopt or reference proven, risk-based Federal regulatory standards (e.g., BLM Onshore Orders 1, 2, 3; NEPA thresholds) rather than attempt to independently draft new frameworks for an inert, low-impact gas sector.	The BLM onshore orders provide permitting requirements, and do not identify specific projects or characteristics when the NEPA process must be completed.
Pulsar Helium	No EIS for inert gas projects: Ensure inert, non-emitting gas projects do not automatically trigger an EIS based on thresholds designed for hydrocarbons. A standard helium well should not be treated as if it were a high-impact natural gas well. Such projects might warrant at most an EAW, or no mandatory review at all, at certain scales if their impacts are clearly below significance levels.	EQB staff are not pursuing a rule that differentiates based on gas type, but under the proposed rule there is no mandatory EIS unless specific extraction techniques are used. EQB staff believe that once gas production projects of any type reach a certain size there is an indication that these projects may have the potential for significant environmental effects and an EAW needs to be completed.

Interested party	Input received	EQB staff response
Pulsar Helium	Explicit low-impact exemptions: Codify exemptions or adjusted thresholds for low impact operations. For example, exploratory or appraisal helium wells (small number of wells, no stimulation, no flaring) should be categorically excluded from mandatory EAW/EIS requirements. Projects with no subsurface injections should be explicitly excluded from the EIS threshold. Only projects utilizing high-impact techniques like hydraulic fracturing, chemical injections, or artificial gas generation would trigger an EIS, consistent with the EQB's draft concept memo. Pulsar suggested incorporating conditional rule language that allows regulators to exercise case-by-case discretion for inert gas projects in special situations, without defaulting to burdensome reviews in all cases.	The proposed rule does not include any specific exemptions for gas production projects from environmental review. The proposed rules do largely align with the comment, in that projects will a small number of wells will not be subject to mandatory review, unless specific high impact techniques are used. Discretionary review remains an option for projects where the nature and location of individual projects may indicate a different potential for significant environmental effects.
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Concerns were noted about projects containing methane gas and the potential impacts from these projects needing to be considered based on potential for significant environmental impacts.	EQB staff decided that multiple mandatory categories for distinct gases will make the rules overly complicated. Available information would make it difficult to determine separate thresholds. Methane production is not expected in Minnesota. Setting a threshold for review based on the number of production wells, regardless of targeted gas, is appropriate for all gas extraction projects and considers the impacts of extraction that are shared across gas types. The air pollution mandatory category based on greenhouse gas emissions also needs to be considered, and may apply to projects with higher levels of methane.
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Concerns were noted about the development of thresholds that would allow certain gas production projects to proceed to permitting without first having to do environmental review.	From the available information, EQB staff determined there are certain gas production projects that are likely to not have the level of effects that would indicate the need for mandatory environmental review. Recognizing that the threshold may not always align with each individual project's potential for significant environmental effects based on the nature and location of individual projects, the environmental review program allows for discretionary environmental review.

Interested party	Input received	EQB staff response
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Exploration activities from oil and gas production should be incorporated into environmental review requirements.	Environmental review applies to projects for which there is one or more "governmental action" (defined in Minn. R. 4410.0200, subp. 33 and generally constituting a permit or approval decision). The typical notification process for exploratory drilling is not seen as a governmental action, and so, to date, exploratory borings generally have not been subject to environmental review.
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Concerns about risks related to underground injection, not just the types of projects that would create a gas underground but for those that intend to dispose of waste or intend to utilize fracking techniques.	The proposed rule includes thresholds that would require an EAW for projects proposing to utilize underground injection for waste disposal, an EAW for projects proposing to utilize underground injection for creating a gas in the subsurface, and an EIS for projects proposing to utilize high-volume hydraulic fracturing techniques.
The Nature Conservancy	Establish inclusive definition of conservation lands and align to Minnesota's conservation objectives.	The proposed rule does not include any specific definitions regarding conservation lands. Recognizing that gas production projects may have varying potential for significant environmental effects depending on location, the proposed rule includes a location-based mandatory EAW threshold. This mandatory category is meant to align with DNR's permitting authority, requiring review for projects locating in areas where DNR's siting rules will place conditions or limitations on their ability to operate due to potential impacts to sensitive environmental areas.

Board discussion

Staff presented to the Board or its environmental review implementation subcommittee (ERIS) on multiple occasions and provided supporting documents. Each meeting also contained opportunity for public comment.

- April 16, 2025 – Board members were informed about the legislation regarding the development of regulations for gas and oil production and the legislative directive that EQB "may" develop mandatory categories. The presentation consisted of a high-level introduction to gas production projects and why environmental review mandatory categories should be developed. The Board approved a resolution to begin the rulemaking process for developing mandatory categories for gas production projects. There were no public comments.
- December 17, 2025 – ERIS was given an update on the rulemaking process, including high-level concepts for those characteristics of gas production projects that staff were considering and evaluating for development of mandatory category thresholds. Information included discussion of engagement and Tribal coordination. Comments were received raising concern about the lack of environmental review for gas exploration.

- February 18, 2026 – Board members were further informed on the rulemaking progress and the development of the mandatory category thresholds, including the overall concepts for the components of the rule. Written comments were received from The Nature Conservancy (see above) and oral comments from Water Legacy that "the EQB seems to be setting up a regulatory scheme that is easy to apply for the producer but not protective of the communities…should consider methane, combustible gases, toxic gases, groundwater pollution, and surface water pollution, etc."
- March 18, 2026 – ERIS members were provided an additional update, along with the opportunity to make recommendations about the information that the full board would benefit from hearing during the upcoming April board meeting. Written comments were received from Pulsar Helium (see above) and oral comments from Tribal environmental staff about the process and timing of sharing draft language. Additional information on Tribal comments is found in attachment 1.
- April 15, 2026 (future) – Board members were provided with draft rule language to be proposed for comment and accompanying justification documents, in order to approve moving forward with the rulemaking process by publishing a notice of intent to adopt rules.

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Environmental review: Mandatory category for gas resource development projects

Rule summary and justification memo addendum

Purpose of addendum

The purpose of this addendum is to describe the EQB's modifications to the proposed rules establishing mandatory categories for gas resource development projects.

The modifications are in response to new legislation that revised multiple laws related to gas resource development as well as the comments received in response to publication of the notice of intent to adopt rules.

This addendum includes a brief discussion of the new legislation and list of the commenters. It provides the rationale for EQB's decision to move forward with rules at this time; describes and justifies modifications made to the proposed rule; and provides a response to the general comment that EQB should establish a more stringent threshold for required environmental review for gas resource development projects.

Appendix A contains a complete response to comments received by EQB during the rulemaking comment period.

Rulemaking History

The EQB staff brought the proposed rules before the Board on April 15, 2026. To support the rulemaking, the EQB staff prepared a memorandum (Rule Summary and Justification Memo, dated April 3, 2026) that included: the legislative directive; background on mandatory categories in environmental review; a summary of the EQB staff's work to develop appropriate amendments, including public outreach and Tribal coordination; the proposed rules; and the rationale for each rule proposed.

At the April 2026 meeting, the EQB adopted a resolution that authorized the Executive Director to proceed with the steps necessary to publish the EQB's Notice of Intent to Adopt Expedited Rules Without a Public Hearing. Pursuant to this resolution, the Executive Director published the proposed rules amendments in the Minnesota State Register for public comment on Monday, May 18, 2026 (50 SR 1313), with the comment period closing on July 2, 2026.

Sources of potential rule modifications

After the close of the comment period, EQB considered modifications to the proposed rules based on review and careful evaluation of:

- Legislation (Laws of Minnesota 2026, chapter 127, article 2) that revised multiple laws related to gas resource development, which was signed by the Governor on May 26, 2026.
- Comments received during the public comment period.

Legislative changes

Laws of Minnesota 2026, chapter 127, article 2 (hereinafter "2026 Gas Law"), primarily focused on amending Minn. Stat. ch. 103I to direct the Minnesota Department of Health (MDH) to make rules setting standards governing the construction of gas wells. These rules must be proposed by May 2028.

Some of the legislative changes affected the rulemaking authority given to the Department of Natural Resources (DNR) and EQB or influenced the contents of the proposed rules. These included:

- A statutory prohibition on "hydraulic fracturing treatment" (Minn. Stat. § 103I.709) and a requirement that MDH rules include a prohibition on hydraulic fracturing (Minn. Stat. § 103I.706).
- A statutory prohibition on injection of any "liquid, gas, or chemical" other than approved drilling fluids, unless a "class 2 injection well permit" is authorized by the U.S. Environmental Protection Agency (Minn. Stat. § 103I.709); and a requirement that MDH rules prohibit the injection or disposal or surface water, groundwater, or any other liquid, gas or chemical except for approved drilling fluids (Minn. Stat. § 103I.706).

Additional legislative changes include limiting construction of gas wells to Cook County, Lake County, and St. Louis County, and a prohibition on construction of gas wells except for extracting or producing helium (Minn. Stat. § 103I.708).

The 2026 Gas Law also established a "moratorium on gas well conversion and construction" (Minn. Stat. § 103I.707) until the following conditions are met: MDH gas well rulemaking is complete; "the legislature enacts a statute specifically authorizing the issuance of gas resource development permits"; and "the legislature enacts fees for gas resource development permits."

Public comments

EQB received comments on the proposed rules from the following:

- Grand Portage Band of Lake Superior Chippewa
- Intertribal Task Force on Helium Extraction (consisting of the Bois Forte Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, and Grand Portage Band of Lake Superior Chippewa)
- Pulsar Helium, Inc.
- WaterLegacy, Minnesota Center for Environmental Advocacy, Northeastern Minnesotans for Wilderness, CURE (joint submittal)
- The Nature Conservancy
- 199 members of the public, collected by WaterLegacy
- Five members of the public via e-comment process

The full comments are available on EQB's rulemaking website and as Exhibit E of EQB's submittal to the Court of Administrative Hearings. Appendix A provides a breakdown and response to all comments.

Rationale for moving forward with rulemaking

Several commenters raised rulemaking process concerns and suggested that EQB should withdraw the rules or they should not be approved by the Administrative Law Judge (ALJ).

EQB finds that it is important to move forward with mandatory categories for gas resource development projects, as part of establishing an overall regulatory framework for this new industry. Gas resource development is coming to Minnesota, and having clear environmental review requirements prior to projects being proposed will meet the objectives of the environmental review program.

The following portion of this memo discusses and addresses the topics identified by commenters as reasons why the rules should be withdrawn or disapproved, providing EQB's rationale for why it is appropriate to move forward with rulemaking.

Tribal consultation and coordination

Environmental organization commenters noted the 2026 Gas Law legislation includes a new requirement (Minn. Stat. § 93.514 (e)), which states "An entity adopting rules under this section is subject to the Tribal consultation requirements under section 10.65." They argued the rules should be disapproved or withdrawn to allow for consultation.

EQB disagrees with the commenter that this is a reason to disapprove the rules. EQB does not fall under the definition of "agency" provided in Minn. Stat. § 10.65, subd. 2. However, in keeping with Minn. Stat. § 10.65, subd. 3(k), which encourages and allows any agency to engage in consultation with the Minnesota Tribal governments, EQB in July 2024 adopted its own Tribal coordination and consultation policy. Throughout this rulemaking process staff followed that policy.

EQB staff coordinated with staff from interested Tribal Governments ("Tribes") during the development of the rule proposal, as documented in Attachment 1 to the Rule Summary and Justification document, and continued coordination as the rule proceeded to adoption. Staff offered consultation in formal letters to each Tribal government in July 2025 and July 2026. No formal consultation was requested. EQB cannot force any sovereign Tribal government to participate in consultation. The results of Tribal coordination were fully documented and included in the decision-making process.

Following the completion of the public comment period, EQB staff continued to coordinate with Tribal staff. Two separate meetings were held. At the first, held on August 10, EQB staff discussed the areas of input received and the legislative updates that staff were evaluating for potential revisions to the rule proposal. At the second meeting, held on September 9, EQB staff discussed draft modifications to the rule proposal. A draft rule language document showing the likely modifications was shared with meeting invitees prior to this meeting. Invitations to both meetings were sent to all members of the Minnesota Tribal Environmental Committee (MNTEC), which is comprised of environmental staff from Minnesota's Tribal Nations and Treaty Authorities.

Legislative guidance

Commenters argue that the legislature improperly delegated its authority to EQB and "furnished no reasonably clear standard or policy to EQB in Minn. Stat. § 93.514(a)(3) or in any other statute to guide EQB's adoption of rules to establish mandatory categories for gas and oil production." Commenters contrast this with the detailed instructions to MDH found in the 2026 Gas Law. Commenters claim that such a delegation of rulemaking authority in the absence of legislative instruction is unconstitutional, particularly for an expedited rulemaking.

EQB does not agree with this assertion. The statute authorizing this rule (Minn. Stat. § 93.514, subd. 1(d)) stated that "any grant of rulemaking authority…is in addition to existing rulemaking authority and does not replace, impair, or interfere with any existing rulemaking authority." EQB has long-standing authority under Minn. Stat. § 116D.04, subd. 2a(b), to establish EIS and EAW categories "where there is potential for significant environmental effects resulting from any major governmental action." Thus, the guiding principle that limits EQB's actions is "potential for significant environmental effects." EQB has adopted all its mandatory EAW and EIS categories under this authority.

Expedited rule process

Commenters argue that the expedited rule process was inappropriate and undermines the goals of rulemaking under the Minnesota Administrative Procedures Act (MAPA, Minn. Stat. ch. 14).

EQB notes that although it was optional for EQB to adopt *any* environmental review rules for gas resource development projects, if it *did* adopt such rules the legislature mandated that it use the expedited rulemaking procedure, stating that "[a]n agency adopting rules under this section must use the expedited procedure in section 14.389." Minn. Stat. § 93.514(b).

Modifications to proposed rule amendments

At its meeting on October 21, 2026, the EQB made several modifications to the rules as published in the Minnesota State Register on May 18, 2026. The modifications are a result of review and careful consideration of the 2026 Gas Law and the comments received during the public comment period.

A discussion of the reasons for the modifications is included below and is a supplement to the information provided in the Rule Summary and Justification Memo.

Minnesota Statute § 14.05, subd. 2, establishes the standard to assess if a modified rule is substantially different than the proposed rule. The modifications below would not result in a substantially different rule than the rule as proposed because:

- The changes are within the scope of the matter announced in the notice of intent to adopt
- The changes are a direct and logical outgrowth of comments submitted in response to the notice of intent to adopt
- The notice of intent to adopt provided fair notice to persons interested in and affected by the rule amendments that the additional changes could be part of the rule in question
- The additional changes do not change the group of persons who will be affected by the rule
- The subject matter of the additional changes is the same as the subject matter contained in the notice of intent to adopt
- The additional changes do not materially alter the effects of the rule proposed in the original notice of intent to adopt the rule

Revised rule language

Language changes

The EQB modified proposed Minn. R. 4410.0200, subp. 32d, the definition of a gas well, as follows:

> Subp. 32d. **Gas well. "**Gas well" has the meaning given in Minnesota Statutes, section 103I.005, Subd. 10b. ~~means a well that is intended for gas production and that is included as part of a gas resource development project.~~

The 2026 Gas Law added this new statutory definition of a gas well. It makes sense to rely on statutory definitions to avoid confusion.

The EQB also modified proposed Minn. R. 4410.4300, subp. 38, item B, to clarify that the "target resource for extraction" is a *gas* resource to better align with the definitions of gas resource development projects.

> B. For construction of a gas resource development project that is designed to produce gas using horizontal or directional drilling methods beneath an area subject to only surface disturbance siting prohibitions in rules adopted by the DNR, if the target gas resource for extraction is less than one-quarter mile below the surface, the DNR is the RGU.

Removed mandatory categories

EIS for projects using high-volume hydraulic fracturing

The EQB modified the rules to remove proposed Minn. R. 4410.4400, subp. 29, requiring an environmental impact statement for a gas resource development project using high-volume hydraulic fracturing techniques; and to remove the related definition of high-volume hydraulic fracturing proposed at Minn. R. 4410.0200, subp. 38a.

In the 2026 Gas Law, the legislature established a definition of hydraulic fracturing treatment at Minn. Stat. § 103I.005, subd. 11a, and then prohibited hydraulic fracturing treatment in a gas well (Minn. Stat. § 103I.709, subd. 2.) The legislature also directed the Minnesota Department of Health to adopt rules for gas wells and specified that those rules must include a prohibition against hydraulic fracturing treatment (Minn. Stat. § 103I.706).

Because these kinds of projects are prohibited within Minnesota, there is no need to require environmental review for them. Maintaining the rules as proposed could cause confusion about what is allowable. Public commenters also generally agreed that the proposed rules provisions around high-volume hydraulic fracturing conflicted with the 2026 Gas Law and should not be included in final rules.

EAW for projects producing “stimulated” gasses using underground injection

The EQB modified the rules to remove proposed Minn. R. 4410.4300, subp. 38, item E, requiring an environmental assessment worksheet for a gas resource development project designed to produce gas created by injecting a substance into the subsurface to create or stimulate a chemical reaction.

The 2026 Gas Law prohibited the construction of a gas well for the primary purpose of extracting or producing a gas other than helium. Helium is not produced via injection or stimulation.

In addition, the legislature prohibited (Minn. Stat. § 103I.709, subd. 1) the use of a gas well to inject or dispose surface water, groundwater, or any other liquid, gas, or chemical (except for injection of approved drilling fluids or if a Class 2 injection well permit is obtained from the Environmental Protection Agency). They also directed the Minnesota Department of Health to adopt rules for gas wells and specified that those rules must include a prohibition against the injection or disposal of surface water, groundwater, or any other liquid, gas, or chemical except for approved drilling fluids (Minn. Stat. § 103I.706).

Because these kinds of projects are prohibited within Minnesota, there is no need to require environmental review for them. Maintaining the rules as proposed could cause confusion about what is allowable. Public commenters also generally agreed that the proposed rules provisions around the production of stimulated gas conflicted with the 2026 Gas Law and should not be included in final rules.

EAW for projects using underground injection for disposal

The EQB modified the rules to remove the originally proposed Minn. R. 4410.4300, subp. 38, item D, requiring an environmental assessment worksheet for a gas resource development project designed to include one or more class II underground injection wells, as defined in Code of Federal Regulations, title 40, section 144.6(b), for waste disposal.

While the legislature prohibited (Minn. Stat. § 103I.709, subd. 1) the use of a gas well to inject or dispose surface water, groundwater, or any other liquid, gas, or chemical, that prohibition includes an exception if a Class 2 injection well permit is obtained from the Environmental Protection Agency. However, the legislature also prohibited the conversion of a gas well to any other type of well (Minn. Stat. § 103I.601, subd. 11) and directed the Minnesota Department of Health to adopt rules for gas wells and specified that those rules must include a prohibition against the injection or disposal of surface water, groundwater, or any other liquid, gas, or chemical except for approved drilling fluids (Minn. Stat. § 103I.706). There is no mention of MDH allowing Class II injection wells in the rulemaking provision.

Upon review of the legislative changes, EQB staff have determined that even if the 2026 Gas Law could be interpreted as allowing a Class II oil and gas injection well, these kinds of injection wells are unlikely to be required for the gas resource development projects currently allowed in Minnesota. Class II injection wells are generally used to dispose of water that co-occurs with oil and natural gas and information available from the northeast Minnesota test sites from Pulsar Helium note gas flowing to the surface without water.

Because projects involving injection are prohibited under Minnesota state law and likely would not be allowed under federal law, there is no need to require environmental review for them. Maintaining the rule that proposed an EAW for projects including Class II injection wells could cause confusion about what is allowable.

Added mandatory category

EAW for projects with gas wells located in DWSMAs

The EQB modified the rules at Minn. R. 4410.4300, subp. 38, item D, to replace the proposed requirement related to underground injection (discussed above) with a requirement for an environmental assessment worksheet for a gas resource development project that is designed to include any gas well(s) located within a groundwater drinking water supply management area delineated under chapter 4720.

> D. For construction of a gas resource development project that is designed to include any gas well(s) located within a groundwater drinking water supply management area delineated under chapter 4720 ~~one or more class II underground injection wells, as defined in Code of Federal Regulations, title 40, section 144.6(b), for waste disposal~~, the DNR is the RGU.

This addition was made directly in response to comments (see Appendix A table comment C2) from the Grand Portage Band of Lake Superior Chippewa and the Intertribal Task Force on Helium Extraction (consisting of the Bois Forte Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, and Grand Portage Band of Lake Superior Chippewa). The rationale for this addition is discussed further below.

The Tribal comments identified an environmental effect – potential contamination of drinking water resulting from the migration of gas or brine during gas extraction from a well – that was not discussed in EQB's initial rule summary and justification document. The comments cited scientific studies that have demonstrated that groundwater was contaminated by gas or brine migration in various projects.

The projects that are referenced in the comments (oil and natural gas production, carbon sequestration) are different than the projects expected in Minnesota due to the more intensive extraction techniques that are noted in the research for the oil and natural gas projects or, in the case of the carbon sequestration research, the *injection* of substances rather than extraction. Indeed, the Tribal commenters noted that they were "not asserting that identical outcomes are inevitable" in the areas of the state where gas production is most likely (the Duluth complex of northeast Minnesota). EQB staff reviewed the information provided by Tribes to understand whether, and to what extent, information about the referenced projects can provide insight into the potential for significant environmental effects from gas resource development projects in Minnesota.

There are some similarities of the types of actions from the projects referenced in the comments and the expected actions from likely gas resource development projects anticipated in Minnesota. These include drilling of wells through drinking water aquifers, extraction of carbon dioxide and methane gas, and the potential for extraction of brine waters. These processes do present a possibility of gas or brine migration from a gas well to groundwater. This possibility is smaller in Minnesota because of the less intense extraction processes than the referenced projects from the Tribal comments. Nevertheless, there may be potential for significant environmental effects due to concerns of drinking water contamination when located in areas that are used for drinking water.

EQB therefore determined that gas resource development projects may have potential for significant environmental effects when located near areas that supply drinking water, and that a lower threshold for review would be appropriate in those areas. This determination – that certain areas related to drinking water should be

considered a sensitive area for gas resource development projects – is in keeping with EQB's general practice within the mandatory categories of identifying a general threshold for all projects (in this case the # of wells threshold) and additional thresholds at a lower project scale or magnitude that consider potential impacts to sensitive resources.

Minnesota has a robust system for drinking water source protection. A key component of that system is the delineation of drinking water supply management areas (DWSMAs), conducted by the Minnesota Department of Health under Minn. Rules ch. 4720. As defined in Minn. R. 4720.5100, a DWSMA consists of "the surface and subsurface area surrounding a public water supply well, including the wellhead protection area, that must be managed by the entity identified in a wellhead protection plan." DWSMAs are the best available identifier of areas in the state that consider protection to drinking water resources.

In light of the above, EQB modified the rules to add a requirement for an EAW for any project with gas wells located within a groundwater drinking water supply management area (DWSMA) delineated under chapter 4720. This kind of requirement already exists within the environmental review program. The mandatory category for animal feedlots at Minn. R. 4410.4300, subp. 29 includes a lower EAW threshold for projects located in "an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination", demonstrating that a DWSMA is a well-defined and usable sensitive location within the environmental review program. MDH offers a source water protection map viewer that clearly shows the location of DWSMAs.

Based on discussion with staff at the Minnesota Department of Health, EQB chose to require an EAW for any project located in a groundwater DWSMA, not solely those that are vulnerable to contamination. This is largely because the designation of vulnerability is based primarily on how fast pollutants move from the surface to the public water supply well, not how pollution travels within the groundwater – which is more relevant to drilling of gas wells. In addition, because MDH also delineates surface water DWSMAs (shown on the source water protection map as DWSMA-SW), EQB felt it was appropriate to clarify that the locations are groundwater-based DWSMAs.

Justification for maintaining five well threshold

A major theme of many of the comments was that EQB should change the general threshold for requiring an EAW for gas resource development projects to be more stringent – to a threshold of three wells or even one well.

EQB's authority is limited to requiring environmental review for projects that pose the potential (may have the potential or do have the potential) for significant environmental effects or in prescribing how the environmental review process should be completed. The scope of this rulemaking is limited to identifying when gas production projects should require mandatory review. The EAW thresholds proposed are based on these determinations. EQB does not have the authority to require any analysis of environmental impacts for projects that do not pose such significant environmental effects. The program, however, includes provisions for discretionary review of projects that do not meet a mandatory threshold, but where a responsible governmental unit determines that the project's unique nature or location would create the potential for significant environmental effects.

The original Rule Summary and Justification memo provides substantial information about the choice of the five well threshold, based on the determination of the potential for significant environmental effects. EQB does not believe that lowering the threshold for mandatory review is justified based on the information provided by commenters.

When it proposed the rule, EQB documented the reasons for the proposed threshold. The threshold was based on the combined potential for environmental effects to the surface, subsurface, and the air of a project of this size. The EQB staff determined that a five well project reaches the point where it is reasonable to conclude that there may be the potential for significant environmental effects (and therefore review should be required). The EQB staff determined that it is not possible to conclude that the combined effects anticipated from a gas resource development project of less than five wells may have the potential for significant environmental effects. The analysis incorporated data from similar projects in Colorado as well as available information from Pulsar Helium. The analysis identified what sort of impacts can be predicted from five wells, such as traffic, potential air emissions, surface disturbance, noise, and lighting. These potential impacts were compared to existing mandatory categories when possible (i.e. surface disturbance, air emissions) and also compared to project activities of various mandatory categories (i.e. traffic from sand and gravel mining). While none of these numbers were enough to trigger a mandatory threshold on their own, the cumulative potential effects at five wells was determined to identify the need for a mandatory EAW.

EQB agrees with commenters that there is currently limited Minnesota-specific information available to analyze the potential for environmental effects that might result from unique geological conditions. However, EQB staff found that the information that was available was substantive and sufficient to determine an appropriate threshold. While EQB has stated that for new project types—where limited information may be available—environmental review may be beneficial in informing the public and decision makers, limited information alone is not an adequate indicator of potential for significant environmental effects.

The new information regarding the environmental concerns to drinking water as presented in the Tribal comment letter and others did not demonstrate a need to change the general threshold of five wells that would apply statewide. The risks, as provided by commenters and discussed in the section above, are most likely to be of concern in areas where drinking water is identified as needing protection, and therefore did not represent a change in EQB's determination of potential for significant environmental effects of a general gas resource development project. The information provided did, however, demonstrate an elevated concern for locations around drinking water supplies, and EQB has modified the rule accordingly (as discussed above).

EQB also considered other issues raised in comments regarding the thresholds in the proposed rule. Potential impacts to surface waters and locations of various water resources were referenced by commenters for reasoning as to why the threshold should be lowered to three wells or one well. While EQB agrees that gas production projects would involve some risk to surface waters from the potential for spills or waste mismanagement, EQB finds that the proposed EAW location thresholds will ensure environmental review for many projects at risk for spills that are located in the areas of concern identified in the comments received. EQB recognized that projects located near or within certain sensitive areas may pose a different potential for significant environmental effects based on the potential to impact those sensitive areas[1]. In considering all the proposed location-based thresholds, EAWs will be required for projects in some areas where water resources may be sensitive which would address various comments regarding concerns to other water resource related impacts as well as drinking water protection areas.

EQB has determined the five well threshold is still appropriate as a general threshold to be considered for all projects while considering the other location-based thresholds that are also being proposed.

While some commenters were concerned that EQB's proposed rule would never result in environmental review, based on research and understanding of the development of similar projects in other states (as discussed in the Summary and Justification document), and as discussed with DNR, the EQB staff disagrees and believes that it is likely that gas projects will require environmental review in numerous circumstances, including as a result of their location.

[1] In the response to comments table, response to comment C21 identifies all of the locations that would require an EAW as proposed.

Appendix A: Response to comments

No.	Commenter	Comment summary	EQB response
C1	**Grand Portage Band; Tribal Task Force**	Lower the mandatory EAW threshold in Minn. R. 4410.4300, Subpart 38(A) from five wells to three wells. Tribes recommended lowering the threshold and provided the following reasoning as to why. • Tribes assert that the proposed rules do not protect drinking water resources because gas and brine may be released during gas well drilling. Tribes cite studies of CO_2, methane, and brine migration in hydrocarbon production areas as well as carbon sequestration storage areas in support of their view that well drilling for gas extraction could result in contamination of local aquifers. • Tribes note the problem is exacerbated by a lack of groundwater data for the area of expected gas development – the fractured Precambrian rift basalt of the Duluth complex which is geochemically distinct from the sedimentary shale and sandstone formations that have been researched. • Tribes believe that an EAW is the minimum review necessary to establish baseline conditions, but the 5-well threshold will not provide for an EAW for the most likely development scenarios in northeastern Minnesota • Surface water contamination from spills. Tribal comments identify surface water impacts from spills and wastewater mismanagement as a risk related to gas production based on historical information involving hydrocarbon gas operations. • Projects under mandatory thresholds as proposed by EQB do not align with EQB staff's response to Tribes regarding the ability for environmental review to consider environmental concerns expressed by Tribes. • The EQB has legal authority under MEPA to set a mandatory EAW threshold at one well - i.e., any gas resource development project requiring a DNR permit. Because the five-well threshold is a policy choice rather than a legal constraint, the failure to set a lower threshold is a policy failure that this comment record documents and that future rulemaking must address.	The EQB does not believe that lowering the 5-well mandatory threshold is justified by the environmental concerns presented by Tribes. The justification for setting the threshold was based on the determination of the potential for significant environmental effects. EQB documented the reasoning for reaching the conclusion that when a gas resource development project is sized at five or more production wells the combined environmental impacts to the surface, subsurface, and the air demonstrate the need for a mandatory EAW as these projects may have the potential for significant environmental effects. This decision was not a "policy choice" but instead a judgment based on available information on potential effects. The EQB considered the information provided by Tribes concerning gas and brine migration, spills, and the general lack of groundwater data for the Duluth complex, but could not conclude that this information supported the need for a mandatory EAW for a gas resource development project that proposes to construct fewer than five wells. However, the EQB did add a location threshold in response to this information, i.e., projects located in DWSMAs, as discussed in response to comment C2 below. See "Justification for maintaining five well threshold" discussion within the document for further reasoning.

No.	Commenter	Comment summary	EQB response
C2	**Grand Portage Band; Tribal Task Force**	Add an explicit location-based EAW trigger for gas resource development projects located within a drinking water supply management area where the aquifer is identified as vulnerable to contamination, consistent with the standard already established for animal feedlots in existing Minn. R. 4410.4300, Subpart 29(B). • Tribes assert that the proposed rules do not protect drinking water resources because gas and brine may be released during gas well drilling. Tribes cite studies of CO_2, methane, and brine migration in hydrocarbon production areas as well as carbon sequestration storage areas in support of their view that well drilling for gas extraction could result in contamination of local aquifers.	EQB agrees with the Tribes that projects located within drinking water supply management areas may have the potential for significant environmental effects. EQB has modified the rules to require an EAW for gas resource development projects with gas wells located within a DWSMA. See the "EAW for projects with gas wells located in DWSMAs" for further reasoning.
C3	**Grand Portage Band; Tribal Task Force**	Add an explicit location-based EAW trigger for any gas resource development project located within five miles of a federally recognized Tribal Nation's reservation boundaries, trust lands, or documented treaty-reserved harvesting, fishing, or gathering areas. • Tribal comments note that three independent frameworks - Minn. Stat. § 10.65, the EQB's own July 2024 Tribal Coordination and Consultation Policy, and the 1854 Treaty as federal law – "converge on the conclusion that the EQB has both the authority and the obligation to recognize proximity to Tribal sovereign territory as a basis for mandatory environmental review." Tribes rejects EQB staff's expressed concern that applying a reservation-proximity trigger to gas extraction—but not to other project types—would introduce asymmetry across the mandatory category rules. Tribes do not agree that this concern constitutes a legally-adequate basis for declining to include this trigger in the final rule.	This issue was discussed and documented as part of Tribal coordination during rule development. (See Attachment 1 to the Rule Summary and Justification.) EQB's authority is limited to requiring environmental review for projects that pose the potential (may have the potential or do have the potential) for significant environmental effects. The EQB does not believe that the documents cited in the comment give it a basis to conclude, based on the potential for significant environmental effects, that environmental review should be required for any project that is "proximate" to Tribal sovereign territory or land where a tribal interest may be present. Although the proposed rule does not include any thresholds based on proximity to any Tribal Nation's reservation boundaries, trust lands, or documented treaty-reserved harvesting, fishing, or gathering areas, some projects that locate in these areas will be required to undergo environmental review where they overlap with other existing required review categories.
C4	**Grand Portage Band; Tribal Task Force**	Expand mandatory EIS categories in Minn. R. 4410.4400, Subpart 29 to include any gas resource development project that involves extraction from a geological formation with no peer-reviewed literature characterizing water quality impacts from gas extraction in that formation type or has no pre-project baseline groundwater quality data for the affected aquifer.	EQB disagrees with the concept that a project seeking to locate in an area that has not previously been studied definitively has the potential for significant environmental effects and therefore requires a mandatory EIS. If the project is of a size or located in a place that requires an EAW, or if a discretionary EAW is ordered, the RGU will have the opportunity to determine whether additional information is needed. This recommendation is not included in the final rule.

No.	Commenter	Comment summary	EQB response
C5	**Grand Portage Band; Tribal Task Force**	Commit to mandatory pre-drilling baseline groundwater monitoring for all gas resource development projects, regardless of well count, as a standalone regulatory requirement applicable at the DNR permitting stage. The Tribal comments requested the following from EQB. • Formally document in the final rulemaking record that pre-project baseline groundwater quality data is absent for the affected aquifer systems and that this absence creates an attribution gap that cannot be remedied through EAW-level review alone. • Formally recommend to the DNR that Minn. R. Ch. 6124 be amended to require pre-drilling baseline groundwater monitoring as a permit condition for all gas resource development projects regardless of well count. • Condition the adequacy of any EAW prepared under the mandatory category rules on the availability of pre-project baseline data sufficient to support a meaningful cumulative impacts analysis.	EQB's authority is limited to that of establishing when projects must undergo mandatory environmental review and how the environmental review process must be completed. The scope of this rulemaking is limited to the creation of mandatory categories for review of gas production projects. EQB cannot require an project proposer to conduct pre-drilling baseline groundwater monitoring to determine if review is necessary, or as part of review. This request is outside of EQB's authorities and the scope of this rulemaking.
C6	**Grand Portage Band; Tribal Task Force**	Set the Early Tribal Notification timing at a minimum of 30 days prior to publication of the EAW or draft scoping decision in the EQB Monitor, consistent with the 30-day Tribal notification standard already embedded in DNR's draft gas resource development permitting rules at Minn. R. 6124.3000, Subpart 8	The scope of this rulemaking, as approved by the Board, is the creation of mandatory categories of environmental review for gas production projects. Creating a rule that requires early notification for Tribal Governments is outside of this rulemaking scope and is not included as part of the final rule. EQB staff are continuing to work on best practices for Tribal notification, and we anticipate bringing forward the larger idea for discussion as part of our ongoing coordination around potential program updates to reflect Tribal sovereignty.
C7	**Grand Portage Band; Tribal Task Force**	Add a geographic aggregation trigger to Minn. R. 4410.4300, Subpart 38 requiring a mandatory EAW when the cumulative total of gas resource development wells proposed or permitted within a defined geographic area within a rolling five-year period meets or exceeds the mandatory threshold, regardless of whether those wells are proposed by the same or different operators. • Tribal comments note the existing phased and connected actions rules are inadequate in considering multiple operators in the same geographic area.	The environmental review program rules require environmental review for proposed projects based on their own potential for environmental effects, without consideration of other projects nearby. Instead, discussion and evaluation of cumulative potential effects from proposed projects in relation to other nearby projects is a requirement *when completing* environmental review. The RGU must consider cumulative potential effects when determining whether an individual project requires an EIS (Minn. R. 4410.1700). This recommendation – to establish a threshold based on an aggregation of projects – would represent an entirely new approach to environmental review mandatory categories. As noted above, the mandatory categories are based on an individual project's potential effects. The existing rules related to cumulative potential effects and phased and connected actions are meant to deal with similar scenarios as identified as concerns from the Tribal comments. EQB is not including this recommendation in the final rule.

No.	Commenter	Comment summary	EQB response
C8	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenters state that the legal framework for EQB's Gas Rules is problematic because the authorizing statute "provided no policy or substantive standards". Commenters further note that the legislature "furnished no reasonably clear standard or policy to EQB in Minn. Stat. § 93.514(a)(3) or in any other statute to guide EQB's adoption of rules to establish mandatory categories for gas and oil production" and contrast the detailed instructions to MDH found in the 2026 Gas Law. Commenters note that "the Legislature made no substantive environmental review policy choices for gas development and provided no direction to EQB as to the categories of gas development projects, sizes, locations, or hazards that should require an EAW or an EIS" and claim that such a delegation of authority is unconstitutional, particularly for an expedited rulemaking under Minn. Stat. § 14.389. Commenters also argue that EQB must establish a mandatory EIS as part of the "environmental review" rule.	EQB disagrees that the legislature has acted unconstitutionally when it gave EQB authority to adopt rules to establish mandatory environmental review categories for gas and oil production projects without additional guidance. The legislature stated that "any grant of rulemaking authority in [section 93.514] is in addition to existing rulemaking authority and does not replace, impair, or interfere with any existing rulemaking authority." Minn. Stat. § 93.514, subd.1(d). EQB's authority to adopt this rule arises in part under MEPA, ch. 116D. Under Minn. Stat. § 116D.04, subd. 2a(b), the legislature required EQB to establish EIS and EAW categories "where there is potential for significant environmental effects resulting from any major governmental action." Minn. Stat. § 116D.04, subd. 2a. Thus, the guiding principle that limits EQB's actions is "potential for significant environmental effects." EQB has adopted all its mandatory EAW and EIS categories under this authority with rare exceptions (i.e., feedlot, ethanol, gas pipeline projects). EQB finds that MEPA's "guiding principles" are adequate for grounding the EQB's rulemaking here. EQB also disagrees that EQB must include a mandatory *EIS* classification in its rule. Commenters read the enabling statute, Minn. Stat. § 93.514, which authorized EQB to adopt rules establishing "mandatory categories for environmental review" to require EQB to mandate "environmental impact statements" rather than "environmental assessment worksheets." EQB rejects this novel reading of the law based on its longstanding interpretation of the term "environmental review" as including mandatory EAWs. The EQB's statutory mandate is to, "by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets must be prepared as well as categories of actions for which no environmental review is required under this section." Minn. Stat. § 116D.04, subd. 2a(b). If an EAW was not a form of environmental review, the legislature would not have described both EAWs and EISs as mandatory categories for environmental review. The EQB's adoption of rules requiring mandatory EAWs as a form of environmental review has never been challenged.

No.	Commenter	Comment summary	EQB response
C9	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenters state that the legal framework for EQB's Gas Rules is problematic because of EQB's use of DNR's proposed siting restrictions as a threshold, stating that this improperly delegated EQB's authority to another agency. Commenters also object to EQB's proposed mandatory classifications that require EAWs for gas projects that are proposed to be sited in any areas that DNR identifies in rule as requiring special siting conditions on the basis that DNR's proposed siting rules have not been adopted into law. Finally, commenters object that reliance on rules that may not be adopted or may change in the future violates rulemaking standards (Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100, items D and E) and "Article 3 constitutional requirements for separation of powers."	EQB staff have worked closely with DNR staff in developing both sets of rules related to gas production. EQB's proposed amendments to Minn. R. 4410.4300, subp. 38, include two items (B and C) that require an EAW for any project locating in areas subject to certain prohibitions established in rule adopted by the DNR. As shown in DNR's proposed rules (also proposed on May 18, 2026, at 50 SR 1316), numerous specific areas fall under these categories (see response to comment C21). In its justification document, EQB noted that DNR has the authority and expertise to determine where areas are sensitive to impacts from gas extraction and EQB therefore found it appropriate to rely on DNR's decisions limiting siting of projects involving certain drilling and extraction techniques rather than attempt to make its own assessment of which areas pose environmental issues with regard to gas production development. DNR was—and is still—charged with adopting rules that pertain to siting of gas resource production projects and reclamation of such projects. Minn. Stat. § 93.514(a)(3) as amended by the 2026 Gas Law. EQB agrees that DNR has only proposed to adopt siting rules, that final adoption has not occurred, and the referenced rules may change. Under Minn. Stat. § 14.07, subd. 4, an agency may reference the text from statutes or rules without a statement of "incorporation by reference." Similarly, under Subdivision 4, an agency may incorporate a document that is subject to change. The question is whether adopting rules pointing to agency rules which are subject to change is legally problematic, as commenters argue. EQB finds that adopting classifications of environmental review referencing agency proposed rules that may change is legally acceptable so long as the reference will be clear at the time it is applied to a proposed project. EQB's rule will be clear before the time the rules are applied to a project, because no projects will move forward if DNR's permitting rules are not finalized, including the siting standard referenced in EQB's rule. EQB does not expect that DNR will make any significant changes to its siting standard. EQB notes that its proposed rule is equivalent to its existing rules where those rules require environmental review by establishing mandatory categories for projects that are in "sensitive shoreland areas." EQB's environmental review rules define "sensitive shoreland areas" by referring to designations by other agencies in rule or as authorized by the legislature. See Minn. R. 4410.0200, subp. 79a. The agencies making these classifications and designations may change them. Under EQB's current environmental review rules, any such agency changes would change environmental review, for example, which "nonmetallic mineral mining" projects are reviewed under Minn. R. 4410.4300, subp. 12, "residential development outside of the seven-county Twin Cites metropolitan area" under Minn. R. 4410.4300, subp. 10a, and "resorts, campground, and RV parks in shorelands" under Minn. R. 4410.4300, subpart 20a. To date, such references and deference have passed legal review during rulemaking and to the best of EQB's knowledge, have not been otherwise challenged on constitutional grounds. For this reason, EQB does not believe it is illegal to point to another agency's rules or formal actions in an environmental review rule when that agency has primary authority to identify criteria relevant to environmental impacts. At the time a particular project is evaluated for environmental review, the rule or order creating the referenced mandatory review classification will be clear. Thus, EQB finds that it is reasonable to allow DNR's rules to identify where a project is located in a "sensitive area" where certain actions would not be permitted and to base environmental review requirements on DNR's "sensitive area" designations.

No.	Commenter	Comment summary	EQB response
C10	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	The legal framework for EQB's Gas Rules is problematic because of conflicts with the 2026 Gas Law. Commenters assert that DNR is improper RGU for projects involving injection.	EQB agrees that the 2026 Gas Law created a need for changes to EQB's proposed rules; see the prior discussion in "Modifications to proposed rule amendments" section in the document above. EQB strongly disagrees with commenters' assertion that its rules could "implicitly authorize" a project that is disallowed by law by creating an environmental review mandatory classification. EQB's authority is limited to requiring environmental review for governmental actions, i.e., projects "conducted, permitted, assisted, financed, regulated, or approved by governmental units, including the federal government." Minn. R. 4410.0200, subp. 33. If EQB adopts a rule requiring review of a project that is or becomes prohibited by law, EQB's rule would become a nullity. Nevertheless, EQB has modified the rules as proposed to eliminate the EIS requirement and related definition for projects involving high-volume hydraulic fracturing (Minn. R. 4410.4300, subp. 38, item E (proposed)) as the 2026 Gas Law appears to have eliminated any possibility for gas resource development permits to be issued for projects that involve any hydraulic fracturing. 2026 Gas Law, Section 16, subd. 2. EQB has modified the EAW requirements for gas projects involving underground injection, Minn. R. 4410.4300, subp. 38, items D and E (proposed). EQB will withdraw these proposed mandatory classifications as unnecessary because no projects of these types will be able to be proposed and constructed. For this reason, commenters' concern about DNR's role as RGU is no longer valid. EQB notes that, although MDH is given the authority over rules governing construction of gas wells, it does not permit or approve such wells and DNR remains the overall permitting authority for gas resource development projects. This authority makes DNR the appropriate RGU. EQB has modified its proposed definition of "gas well" in part 4410.0200, subp. 32d and will adopt a modified definition that references the new legislative definition.
C11	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenters stated that expedited rules are not appropriate and exacerbate the problem of the legislature's lack of guidance to EQB. Commenters also noted that the expedited process bypasses the SONAR requirement and public hearing, and results in a reduced level of public participation in the rulemaking process.	Use of the expedited rulemaking process must be specifically authorized by the legislature. In this specific case, although it was optional for EQB to adopt *any* environmental review rules for gas resource development projects, if it did adopt such rules the legislature *mandated* that it use the expedited rulemaking procedure, stating that "[a]n agency adopting rules under this section must use the expedited procedure in section 14.389." Minn. Stat. § 93.514(b). As a result, commenters' dispute is with the legislature. To ensure that all interested or affected parties had notice of EQB's thinking on the proposed rules applicable to gas projects, EQB staff presented its rule proposals at multiple public meetings of the Board and its subcommittees, developed a detailed justification document in support of the proposals, and accepted public comment. Commenters took advantage of these opportunities. Thus, the legislature's choice to allow use of the expedited process, as implemented by EQB, does not undermine the goals of MAPA related to public participation and public accountability, and EQB will not withdraw the proposed rules on this basis.

No.	Commenter	Comment summary	EQB response
C12	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenters argue that EQB's rules should be disapproved because EQB "received input in "coordination" with Tribal environmental staff, but engaged in no tribal consultation. EQB was required under the 2026 Gas Law, Sec. 1, to engage in Tribal consultation in compliance with Minn. Stat. § 10.65 "for purposes of the rulemaking." Since EQB's rules have already been noticed for adoption without compliance with this applicable law, they should be disapproved or withdrawn to allow "timely and meaningful" consultation on gas rules that "allows the result to be included in the agency's decision-making process."	EQB disagrees with the commenter that this is a reason to disapprove the rules. EQB does not fall under the definition of "agency" provided in Minn. Stat. § 10.65, subd. 2. However, in keeping with Minn. Stat. § 10.65, subd. 3(k), which encourages and allows any agency to engage in consultation with the Minnesota Tribal governments, EQB adopted its own Tribal coordination and consultation policy in July 2024. Throughout this rulemaking process staff followed that policy. Staff coordinated with Tribes during the development of the rule proposal, as documented in the Rule Summary and Justification document, and continued coordination as the rule proceeded to adoption. Staff offered consultation in formal letters to each Tribal government in July 2025 and July 2026. No formal consultation was requested. EQB cannot force any sovereign Tribal government to participate in consultation. The results of Tribal coordination were fully documented and included in the decision-making process.
C13	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenters argue that EQB's proposed rules are unreasonable and arbitrary because they are not consistent with EQB's prior recommendation. EQB originally recommended a mandatory EAW for any gas resource development project due to the fact that gas production is new to Minnesota and environmental review would inform decisionmakers. [2024 GTAC recommendation]	EQB staff made the referenced recommendation as part of a legislative requirement to make recommendations for a potential *temporary* regulatory framework in 2024. At the time, EQB staff had limited information on gas production, and limited time to gain additional information and meet the legislative deadline. No temporary regulatory framework was established by the legislature. As noted by commenters, EQB's initial proposal referenced the fact that gas production is new to Minnesota in recommending environmental review for any gas production project under the temporary framework. Under MEPA, a project that requires environmental review is one that has or may have the potential for significant environmental effects. Novelty does not directly relate to the potential for significant environmental effects. In addition, EQB notes that most mandatory categories do not require review of projects of ANY size; they have thresholds based on acreage, level of pollution, etc. Since 2024, EQB staff have gathered information on the potential for environmental effects related to gas production and compared that information to existing rules establishing thresholds for environmental review, as detailed in the justification document included in the rulemaking materials. EQB concluded that the number of wells associated with a project best correlated with the environmental impacts of that project and was a standard that could easily be applied to proposed projects. EQB also concluded that certain project locations, and production techniques, posed potential for significant environmental effects.
C14	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	EQB's proposed rule fails to capture the potential for significant environmental effects related to the type of gas, whether inert, like helium, or highly flammable and explosive, like methane and hydrogen, or radioactive. EQB's approach is inconsistent with policy in the 2026 Gas Law which requires MDH rules pertaining to gas wells to "distinguish between types of gas based on the risks they pose to groundwater quality, health, and safety." 2026 Gas Law, Sec. 13, adopting Minn. Stat.§ 103I.706, subd. 1.	The 2026 Gas Law limits production of gas to helium, which is inert. But as noted in the EQB's justification document, a gas deposit is typically a mixture of gases, some of which are inert (like helium) and some of which are not (like methane or hydrogen). In considering the potential for significant environmental effects, the Rule Summary and Justification document recognized the reality that any gas extraction project is likely to need to properly manage a variety of gases once they are extracted. EQB did not see a benefit to creating a variety of categories for each type of gas, due to a similar potential for environmental effects of the types that could be reasonably considered. Because gases in the subsurface are often a mixture of multiple gases, the implementation of mandatory categories based on type of gas was more likely to create confusion and unlikely to accurately represent a difference in the potential for significant environmental effects. The fact that MDH must address types of gases in its rules under the 2026 Gas Law means that there will be regulations that reduce public safety risks posed by certain gas types. Because of the existence of this regulatory regime, EQB does not believe that it would be of great benefit to require environmental review due to the presence of these gases.

No.	Commenter	Comment summary	EQB response
C15	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenters asserted that EQB rejected comments from conservation organizations and Tribes during its rulemaking process.	EQB will respond to comments filed in this rulemaking proceeding by conservation organizations and Tribes in this proceeding, rather than comments filed by organizations and Tribes prior to the proceeding because it is reasonable to assume that *current comments* reflect the issues that conservation organizations and Tribes are currently concerned with, and it makes better sense for EQB to respond to the comments filed by the other commenters "first hand" rather than as reported by commenters here. Comments received during the rule development process are documented in Attachment 1 and Attachment 2.
C16	**WaterLegacy; MCEA; Northeastern Minnesotans for Wilderness; CURE**	Commenter WaterLegacy provided draft language for EQB to consider that reflected commenters concerns, although WaterLegacy was unable to provide particular numeric thresholds. WaterLegacy proposes **EAW thresholds** based on: • the number of wells. • volume of gas production. • "gas that is explosive, flammable, or radioactive." • location (in unspecified miles) from any area where gas resource development is prohibited or restricted under federal, state, or local law. • any area where gas resource development is prohibited or restricted under federal, state, or local law. WaterLegacy proposes **EIS thresholds** based on: • within an unspecified distance (feet) of lands, public waters, public waters wetlands, peatlands, or ecosystems protected or restored under applicable Minnesota Statutes, including but not limited to sections 84.035, 97A.056, 97A.133, 97C.005, 103F.612-616, 103G.221-223, 103H.101. • gas resource development with a total of [ ] gas wells or total gas throughput production of [ ] million cubic feet per day (MMcf/d). • gas resource development where total surface disturbance for all gas resource development facilities—including facilities at gas well locations, gas or waste storage, facilities for separating, compressing, treating, enhancing or processing gas, flowlines, gathering lines, and access roads—exceeds [ ] acres	EQB appreciates WaterLegacy's effort to provide draft language for modification of EQB's rule and agrees that the primary difficulty in establishing environmental review thresholds is establishing numeric thresholds that can easily be applied, particularly before detailed information about a project is developed through the permitting process. EQB has addressed some of these ideas for alternate thresholds in the Rule Summary and Justification document. Considering the EAW thresholds that were proposed by the commenter, EQB agrees that number of wells is an appropriate threshold and has proposed to adopt an environmental review rule based on it. (See response to comments C1 and the discussion in the "Justification for maintaining five well threshold" section in the document above regarding the number of wells.) EQB does not agree that WaterLegacy's other proposed EAW thresholds are workable. Volumes of gas production may or may not correlate with environmental risk. For example, one well may produce a high volume, but with less environmental risk because of the setting of the project. Additionally, volumes produced may change over time. Similarly, as discussed above and in the justification document, most gas wells will produce a mix of gases, some of which may be explosive or flammable. Creating a threshold that considers this concept would be difficult to implement and is less likely to appropriately reflect when projects may have the potential for significant environmental effects. With regard to "location," EQB is proposing to require EAWs for projects in certain areas close to certain protected or sensitive areas, see response to comment C21. However, EQB does not adopt rules that require environmental review in areas where an activity is already completely prohibited. See "removed mandatory categories" section above for discussion of a threshold for hydraulic fracturing following legislative action banning such projects. Considering the EIS thresholds that were proposed by the commenter, the commenter has not provided the EQB sufficient evidence to support using these concepts to establish a threshold. for review based on a demonstrated potential for significant environmental effects. As noted above, EQB staff considered many of the concepts provided by the commenter during rule development. The number of wells threshold was ultimately chosen by EQB to be the best representation of the potential for significant environmental effects due to the combined potential for impact based on many of these recommendations (such as surface disturbance, potential production amounts, flowline distances, etc.) EQB also notes that if an RGU finds, based on information included in an EAW, that a project has the potential for significant environmental effects, an EIS must be completed.

No.	Commenter	Comment summary	EQB response
		• For gas resource development where the total length of gas production wells exceeds [ ] feet or the total length of flowlines and gathering lines exceeds [ ] feet For gas resource development within [ ] miles of drinking water wells, within [ ] miles of wellhead protection areas, or that proposes to inject any substance into a gas well pursuant to Minnesota Statutes chapter 103I or rules adopted thereunder, the **MDH is the RGU.**	
C17	The Nature Conservancy	The commenter requests that EQB strike Part 4410.0200, subp. 38a from the draft rules. Laws of Minnesota 2026, Ch. 127, Art. 2, Sec. 16, subd. 2 prohibits hydraulic fracturing in gas wells. Therefore, a definition of "High-volume hydraulic fracturing" is not needed in the EQB rules and could lead to confusion.	EQB has made this modification.
C18	The Nature Conservancy	The commenter requests that EQB clarify or describe the RGU for activities not listed in proposed Minn. R. 4410.4300, subp. 38. The commenter also requests explanation on whether activities not listed in this section require a mandatory EAW. Finally, the commenter requests that an EAW be mandatory for all projects and not limited to projects with 5 or more proposed wells.	The rules establish mandatory categories – i.e., a *requirement* to complete an environmental assessment worksheet – for the project types and thresholds as defined in Minn. R. 4410.4300, subp. 38. In each case, the rules establish the DNR as the RGU. Under Minn. R. 4410.1000, subp. 2, an EAW must be prepared for any project that meets or exceeds the thresholds listed in part 4410.4300. A discretionary EAW may be prepared for projects that do not exceed any mandatory category thresholds (Minn. R. 4410.1000, subp. 3), and the public may petition for an EAW under Minn. R. 4410.1100. The RGU may vary depending on which governmental unit(s) have approval authority over the proposed project. For a discussion of the five well threshold, see response to comments (C1).
C19	Pulsar Helium	Pulsar is generally supportive of the Proposed Rules. We have anticipated that our Topaz Helium Project would require an environmental assessment worksheet (EAW), and we look forward to cooperating with the EQB to understand any potential significant environmental impacts from the project and find ways to mitigate them.	EQB appreciates the comment.
C20	Letter from members of the public (199 submittals)	EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.	The original proposal put forth by EQB was published prior to any legislation that was created to prohibit hydraulic fracturing. EQB disagrees that the environmental review rules can authorize otherwise prohibited activities. EQB has modified the rule to remove these proposed provisions because it does not establish review classifications for prohibited projects.

No.	Commenter	Comment summary	EQB response
C21	Letter from members of the public (199 submittals)	EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.	See response to comment C9 regarding reliance on DNR's proposed rules. EQB and DNR staff have coordinated during the rulemaking process. DNR's proposed rules can be found at 50 SR 1316. See response to comment C3 regarding Tribal lands and resources. DNR has proposed some locations where gas resource operations of all types will be "excluded" or fully prohibited. EQB has not incorporated these into the rules because no such projects will be allowed. They include the Boundary Waters Canoe Area Wilderness; Voyageurs National Park; state wilderness areas, with restrictions specified in Minnesota Statutes, section 86A.05, subdivision 6; and the Agassiz and Tamarac National Wilderness Areas and Pipestone and Grand Portage National Monuments. DNR has proposed multiple locations that will be subject to certain siting restrictions, i.e., locations where surface disturbance will be prohibited, or where both surface and directional drilling will be prohibited. These locations would include many wetlands, including wild rice wetlands, because those wetlands would be listed on the Public Waters Inventory. See Minn. Stat. § 103G.005, subds. 15-16. EQB's rules will ensure that projects locating in these areas will undergo environmental review (in addition to these areas listed below EQB has added a mandatory EAW requirement for projects located within a DWSMA). For example, the rule would require an EAW for any gas resource development project that is extracting gas from beneath the following: • state-owned surface lands designated as scientific and natural areas • state-owned surface lands designated as state peatland scientific and natural areas where gas resource development operations would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or natural features of the peatland scientific and natural areas • calcareous fens identified according to Minnesota Statutes, section 103G.223 • state-owned surface lands designated as state parks An EAW would also be required for projects drilling within ¼ mile of the surface beneath any of the following: • within the Boundary Waters Canoe Area Wilderness Mineral Management Corridor, identified on the map Minnesota Department of Natural Resources B.W.C.A.W. Mineral Management Corridor, Department of Natural Resources (February 1991) • within one-fourth mile of Voyageurs National Park • within one-fourth mile of state-owned surface lands designated as state wilderness areas • within one-fourth mile of Agassiz and Tamarac National Wilderness Areas and Pipestone and Grand Portage National Monuments • within one-fourth mile of state-owned surface lands designated as scientific and natural areas • within one-fourth mile of state-owned surface lands designated as state parks

No.	Commenter	Comment summary	EQB response
			• within one-fourth mile of calcareous fens identified according to Minnesota Statutes, section 103G.223 • on sites designated in the National Register of Historic Places, except that gas resource development operations are allowed if the sites have been established because of their association with mining • on sites designated as state historic sites under Minnesota Statutes, section 138.662, or state historic places under Minnesota Statutes, section 138.664 • within waters identified in the public waters inventory under Minnesota Statutes, section 103G.201, that have not been created or substantially altered in size by human activities and on the shorelands, as defined in Minnesota Statutes, section 103F.205, subdivision 4, adjoining the unaltered public waters • within national wild, scenic, or recreational river districts of a national wild, scenic, or recreational river and within the areas identified in A Management Plan for the Upper Mississippi River, Mississippi Headwaters Board (January 1981) • within designated state land-use districts of a state wild, scenic, or recreational river • within the area adjacent to the north shore of Lake Superior identified in North Shore Management Plan: Shoreland Management, North Shore Management Board (December 1988) • within 1,000 feet of an occupied dwelling, public school, church, public institution, or county or municipal park that existed before a gas resource development permit was issued for the area, unless allowed by the owner • within 100 feet of a cemetery that existed before a gas resource development permit was issued for the area • within 100 feet of the outside right-of-way line of a public roadway that existed before a gas resource development permit was issued for the area
C22	Letter from members of the public (199 submittals)	Unless a developer proposes (prohibited) “high-volume” fracking, EQB Proposed Rules would “never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.”	EQB’s proposal for mandatory categories is based on EQB’s determination of the potential for significant environmental effects from gas resource development projects. To the extent that commenters suggest that only an EIS is “real” environmental review, EQB disagrees. As noted above, EQB has established EAW thresholds based on the size of the project (number of wells) and numerous sensitive locations. See comment C21.
C23	Letter from members of the public (199 submittals)	Commenters respectfully ask the Judge to disapprove EQB’s Proposed Rules for gas development and ask EQB to withdraw these Proposed Rules and start over. Commenters request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.	EQB intends to move forward with the rulemaking process under the current authority to adopt rules. Although a rulemaking hearing is not mandated, EQB staff presented information on these rules at multiple public meetings of the Board and its subcommittees and accepted public testimony. Also, see discussion in “Tribal coordination and consultation” above and in Attachment 1 for Tribal coordination that has taken place through this rulemaking.

No.	Commenter	Comment summary	EQB response
C24	Letter from members of the public (199 submittals)	EQB's Proposed Rules fail to require "EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities."	Minn. Stat. § 116D.04 recognizes both EISs and EAWs as effective forms of environmental review and EQB's rules contain many examples of project types that are only subject (initially) to an EAW requirement. The rule proposal from EQB represents the types of gas production projects that EQB has determined may have the potential for significant environmental effects but EQB cannot mandate an EIS solely on the basis that a particular type of project is new to the state.
C25	Thomas Sullivan	'High-volume' fracking conflicts with state law. The Proposed Rules would require an Environmental Impact Statement — the only review that seriously examines impacts and alternatives solely when a project involves 'high-volume' fracking. But the Legislature has acted to prohibit fracking in Minnesota. Rules that contemplate and permit 'high-volume' fracking, even on the condition that an EIS is prepared, are inconsistent with that prohibition. Minn. R. 4410.0200, subp. 38a and 4410.4400, subp. 29 should be disapproved or withdrawn.	As noted in response to comment C10, EQB has modified the proposed rules to remove these provisions.
C26	Thomas Sullivan	No EIS for even the largest projects. Most troubling, the Proposed Rules never require an EIS for gas production, no matter how large the project. Under 4410.4400 as written, a development with dozens of gas wells, miles of drilling and pipeline, a gas processing plant, and extensive new roads together with the wetland and forest destruction all of that entails — could proceed without a single Environmental Impact Statement. That is precisely the kind of large, complex, high-impact project that EIS review exists to evaluate. The rules must set mandatory EIS thresholds scaled to a project's size and impact.	See response to comments C16, C23, and C24.
C27	Thomas Sullivan	No protection for sensitive locations or Tribal resources. Finally, the Proposed Rules contain no definition of sensitive environmental locations and reject the extensive input that Tribal nations provided. Tribes proposed that reservations, trust lands, ceded territories, key resources, and culturally sensitive areas trigger EAW screening or EIS review depending on the project and its proximity. Instead, the rules defer to DNR rules that have not yet been promulgated, and require only an EAW — never an EIS — and only if the DNR decides to prohibit drilling at a site (4410.4300, subp. 38, items B and C). That is not adequate protection for irreplaceable resources, or for the Tribal sovereignty and treaty rights at stake. The EQB should write its own protections and honor the Tribal input it received.	See response to comment C3 and C21.

No.	Commenter	Comment summary	EQB response
C28	Sheila Packa	Besides fracking concerns, communities are being pressured to allow data centers which also consume vast water resources. In addition, our population is growing and as communities expand, more drinking water will be needed.	EQB has added a requirement for an EAW in drinking water supply management areas.
C29	John Harford	As a retired local community planner in southeast Minnesota involved in Wetland Conservation Act administration and county water management planning I recognize the sensitivity of the geology to groundwater pollution and the continued loss of our wetland resources in the state. These rules appear to brush aside any detailed review of the impacts of drilling. They ignore the related infrastructure impacts such as pipelines industrial impacts on local community infrastructure and resources. Ask the local communities in Pennsylvania and North Dakota about such impacts on quality of life. The impacts of drilling go far beyond the drilling pad and need to be accounted for.	EQB finds its proposed rules do address sensitive groundwater and locations and that the EAW form will result in identification of drilling impacts so that the RGU can assess whether an EIS to study these impacts is required. EQB agrees that related infrastructure impacts may occur. Some of the infrastructure identified by the commenter (pipelines, or larger sensitive area disturbances or industrial development) may also be subject to an independent environmental review requirement.
C30	Marlise Riffel	The environmental impacts of fracking are well known from experience in other states	See response to comment C20.
C31	Marlise Riffel	Minnesota's tribal lands and treaty rights are especially vulnerable to environmental disruption	See response to comment C3.
C32	Marlise Riffel	To permit ANY extractive industry without environmental review endangers all of Minnesota's resources	EQB's authority is limited to that of requiring when projects must undergo mandatory environmental review and how the environmental review process must be completed. The scope of this rulemaking is limited to the creation of mandatory categories for gas production projects identifying when environmental review is mandatory for these types of projects. See also the justification for the five well threshold and response to comment C1.
C33	Julie Anne Larkin	I personally want to share that I was present for over a week near a fracking site. There was noise and banging 24 hours a day which totally disrupted the experience, disturbing sleep and destroying quality of life. No one will want to live in this place and local people likely completely lost their property value because no one would want to live there!	See response to comment C20.
C34	Nancy Conger	I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking.	See response to comment C20.

No.	Commenter	Comment summary	EQB response
		It shouldn't be incumbent on a citizen like me to have to police the industry— the EQB has the science and the smarts to protect our water and quality of life.	
C35	Dave Crawford	No public hearings? No deal. Violation of existing statutes? No deal. Start over and do this honorably and responsibly. Please.	EQB has modified the rules to align with the 2026 Gas Law. See response to comment C23.
C36	Fern Peterson	The EQB has used "expedited" rulemaking and none of its rules have had public hearings. The EQB rules conflict with applicable law, improperly rely on the Department of Natural Resources (DNR) for standards, and fail to require environmental review of even the most serious threats to Minnesota waters, wetlands, climate, and communities.	See response to comments C23 and multiple responses to the comments provided by Water Legacy, et al.
C37	Andrew Keith	Please, no fracking without an environmental impact statement, anywhere in Minnesota, especially near the fragile Boundary Waters!	See response to comment C20 and C21.
C38	Kathryn Milun	I fully agree with the scientifically supported arguments put forward by the 1854 Tribes Intertribal Task Force on Helium Extraction. Their comments demonstrate that the proposed rules do not adequately protect the water resources of northeastern Minnesota. It is not my aim to repeat the substantial evidence offered by these experts here. My aim is note that when such evidence is provided to our public officials, evidence that the geological structure of our region makes groundwater contamination from gas well drilling—regardless of extraction method or scale—a public health concern, citizens must be able to access the appropriate scientific and democratic tools to make a legal argument that protects their right to clean water. The proposed environmental review rule erodes that legal right.	See response to comment C1.

No.	Commenter	Comment summary	EQB response
C39	Kathryn Milun	The rules must be modified to support our regions' citizens in their right to defend their local water resources. The science tells us citizens need baseline groundwater data to attribute, remediate, or assign contamination to a responsible party. A mandatory Environmental Assessment Worksheet (EAW) would supply that data. However, the five-well threshold ensures that EAWs will never be triggered by the most likely gas development scenarios in our region. The Court must ask the EQB to rewrite the rules to state that the conditions requiring mandatory environmental review are present at the start of all gas development activities in the Duluth Complex geological formation. In order to understand the real public health hazards, citizens and public health officials of northeastern Minnesota need baseline groundwater data for all gas development in our region.	See response to comment C1.
C40	Kathryn Milun	It is unfortunate that the EQB used an expedited rule-making process such that none of its rules have had public hearings. We now rely on you, the Court of Administrative Hearings, to listen to the science and order a new rule-making process that protects citizens' rights to know, through scientific evidence, the baseline quality of their groundwater BEFORE any gas development in the unique geological conditions of northeastern Minnesota.	The use of the expedited rulemaking process was a legislative requirement. Minn Stat. § 93.514.
C41	Jeanne Norrgard	I am writing to advise you that I have only just found out on this last afternoon for comments about the Environmental Quality Board's proposed rules for gas development industries that would cut almost everyone out of the process of deciding if their plans for gas extraction, gas pipelines, gas processing, etc., meet any kind of environmental standards at all. I don't have time to research anything in depth and yet, I don't need to. This proposal fails on its face to protect Minnesotans and our environment from possibly reckless gas development and must be withdrawn and extensively reworked. We deserve to have our public input considered for any development of this sort. We deserve EAS and EIS and full and complete analysis before making decisions on each and every project proposal and definitely before any permits are granted. Please request that the EQB to withdraw this proposal and go back to the drawing board. We need more input from all stakeholders to decide what's best for Minnesota's environment.	See response to comments C22 and C23.

Environmental Quality Board

Adopted Expedited Permanent Rules for Environmental Review of Gas Resource Development Projects

4410.0200 DEFINITIONS AND ABBREVIATIONS.

[For text of subparts 1 to 32, see Minnesota Rules]

Subp. 32a. **Gas.** "Gas" has the meaning given in Minnesota Statutes, section 93.514.

Subp. 32b. **Gas production.** "Gas production" means production, as defined under Minnesota Statutes, section 93.514, of gas.

Subp. 32c. **Gas resource development project.** "Gas resource development project" means an operation that is designed for gas production from consolidated or unconsolidated formations and that is required to hold a permit from the DNR under Minnesota Statutes, section 93.513, and rules adopted by the DNR under Minnesota Statutes, section 93.514.

Subp. 32d. **Gas well.** "Gas well" ~~means a well that is intended for gas production and that is included as part of a gas resource development project~~ has the meaning given in Minnesota Statutes, section 103I.005, subdivision 10b.

[For text of subparts 33 to 38, see Minnesota Rules]

~~Subp. 38a. **High-volume hydraulic fracturing.** "High-volume hydraulic fracturing" means injecting fluid, with or without proppants, into the subsurface under pressure to create fractures within a geologic formation to improve the deliverability and production of gas for a gas resource development project, using a combined total of 100,000 gallons or more of any fluids.~~

[For text of subparts 39 to 96, see Minnesota Rules]

4410.4300 MANDATORY EAW CATEGORIES.

[For text of subparts 1 to 37, see Minnesota Rules]

Subp. 38. **Gas resource development projects.** Items A to ~~E~~ D designate the RGU for the type of project listed:

A. For construction of a gas resource development project designed to include five or more gas wells or expansion of an existing gas resource development project by the addition of five or more gas wells, the DNR is the RGU.

B. For construction of a gas resource development project that is designed to produce gas using horizontal or directional drilling methods beneath an area subject to only surface disturbance siting prohibitions in rules adopted by the DNR, if the target gas resource for extraction is less than one-quarter mile below the surface, the DNR is the RGU.

C. For construction of a gas resource development project that is designed to produce gas from beneath an area subject to both surface disturbance and directional drilling siting prohibitions in rules adopted by the DNR, the DNR is the RGU.

D. For construction of a gas resource development project that is designed to include ~~one or more class II underground injection wells, as defined in Code of Federal Regulations, title 40, section 144.6(b), for waste disposal~~ any gas well located within a groundwater drinking water supply management area delineated under chapter 4720, the DNR is the RGU.

~~E. For construction of a gas resource development project designed to produce gas created by injecting a substance into the subsurface to create or stimulate a chemical reaction, the DNR is the RGU.~~

~~**4410.4400 MANDATORY EIS CATEGORIES.**~~

~~*[For text of subparts 1 to 28, see Minnesota Rules]*~~

~~Subp. 29. **Gas resource development projects.** For construction of a gas resource development project designed to use high-volume hydraulic fracturing techniques, the DNR is the RGU.~~

41570 Minnesota Environmental Quality Board Notice of Intent to Adopt Expedited Rules

Closed Jul 02, 2026 · Discussion · 9 Participants · 1 Topics · 10 Answers · 0 Replies · 1 Votes

9	1	10	0	1
PARTICIPANTS	TOPICS	ANSWERS	REPLIES	VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

10 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Court of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Krishna Woerheide · Citizen · (Postal Code: unknown) · Jun 15, 2026 12:22 pm

0 Votes

On behalf of the Grand Portage Band of Lake Superior Chippewa, please find the comment document attached regarding the EQB expedited gas extraction rulemaking - proposed rules amending Minn. R. 4410.4300 and 4410.4400 - Mandatory EAW and EIS Categories for Gas Resource Development Projects.

Sincerely,

Krishna Woerheide
Environmental Director
Grand Portage Band of Lake Superior Chippewa

Charles Ernst · Citizen · (Postal Code: unknown) · Jun 26, 2026 12:15 pm

0 Votes

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB’s Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land,

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air, and climate, as well as most if not all state and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. The health of the economy is intrinsically tied to the health of the environment, and the Proposed Rules implicitly threaten to damage both.

Rin Porter · Citizen · (Postal Code: unknown) · Jun 27, 2026 12:47 pm

0 Votes

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota.

I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and

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greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

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3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

We cannot allow the Trump Administration to destroy valuable public lands, water resources, wetlands, forests, native plants, and wildlife with the Administration's reckless attempt to make as much money as possible for its donors, such as oil and gas company owners.

Sincerely,

Dr Rin Porter

801 E 3rd St Fairmont, MN 56031-4008
rporter@rea-alp.com

Krishna Woerheide · Citizen · (Postal Code: unknown) · Jun 30, 2026 4:12 pm
0 Votes

RE: Comments on Proposed Rules Amending Minn. R. 4410.4300 and 4410.4400 - Mandatory EAW and EIS Categories for Gas Resource Development Projects

The Intertribal Taskforce on Helium Extraction, formed by the Tribal Councils of the Grand

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Portage Band of Lake Superior Chippewa, the Fond du Lac Band of Lake Superior Chippewa, and the Bois Forte Band of Chippewa, submits the attached comments on the EQB's proposed rules amending Minn. R. 4410.4300 and 4410.4400 governing mandatory EAW and EIS categories for gas resource development projects.

The attached document details the Taskforce's position that the proposed five-well EAW threshold is insufficiently protective of northeastern Minnesota's water resources, treaty-reserved rights, and the Lake Superior watershed given the absence of any peer-reviewed science characterizing water-quality impacts from gas extraction in Precambrian basaltic rift geology. Highlights include requests that the EQB: lower the mandatory EAW threshold from five wells to one (or, at minimum, three); add explicit location-based EAW triggers for projects within vulnerable drinking water supply management areas and within proximity to Tribal reservation boundaries, trustlands, and treaty-ceded territory; expand the mandatory EIS category beyond high-volume hydraulic fracturing alone; require mandatory pre-drilling baseline groundwater monitoring; strengthen early Tribal notification timing; and add a geographic aggregation trigger to prevent multi-operator fragmentation of the threshold.

Supporting literature citations are included in this attachment. Also attached is the signatory page from the Tribal Chairmen of the three Bands.

Respectfully submitted, The Intertribal Taskforce on Helium Extraction

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Kathryn Milun · Citizen · (Postal Code: unknown) · Jul 01, 2026 1:08 pm
0 Votes

Comment on Environmental Review Program Rules for Gas Resource Development, R-494, CAH Docket No. 23-9008-41570

I appreciate this opportunity to address the Court of Administrative Hearings (CAH) to comment on the proposed rules for gas development in Minnesota put forward by the Environmental Quality Board (EQB). My comment addresses the rules regarding environmental review. I am a social science professor in the Lake Superior watershed focused on sustainable governance of natural resources. I teach the next generation of Minnesotans the importance of participating in our fragile democracy and of acting as good stewards of the natural resources we share with present and future generations. My colleagues and I teach the next generation of voters, K-12 teachers, and community leaders how to use citizen science, moral reasoning, and our public hearing processes to responsibly steward our shared resources.

I have read the EQB’s proposed rules and the comments submitted by scientists and my tribal neighbors. I fully agree with the scientifically supported arguments put forward by the 1854 Tribes Intertribal Task Force on Helium Extraction. Their comments demonstrate that the proposed rules do not adequately protect the water resources of northeastern Minnesota. It is not my aim to repeat the substantial evidence offered by these experts here. My aim is note that when such evidence is provided to our public officials, evidence that the geological structure of our region makes groundwater contamination from gas well drilling—regardless of extraction method or scale—a public health concern, citizens must be able to access the appropriate scientific and democratic tools to make a legal argument that protects their right to clean water. The proposed environmental review rule erodes that legal right.

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Here is how the EQA rules must be modified to support our regions' citizens in their right to defend their local water resources. The science tells us citizens need baseline groundwater data to attribute, remediate, or assign contamination to a responsible party. A mandatory Environmental Assessment Worksheet (EAW) would supply that data. However, the EQA's five-well threshold ensures that EAWs will never be triggered by the most likely gas development scenarios in our region. The Court must ask the EQA to rewrite the rules to state that the conditions requiring mandatory environmental review are present at the start of all gas development activities in the Duluth Complex geological formation. In order to understand the real public health hazards, citizens and public health officials of northeastern Minnesota need baseline groundwater data for all gas development in our region.

It is unfortunate that the EQB used an expedited rule-making process such that none of its rules have had public hearings. We now rely on you, the Court of Administrative Hearings, to listen to the science and order a new rule-making process that protects citizens' rights to know, through scientific evidence, the baseline quality of their groundwater BEFORE any gas development in the unique geological conditions of northeastern Minnesota.

Jessica Biggott · Citizen · (Postal Code: unknown) · Jul 02, 2026 9:39 am
0 Votes

Thank you for the opportunity to provide comments. Attached, please find comments submitted on behalf of Pulsar Helium Inc. regarding the Proposed Expedited Amendments to Rules Governing the Environmental Review Program Addressing Gas Resource Development Projects, Minnesota Rules, Chapter 4410, Revisor's ID Number R-04945.

Martin Masters · Citizen · (Postal Code: unknown) · Jul 02, 2026 1:00 pm
0 Votes

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

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Closed Jul 02, 2026 · Discussion · 9 Participants · 1 Topics · 10 Answers · 0 Replies · 1 Votes

Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.
Martin Masters
395 Bucher Ave
Shoreview, MN 55126

Paula Maccabee · Citizen · (Postal Code: unknown) · Jul 02, 2026 1:03 pm
0 Votes

Dear Judge Todnem,

Attached please find WaterLegacy comments, joined by the Minnesota Center for Environmental Advocacy, Northeastern Minnesotans for Wilderness, and CURE, pertaining to Proposed Amendments to Rules Governing the Environmental Review Program [Mandatory EAW and EIS Categories] for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945 Proposed Expedited Rules CAH Docket No. 23-9008-41570.

Please also find Attachments A-J supporting these comments.

Respectfully submitted,
Paula Maccabee, Executive Director and Counsel
WaterLegacy

Sophia Patane · Citizen · (Postal Code: unknown) · Jul 02, 2026 2:56 pm
0 Votes

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Please find the attached documents submitted regarding the Environmental Quality Board's Proposed Amendments to Rules Governing the Environmental Review Program [Mandatory EAW and EIS Categories] for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945, CAH Docket No. 23-9008-41570:

2026-07-02 S. Patane Letter with Public Comments on EQB Proposed Rules
2026-07-02 Public Comments and Requests EQB Proposed Rules from 199 individuals.
2026-07-02 S. Patane Decl. Supporting Public Comments EQB Proposed Rules

Sincerely yours,
Sophia Patane,
Community Engagement Director for WaterLegacy

Jeanne Norrgard · Citizen · (Postal Code: unknown) · Jul 02, 2026 3:27 pm
1 Votes

Comment on Environmental Review Program Rules for Gas Resource Development, R-494, CAH Docket No. 23-9008-41570

Dear Judge Todnem,

I am writing to advise you that I have only just found out on this last afternoon for comments about the Environmental Quality Board's proposed rules for gas development industries that would cut almost everyone out of the process of deciding if their plans for gas extraction, gas pipelines, gas processing, etc., meet any kind of environmental standards at all. I don't have time to research anything in depth and yet, I don't need to. This proposal fails on its face to protect Minnesotans and our environment from possibly reckless gas development and must be withdrawn and extensively reworked. We deserve to have our public input considered for any development of this sort. We deserve EAS and EIS and full and complete analysis before making decisions on each and every project proposal and definitely before any permits are granted. Please request that the EQB to withdraw this proposal and go back to the drawing board. We need more input from all stakeholders to decide what's best for Minnesota's environment. An agency called the Environmental Quality Board should know this and should live up to its title. Thank you.

Docusign Envelope ID: 63A8CA91-F290-8675-8242-8E8AF598DD23

RECEIVED BY CAH
6/15/2026

Grand Portage Band of Lake Superior Chippewa
TRUSTLANDS AND NATURAL RESOURCES DEPARTMENT
27 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

June 15, 2026

Minnesota Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155. Filed electronically via the eComments website and info.EQB@state.mn.us

RE: Comments on Proposed Rules Amending Minn. R. 4410.4300 and 4410.4400 - Mandatory EAW and EIS Categories for Gas Resource Development Projects

Dear Chair Daubenberger and Members of the Environmental Quality Board:

The Grand Portage Band of Lake Superior Chippewa ("the Band") submits these comments in its sovereign government capacity. The Band is a signatory to the Treaty of La Pointe, September 30, 1854, under which it ceded approximately 6.2 million acres of land in present-day northeastern Minnesota while retaining the right to hunt, fish, and gather within that territory in perpetuity. The gas deposit at the center of this rulemaking lies within the 1854 Ceded Territory. The Band's Environmental Department has directly engaged in the EQB's rulemaking process for gas resource development, including technical collaboration with EQB staff, and has worked to assess the environmental, health, and treaty resource implications of helium extraction. These comments are submitted by the Grand Portage Band to ensure that the Band's governmental voice is present in the rulemaking record.

1

The Grand Portage Band submits these comments because the proposed rules, as written, do not adequately protect northeastern Minnesota's water resources. The core concern, well documented in a substantial body of peer-reviewed literature, is that gas well drilling contaminates groundwater with methane, propane, and CO_2, regardless of extraction method. The fractured Precambrian rift basalt of the Duluth Complex makes these risks more acute, not less. The CO_2-dominant gas deposit at Pulsar's Topaz site, coupled with the geology of the area create contamination pathways more severe than those studied in shale settings, and the body of peer-reviewed literature documents how CO_2 intrusion depresses pH and leaches heavy metals in analogous settings. No baseline groundwater data exists for this formation. Without it, contamination cannot be attributed, remediated, or assigned to a responsible party. An Environmental Assessment Worksheet is the minimum review necessary to require that baseline and to make operative the legal protections the EQB's own responses cite as adequate, but those protections only apply when an EAW threshold is triggered. The five-well threshold ensures it never is for the most likely development scenarios in northeastern Minnesota.

The Band expresses sincere gratitude to EQB staff for the substantial work invested in developing these draft rules under an expedited timeline, and for the direct outreach to Tribal environmental staff that reflects good-faith partnership. These comments are submitted constructively and in the same spirit, because the draft as written does not yet reflect the threshold recommendations that Tribal staff

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Grand Portage Band of Lake Superior Chippewa
TRUSTLANDS AND NATURAL RESOURCES DEPARTMENT
27 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

developed during the collaboration. The following sections document each point in the detail the rulemaking record requires.

I. Background: A Novel Project Type in a Geologically and Hydrologically Distinct Environment

Gas resource development is new to Minnesota. The EQB's own guidance documentation acknowledges this explicitly: because gas production has no regulatory or environmental review history in the state, there is no established body of Minnesota-specific science from which to predict project impacts, no analogous approved projects to reference, and no pre-existing baseline water quality data for the relevant aquifers.

The known gas resource in northeastern Minnesota, centered on Pulsar Helium's Topaz Project near Babbitt, is located within the Precambrian basaltic rock of the Duluth Complex, one of the oldest geological formations in North America. Pulsar's own flow test data confirm that the gas composition from the Jetstream wells is not exclusively helium. Flow testing of the Jetstream #1 well confirmed a gas composition consisting primarily of CO_2 (approximately 75-80%) and helium (7-8%), with methane content recorded at less than 3% (Pulsar Helium, September 2025). An earlier Pulsar sampling event reported a somewhat different composition - up to 71% carbon dioxide, 24% nitrogen, and less than 5% hydrocarbons, including methane and propane - reflecting variability between test stages rather than any inconsistency in the underlying data. The presence of CO_2 and methane in a pressurized gas system hosted in fractured Precambrian basalt within the Lake Superior watershed is a critical data point for environmental review design. The density of private drinking water wells overlying the Duluth Complex in this watershed is illustrated in Appendix A, Figure 1.

The Duluth Complex's geology is geochemically distinct from the sedimentary shale and sandstone formations that have formed the basis for existing gas extraction research. No peer-reviewed literature exists that characterizes the hydrogeological behavior of this specific formation under production-scale gas extraction pressure changes. This absence of science is not a reason to proceed without heightened scrutiny; it is the central justification for requiring heightened environmental review.

From this background, one should reasonably conclude that:

1. Gas resource development is genuinely novel in Minnesota: no regulatory history, no approved project comparators, and no pre-existing baseline water quality data for the relevant aquifers.
2. The Topaz deposit is not a conventional hydrocarbon play. Its gas is approximately 75-80% CO_2 at pressures approaching 1,000 psi, a composition that creates a distinct and well-documented hazard profile in combination with the Duluth Complex's fractured basalt geology.
3. The mechanisms of CO_2 intrusion documented in analogous settings are applicable to the Topaz deposit, though no formation-specific study of the Duluth Complex exists.
4. The fractured and faulted character of the Duluth Complex, documented in peer-reviewed field studies conducted within this formation, creates conduit pathways for fugitive gas migration and brine co-transport that are not inferred by analogy; they are mapped. (See Appendix B, Figure 1.)

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5. The combination of these factors - novel project type, distinct and poorly characterized geology, absence of baseline data - creates the precise conditions under which mandatory pre-project environmental review is most essential.

II. The Science from Analogous Settings: What the Peer-Reviewed Literature Documents

Because no peer-reviewed literature exists on the impacts of helium or gas extraction specifically in Precambrian basaltic rift geology, this section draws on the best available peer-reviewed science from analogous settings to establish that the contamination mechanisms - including migration of methane, propane, and CO_2 into drinking water aquifers - are real, documented, and applicable to the Duluth Complex. An important distinction must be drawn at the outset. The absence of peer-reviewed literature characterizing this specific formation under gas extraction conditions does not mean there is no relevant science. To the contrary: there is a substantial, rigorous, and directly applicable body of peer-reviewed literature on CO_2 migration into shallow groundwater, the resulting pH depression, and the subsequent leaching of heavy metals - arsenic, iron, manganese, lead, chromium, barium, and others - from the surrounding rock matrix. That literature was developed primarily in the context of geologic carbon sequestration leakage and natural CO_2 analog sites, but the geochemical mechanisms it documents are not specific to sedimentary basins; they are driven by CO_2 partial pressure and aquifer mineralogy. The Topaz deposit's gas composition (approximately 75-80% CO_2 at pressures approaching 1,000 psi) and the Duluth Complex's poorly buffered siliceous basalt geology place this project squarely within the risk profile that literature addresses. What is absent is formation-specific characterization of the Duluth Complex's buffering capacity and redox baseline, precisely the assessment that pre-drilling baseline monitoring provides and that the proposed rules do not require for sub-threshold projects. We summarize this literature not to draw a direct analogy in every respect, but to establish that the identified risk mechanisms are scientifically documented, are plausible in this setting, and require site-specific investigation before, not after, drilling commences.

A. CO_2 Migration to Shallow Groundwater: A Directly Applicable Risk Category for the Topaz Project

The migration of CO_2-dominant gas into shallow groundwater is the primary hazard profile specific to the Topaz deposit's gas composition. Pulsar's flow test data document that the Jetstream #1 produced gas is approximately 75-80% CO_2 at pressures approaching 1,000 psi. Any subsurface migration pathway from the Jetstream wells - whether through well casing failure, fault-mediated transport, or pressure-induced fracture reactivation - would deliver CO_2-dominant gas directly into the fractured basalt aquifer system from which Cook and Lake County residents draw drinking water. The literature on geologic CO_2 sequestration leakage was developed specifically for this scenario: the migration of high-concentration CO_2 from a pressurized subsurface reservoir into overlying drinking water aquifers. That the CO_2 at Topaz is a co-product of helium extraction rather than a sequestered industrial emission does not change the geochemical hazard profile; the CO_2 partial pressures, the fracture migration pathways, and the aquifer vulnerability conditions are the same. What the peer-reviewed literature across laboratory, field, modeling, and natural analog study designs establishes is a coherent and well-documented suite of hazards that are (1) directly applicable to the known gas composition at Topaz; (2) dependent on site-specific aquifer properties that have not been characterized for the Duluth Complex; and (3) detectable only against a pre-project baseline that the proposed rules do not require. The principal migration pathways by which these hazards reach aquifers are illustrated in Appendix B, Figure 1.

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When CO_2 dissolves into groundwater, it forms carbonic acid. The resulting pH drop is rapid, consistent across study designs, and well-documented. At the ZERT controlled injection site in Bozeman, Montana, where approximately 300 kg/day of CO_2 was injected at shallow depth, pH fell from 7.0 to 5.6 within days, alkalinity tripled from 400 to 1,330 mg/L, and electrical conductance nearly tripled from 600 to 1,800 µS/cm (Kharaka et al., 2010). Iron rose from 5 to 1,200 ppb and manganese from 5 to 1,400 ppb. BTEX compounds including benzene, toluene, and xylene were detected, driven by organic matter mobilization. Across four freshwater aquifer types subjected to more than 300 days of continuous CO_2 exposure under laboratory conditions, Little and Jackson (2010) found pH declines of 1 to 2 units in every sample, with all exposed experiments falling below EPA's minimum MCL of 6.5; transition metal concentrations including manganese, iron, cobalt, nickel, and zinc increased more than 1,000% above controls. In the most rigorous field study to date, Trautz et al. (2013) documented a sustained 3-unit pH drop, from a baseline of 7.4-8.6 down to approximately 5.1, following controlled dissolved CO_2 release into a confined sand aquifer, with statistically significant increases in barium, beryllium, and chromium across multiple sampling events, and mercury and antimony elevated at one event, with antimony reaching half its MCL. The ZERT study represents a low-pressure analog: its maximum CO_2 partial pressure was approximately 1 bar, compared to roughly 68 bar at the Topaz Jetstream wells. As Kharaka et al. explicitly cautioned, at greater depth and pressure CO_2 dissolution in groundwater is substantially higher, yielding more severe pH depression and correspondingly greater mineral dissolution and trace metal mobilization. The peer-reviewed literature is unambiguous that CO_2 intrusion into shallow groundwater produces rapid, measurable, and in some settings severe water quality degradation, at pressures far below those present at Topaz.

4 The severity of those impacts, however, is not uniform. It depends critically on the buffering capacity of the receiving aquifer. This is where the Duluth Complex basalt presents a risk profile that the literature identifies as among the most vulnerable. Harvey et al. (2012) documented that CO_2 intrusion causes pH decreases of 1 to 3 units, depending on the host rock's buffering capacity. Well-buffered systems - those rich in reactive carbonates such as calcite and dolomite - resist the most severe pH depression because carbonate dissolution produces bicarbonate that partially neutralizes the introduced acidity. Poorly buffered systems, such as those dominated by siliceous minerals with low carbonate content, offer no such resistance: pH changes are more severe and more prolonged, and they produce the highest concentrations of mobilized metals. Little and Jackson (2010) demonstrated this directly: their carbonate-poor aquifer samples produced the lowest pH values and the highest concentrations of aluminum, cobalt, nickel, zinc, cadmium, arsenic, and selenium - the most severe contamination outcomes of any samples in their study. The Duluth Complex is a Precambrian basaltic rift formation. While basalt contains reactive minerals including plagioclase feldspar and pyroxene, it lacks the abundant calcite and dolomite that drive buffering in the sedimentary settings where most CO_2 groundwater research has been conducted. Its buffering capacity against rapid CO_2 intrusion at extraction pressures has never been characterized. That absence of characterization is not a technicality; it is the central reason why the proposed rules' failure to require pre-project baseline assessment is a substantive protection gap, not a procedural one. Little and Jackson expressly concluded that aquifer buffering capacity must be assessed before CO_2 operations begin, because it controls the magnitude of harm a given intrusion event will cause. No such assessment has been carried out for the Duluth Complex, and no sub-threshold project under the proposed rules would be required to perform one.

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The Duluth Complex basalt presents a second, compounding vulnerability that goes beyond buffering capacity: the coupled pH-redox dynamics that govern arsenic and iron mobilization in iron-sulfide-bearing formations. Harvey et al. (2012) identified redox conditions as a critically under characterized variable in CO_2 impact assessment, noting that most studies attribute CO_2 geochemical impacts solely to pH changes, while the coupled pH-Eh dynamics that govern metal speciation and dissolution have rarely been measured under field conditions. For the Duluth Complex, this gap is not abstract. Iron-bearing minerals, including magnetite, ilmenite, and sulfide phases, are documented components of the formation's geochemistry. In formations where these phases are present, Harvey et al. concluded that CO_2 intrusion could mobilize iron, arsenic, and other redox-sensitive metals at concentrations significantly above what pH effects alone would predict. Trautz et al. (2013) confirmed the arsenic pathway with precision: synchrotron-based X-ray fluorescence analysis of pyrite grains in the test interval showed significant arsenic and some lead in direct association with iron sulfide. Arsenic and lead remained below detection limits in the Mississippi field experiment, but the authors explicitly attributed this outcome to the specific absence of FeS dissolution conditions at that site, not to any inherent safety of CO_2 exposure in sulfide-bearing formations. In a formation where pyrite and other iron sulfides are present and exposed to CO_2-induced acid dissolution, arsenic release from the mineral matrix is a documented geochemical mechanism, not a theoretical one. The Duluth Complex contains iron sulfides. Its redox baseline has not been characterized. Harvey et al. concluded that robust predictions of CO_2 impact on aquifer geochemistry require coupling CO_2 plume modeling with formation-specific laboratory and field measurements under actual redox conditions. No such work has been conducted for the Duluth Complex, and the proposed rules do not require it.

5 A third risk pathway operates independently of aquifer mineralogy: pre-existing wellbores as conduits for CO_2 and brine migration. Carroll et al. (2014), drawing on 700 high-fidelity reactive transport simulations, identified abandoned legacy wells - specifically those from previous oil, gas, or exploration operations - as the most likely conduits for CO_2 and brine leakage to overlying aquifers. Their modeling showed that even a small percentage of wells with leakage pathways, consistent with historical rates of 5% sustained casing pressure in Canadian oil fields, can produce measurable aquifer contamination. Critically, leakage as small as 1-10 tons of brine can produce a measurable groundwater quality change in carbonate aquifers, and 100-1,000 tons of CO_2 can produce pH changes above detection thresholds in both aquifer types studied. Contamination plumes, once established, are highly persistent: Carroll et al. modeled a ten-fold increase in plume volume between 40 and 200 years. The relevance to the Duluth Complex is direct. The Minnesota Well Index documents historic water supply wells throughout Cook and Lake Counties drilled into the same fractured basalt formation targeted by the Topaz Project. Each of those wells represents a penetration of the fractured basalt - a potential pre-existing conduit that, if in proximity to a gas extraction wellbore and the pressurized Topaz reservoir, could function as a leakage pathway of the type Carroll et al. modeled. Carroll et al. further established that the probability of detecting contamination using existing well networks is below 10% for all parameters over a 200-year simulation period, because plume volumes are small relative to well spacing. Most CO_2-induced contamination events in this setting would go undetected by routine monitoring. Carroll et al. concluded explicitly that EPA's "no net degradation" policy for groundwater cannot be operationalized without pre-project baseline data. The proposed rules do not require that baseline for sub-threshold projects.

The literature also documents two interrelated failures of standard monitoring approaches that make pre-project baseline data not merely useful but essential. The first is temporal. Contamination signatures

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do not stabilize quickly. Little and Jackson (2010) found that while manganese, iron, calcium, and pH all responded within two weeks of CO_2 exposure, making them useful early markers, barium and uranium concentrations continued to increase on a time-dependent logarithmic trajectory throughout the entire 300-day experiment, never reaching equilibrium. For a multi-year extraction operation in a poorly buffered fractured basalt aquifer with no pre-project baseline, the absence of elevated readings in any given monitoring window cannot be interpreted as safety; it is only interpretable relative to pre-disturbance concentrations that have been established in advance. The second failure mode operates at the geochemical level. When a receiving aquifer has sufficient carbonate content to buffer the pH signal, pH monitoring fails as an early-warning indicator for CO_2 intrusion altogether (Keating et al., 2010). At the Chimáo natural analog site in New Mexico, where deep CO_2-rich water upwells through a fractured sandstone aquifer and produces geysering, Keating et al. documented exactly this failure: buffering reactions masked the pH signal while contaminant-bearing water arrived and exceeded relevant thresholds. Trautz et al. (2013) confirmed the practical limitation at field scale: pH and total dissolved carbonate are more reliable indicators than alkalinity or conductivity, but even these are interpretable only against a known baseline. For the Duluth Complex, where the buffering capacity is uncharacterized, it is not yet known whether pH monitoring would provide early warning at all, or whether buffering reactions would mask the signal entirely. That unknowing is precisely what pre-project assessment is designed to resolve, and what the proposed rules for sub-threshold projects decline to require.

Finally, CO_2 migration from the Jetstream reservoir would not occur in isolation. The Topaz system is a pressurized, CO_2-dominant gas system hosted in faulted and fractured Precambrian basalt, directly confirmed by Pulsar's flow test data and the peer-reviewed geological literature on the Duluth Complex.
6 Whether the Topaz reservoir co-occurs with saline formation waters has not been publicly characterized: no published geochemical analysis of Topaz formation waters has appeared in the peer-reviewed literature, and no such data has been made available in this rulemaking record. That absence is itself a data gap material to this proceeding. Deep Precambrian rift formation waters are characteristically saline - Warner et al. (2012) documents exactly this chemistry in analogous Appalachian basement formations, and Harkness et al. (2016) uses helium as a tracer for deep saline brine migration through dolerite intrusion pathways in Precambrian-adjacent geology structurally similar to the Duluth Complex. The inference that formation waters at depth in the Topaz reservoir are saline is geochemically well-grounded. But it is an inference, not a direct measurement, and the proposed rules do not require the formation water characterization to resolve it. Any leakage pathway carries not only CO_2, but the potential for brine co-transport - a compound hazard documented directly at the Chimáo natural analog site, where Keating et al (2010) found that co-transport of CO_2 with deep brackish water introduced arsenic, uranium, and lead directly into shallow freshwater. In that setting, As, U, and Pb concentrations in monitoring wells correlated with chloride - a conservative tracer for the deep brine source - rather than with CO_2 partial pressure alone, demonstrating that the contamination was driven by the carrier fluid, not merely by CO_2-induced dissolution in the shallow aquifer. The structural setting at Chimáo - CO_2-rich water upwelling through a fault system into a shallow aquifer - is precisely what Foose and Cooper (1981) and Foster and Hudleston (1986) documented within the Duluth Complex. For the Topaz system, this means that an extractive operation introducing CO_2 at 1,000 psi into fractured basalt does not present a risk profile limited to CO_2 alone, but also pressurized saline formation. It presents the compound risk of CO_2 plus co-transported deep brine, carrying arsenic, uranium, lead, and other trace metals characteristic of deep Precambrian formation waters of the type identified by Warner et al. (2011), migrating upward through the fault and fracture networks that Foose and Cooper (1981) mapped

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as pervasive across the Duluth Complex, into the shallow drinking water aquifers that Cook and Lake County residents depend on. This compound mechanism is not hypothetical. It is documented at a natural analog site. Whether it is operative at Topaz specifically cannot be determined without the formation water characterization that the proposed rules do not require for sub-threshold projects. That is not a reason to dismiss the risk; it is the precise condition under which the precautionary purpose of mandatory environmental review applies with greatest force. The EQB must set the mandatory EAW threshold at a level that requires this assessment before, not after, drilling begins.

B. Fugitive Hydrocarbon Gas Migration to Groundwater

Osborn et al. (2011) provided the foundational peer-reviewed documentation of methane contamination of drinking water associated with shale gas extraction, analyzing sixty-eight private drinking water wells in northeastern Pennsylvania and upstate New York. In active gas extraction areas (one or more gas wells within 1 km), average methane concentrations were 17 times higher than in neighboring nonextraction areas (19.2 mg CH_4 L^{-1} versus 1.1 mg L^{-1}; $P < 0.05$), with a maximum observed value of 64 mg L^{-1} - well above the US Department of the Interior's action level for hazard mitigation. Carbon and hydrogen isotopic signatures of dissolved methane in active extraction areas were consistent with deeper thermogenic sources matching gas well geochemistry from nearby production wells, whereas nonactive areas showed signatures consistent with biogenic or mixed biogenic/thermogenic sources. The study found no evidence of contamination from deep saline brines or fracturing fluids, suggesting that leaky well casings, rather than upward fluid migration, were the more likely contamination pathway. Critically for the present rulemaking, Osborn et al. (2011) explicitly called for systematic and independent groundwater quality data, including dissolved gas concentrations and isotopic compositions, to be collected before drilling operations begin in a region, stating that such baseline data would improve environmental safety, scientific knowledge, and public confidence. This call for pre-drilling baseline data, made in 2011 by the research team that first documented the contamination problem, has not been answered for the Duluth Complex. Jackson et al. (2013) analyzed 141 drinking water wells in northeastern Pennsylvania and found methane in 82% of samples, with average concentrations six times higher in homes within one kilometer of natural gas wells. Darrah et al. (2014) documented fugitive gas contamination attributable primarily to well casing and cementing failures, with gas traveling up the outside of the borehole and discharging directly into drinking water aquifers. Darrah et al. (2014) employed noble gas geochemistry - specifically measurements of helium-4, neon-20, and argon-36 - as non-reactive tracers that are unaffected by microbial activity or chemical reactions, allowing them to distinguish anthropogenic contamination from naturally occurring gas migration and to identify the specific mechanical pathway through which contamination occurred. Using this methodology, the study identified eight discrete clusters of fugitive gas contamination, seven in Pennsylvania overlying the Marcellus Shale and one in Texas overlying the Barnett Shale. Noble gas and hydrocarbon data attributed four contamination clusters to gas leakage from intermediate-depth geologic strata through failures of annulus cement - meaning gas from formations above the target shale traveled upward through the space between the well casing and the surrounding rock due to inadequate cementation - and three clusters to leakage of target production gases through faulty production casings. One additional cluster was attributed to an underground gas well mechanical failure. Critically, the noble gas data ruled out upward migration of gas from depth through overlying geological strata, triggered by horizontal drilling or hydraulic fracturing, as a mechanism for the contamination observed. This finding has direct methodological relevance for the Duluth Complex context: the contamination pathways identified by Darrah et al. (2014) are structural well integrity failures that are independent of formation geology,

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meaning they represent risks present in any gas extraction context, including conventional extraction in crystalline rock, regardless of whether hydraulic fracturing is employed.

The implication for the Duluth Complex is significant: even without hydraulic fracturing, the mechanical act of drilling, casing, and completing production wells through fractured Precambrian basalt creates pathways for fugitive gas migration into shallow aquifers. Well integrity failures in this setting would be particularly concerning given the fractured nature of the Duluth Complex basalt, which provides natural conduit pathways not present in intact sedimentary sequences. The pressurized nature of the Topaz deposit, documented by Pulsar at pressures approaching 1,000 psi at depths exceeding 2,100 feet, compounds this concern. The fractured and faulted character of the Duluth Complex is not merely inferred from general crystalline geology principles, it is directly documented in peer-reviewed literature specific to this formation. Foose and Cooper (1981, Canadian Journal of Earth Sciences) provided the first field documentation of extensive faulting within the Duluth Complex, mapping a 48 km² area of the South Kawishiwi intrusion and identifying three major fault sets with steep dips trending N35°E, N05°W, and N40°W. Many lineaments associated with mapped faults could be traced for as far as 20 km beyond the mapped area, indicating a structural pattern likely pervasive across much of the Duluth Complex. Foster and Hudleston (1986, Geological Society of America Bulletin) documented a system of closely spaced extensional fracture cleavage in troctolitic rocks of the Duluth Complex at Bardon Peak, formed at high fluid pressures during late-stage continental rifting, with serpentine alteration along fracture surfaces confirming that fluids were present and mobile within these fracture networks during formation. Together, these studies establish that the Duluth Complex contains documented fault and fracture systems that are structural features of the formation itself, and that fluid migration through these fractures occurred during its geological history. The conduit pathways that make well integrity failures particularly consequential in this setting are not hypothetical; they are mapped. Appendix B, Figure 1 illustrates these pathways in cross-section for the Duluth Complex setting.

C. Fault-Mediated Brine Migration to Shallow Aquifers

Dong et al. (2024, Science of the Total Environment) investigated shallow groundwater quality in the Wufeng-Longmaxi shale gas region of the Sichuan Basin, China, a tectonically complex setting with extensively developed fault systems, analyzing 156 groundwater samples and twenty-three flowback/produced water samples from both operational and prospective extraction areas. The study found no significant correlation between groundwater quality and proximity to shale gas well pads; critically, salinized groundwater samples were located farther from well pads (1.3 to 8.4 km), not closer. Using a sensitivity assessment model and conservative mixing model based on strontium isotopes ($^{87}Sr/^{86}Sr$), chloride, bromide, lithium, and other conservative tracers, the authors identified Triassic formation brines, not flowback water from hydraulic fracturing, as the primary source of shallow groundwater salinization. All salinized samples were located in close proximity to fault zones (0.1 to 1.3 km), and the faults were identified as hydraulic conduits establishing connectivity between deep Triassic brine aquifers and shallower groundwater layers. Mixing proportions of Triassic brine in the salinized samples ranged from 0.5 to 15 percent. The study further found that hydraulic fracturing can trigger microseismicity and reactivate pre-existing fault systems through subtle stress perturbations, increases in pore pressure, and poroelastic effects, and that reactivated faults may serve as conduits for upward migration of deep brines and hydrocarbon gases driven by pressure differentials between deep and shallow layers. The authors concluded that shale gas extraction in complex tectonic regions with well-developed faults requires careful well placement away from areas of high fault density, strict control of

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hydraulic fracturing scale to mitigate microseismic risk, and continuous groundwater monitoring throughout extraction. The relevance to the Duluth Complex is direct: the Precambrian basaltic rift geology of northeastern Minnesota is structurally characterized by fracture networks that function as natural hydraulic conduits analogous to the fault systems documented in the Dong et al. (2024) study. The Dong et al. findings establish that brine migration risk in fault- and fracture-rich settings is a documented, quantifiable phenomenon that is not dependent on direct hydraulic fracturing fluid invasion, it can occur through reactivation of pre-existing structural conduits by microseismic activity associated with extraction operations. This is precisely the risk category that pre-project baseline geochemical assessment is designed to detect and characterize before drilling commences.

The North American analog for this brine migration pathway is directly documented in peer-reviewed literature. Warner et al. (2012) analyzed 426 shallow groundwater samples from the Appalachian Plateaus of northeastern Pennsylvania, integrating chemical data (Br, Cl, Na, Ba, Sr, Li) and isotopic ratios ($^{87}Sr/^{86}Sr$, $^{2}H/H$, $^{18}O/^{16}O$, and $^{228}Ra/^{226}Ra$) across 83 northern Appalachian brine samples. The study documented geochemical evidence of cross-formational pathways, unrelated to recent drilling activity, connecting deep Marcellus Formation brines to shallow drinking water aquifers in some locations, with strontium isotope signatures of salinized Type D groundwater matching Marcellus brine fingerprints and distinctly different from shallower Upper Devonian formation brines. These brine-influenced areas were associated with valley bottoms and lower hydrodynamic pressure zones rather than proximity to gas wells, and salinized groundwater with this Marcellus brine signature was present in the historical dataset predating rapid shale gas development, confirming these as naturally occurring cross-formational connections rather than drilling-induced contamination. The study's central regulatory conclusion is that areas with preexisting evidence of brine connectivity to deeper formations are at heightened risk of contamination from shale gas development, because those same natural pathways - fracture zones, fault systems, and hydrodynamic conduits - represent the most likely routes for fugitive gas migration once drilling begins. The authors further found that buoyant flow of methane gas bubbles through fractures is far more rapid than head-driven flow of dense brine, occurring on timescales of less than a year, meaning that areas with documented brine connectivity should be treated as priority zones for pre-drilling baseline assessment and mandatory environmental review. Warner et al. (2012) also identified a geomechanical mechanism particularly relevant to northeastern Minnesota: in the Michigan Basin, upward migration of saline fluid into overlying glacial sediments was interpreted to reflect isostatic rebound following the retreat of glaciers, leading to fracture intensification and increased permeability. The same mechanism - lithostatic and isostatic rebound following glacial retreat - also significantly increased fracture intensification and permeability in the Upper Devonian aquifers of the Pennsylvania study area. Northeastern Minnesota was subject to the same Laurentide glaciation and post-glacial isostatic rebound processes, meaning the fracture and fault networks documented by Foose and Cooper (1981) and Foster and Hudleston (1986) within the Duluth Complex may have experienced the same post-glacial permeability enhancement that Warner et al. identify as a driver of cross-formational fluid connectivity in the Appalachian Basin. This provides an independent geomechanical basis for expecting that pre-existing fracture pathways in the Duluth Complex basalt may be hydraulically active in the contemporary setting, not merely relict features from the Precambrian rifting event. Applied to the Duluth Complex: if pre-existing cross-formational pathways are present in the fractured Precambrian basalt of northeastern Minnesota, and the fractured crystalline geology and post-glacial rebound history make their existence structurally plausible, those pathways represent not only a brine salinization risk but a faster-acting pathway for the pressurized gas mixture documented at the Topaz site (CO_2, helium,

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methane at pressures approaching 1,000 psi) to reach shallow drinking water aquifers once production begins. The absence of pre-project baseline geochemical data means these pathways cannot be identified, mapped, or mitigated before drilling commences, which is precisely the evidentiary gap that mandatory environmental review under MEPA is designed to fill.

The Warner et al. (2012) findings about pre-existing brine connectivity and attribution complexity are directly confirmed and extended by the most methodologically rigorous prospective study in peer-reviewed literature. Barth-Naftilan et al. (2018) conducted a two-year prospective study of groundwater quality in Susquehanna County, Pennsylvania, installing eight multilevel monitoring wells within bedrock aquifers of a 25 km² area before seven shale gas wells were drilled, hydraulically fractured, and placed into production. Monthly sampling before, during, and after each stage of development allowed the study to do what the broader contamination literature had not: directly test whether observed groundwater changes could be attributed to specific shale gas drilling (SGD) activities against a known pre-drill baseline. The study's findings are instructive for the Duluth Complex context on four grounds. First, and most directly applicable to this rulemaking, the study confirmed that the absence of pre-drill baseline data is the definitive impediment to contamination attribution. Barth-Naftilan et al. (2018) explicitly noted that prior studies attributing methane contamination to SGD had been challenged by critics who argued that methane predated development - a challenge that would have been unanswerable without the prospective design. The authors found that "reliable conclusions on CH_4 source attribution could not be made solely on the basis of [CH_4] changes relative to the timing of SGD operations, but required consideration of pre- and post-drill observations of hydrocarbon composition of dissolved gases from discrete-depth sampling, as well as hydrologic observations and access to indicators of gas well integrity." This is the clearest statement in the peer-reviewed literature of why baseline data is not merely useful but legally essential: without it, no regulatory body, no court, and no agency can determine whether a detected change was caused by development or was pre-existing. For sub-threshold projects proceeding without a mandatory EAW - and therefore without any requirement for pre-drilling baseline groundwater monitoring - this attribution problem is not merely theoretical; it is structurally guaranteed by the proposed rules. Second, the study directly documented drilling-induced perturbations in groundwater pressure. At hilltop monitoring wells sited within 100 m of gas well pads, groundwater pressures dropped abruptly within hours of top-hole drilling beginning - driven by compressed air from the air-hammer drill bit - and then recovered. The study cited field and model results showing that compressed air from drilling can penetrate hundreds of meters into fractured aquifers and create pressure gradients extending over similar distances. For the Duluth Complex, where the target formation is fractured Precambrian basalt with documented fault and fracture networks mapped across tens of kilometers by Foose and Cooper (1981), these drilling-induced pressure perturbations could propagate further and persist longer than in the comparatively lower-permeability sedimentary settings studied in Susquehanna County, potentially redistributing naturally occurring dissolved gases and brines across a wider radius - effects that would be undetectable and unattributable without a pre-drill baseline. Third, the study documented a casing rupture event at a gas well 64 m from a monitoring well. Small ruptures in the production and intermediate casings at 20 m depth allowed gas to enter the groundwater system, and methane concentrations at the nearest monitoring well subsequently peaked at 0.12 mg/L - isotopically consistent with Marcellus gas migration - within seven months of the rupture. The casing failure was detected only because the study's continuous pressure monitoring identified a pressure anomaly on the day of the rupture, enabling attribution. Without near-field hydrologic monitoring against a known baseline, the methane increase would have been

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undetectable as a casing failure event and indistinguishable from natural variability. Fourth, and most directly confirming the Warner et al. (2012) brine connectivity findings, the valley monitoring wells in the study showed methane concentrations ranging from below detection to 70 mg/L, with the deepest ports exhibiting the highest and most variable concentrations, and methane increases co-varying with salinity - a pattern the authors attributed to persistent shifts in the mixing ratio between shallow freshwater and comparatively saline, methane-rich deep groundwater, consistent with pre-existing cross-formational brine connectivity of the type Warner et al. (2012) documented. The co-varying methane and salinity trends in the valley wells had their closest analog in Warner et al.'s observation that deep basin brine connectivity is a pre-existing feature of fractured Appalachian geology - not an artifact of development. Barth-Naftilan et al. (2018) concluded explicitly that this natural variability "complicates contaminant source attribution and suggests that regulatory monitoring programs may need to collect samples with higher frequency in locations with significant [CH_4]." They further concluded that prospective studies "should be conducted in conjunction with larger scale studies of drinking water quality at the outset of the development of an unconventional oil and gas (UOG) play" - a recommendation that the proposed rules, by failing to require pre-drilling baseline monitoring for sub-threshold projects, structurally prevent from being implemented. For the Duluth Complex - where the naturally occurring methane content of the formation has not been characterized, where the fracture network connectivity between deep and shallow aquifers has not been mapped, and where no ambient monitoring program covers the affected aquifer system - the Barth-Naftilan et al. (2018) study establishes that proceeding without a pre-drill baseline does not merely create uncertainty; it creates a regulatory setting in which contamination, if it occurs, can never be attributed, remediated, or assigned to a responsible party. That is not a gap the EAW form fills after the fact. It is precisely the gap that a mandatory EAW threshold is designed to close before the first well is drilled.

D. Surface Water Impacts from Spills and Wastewater Mismanagement

Shaheen et al. (2024) analyzed approximately 29,000 groundwater samples from the Marcellus shale development region in Pennsylvania and identified small but statistically significant regional increases in salt concentrations associated with unconventional oil and gas development, attributing these increases primarily to surface spills and faulty impoundments. This large-scale dataset establishes that surface management of produced water is as significant a contamination vector as subsurface pathways, and that spills and impoundment failures are the primary driver of the groundwater salinization signal observed at a regional scale.

Olmstead et al. (2013) found that shale gas wells and the release of treated shale gas waste by permitted facilities were associated with downstream increases in chloride concentrations in surface water. For a gas development project within the Lake Superior watershed - a source of drinking water for millions of people, with cold-water stream systems supporting documented trout habitat - the downstream consequences of surface water contamination are of regional and national significance. Olmstead et al. (2013) identified two distinct contamination pathways: direct discharge from permitted wastewater treatment facilities handling shale gas waste, and surface spills from drilling and production operations. Both pathways are relevant to the Topaz Project context. Together, Shaheen and Olmstead establish that both subsurface and surface pathways are active vectors of contamination, reinforcing the need for comprehensive review before any gas development proceeds. The surface water protection concern is acute in northeastern Minnesota for several compounding reasons that go beyond what either study was designed to address. First, Lake Superior is the largest freshwater lake in the world by surface area

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and a drinking water source for communities in Minnesota, Wisconsin, Michigan, and Ontario. It is protected under the Great Lakes-St. Lawrence River Basin Water Resources Compact, which imposes the most stringent freshwater protection framework in North America. Any chloride or produced water contamination entering Lake Superior tributaries in the St. Louis River watershed or the North Shore drainages carries potential consequences that extend well beyond state boundaries and implicate federal and binational jurisdiction. Second, the cold-water tributary streams of the North Shore - including the Baptism, Caribou, Manitou, and Brule Rivers - support documented habitat for steelhead, brook trout, and lake trout. These are streams to which the 1854 Treaty ceded territory tribes hold treaty-reserved fishing rights; chloride contamination is acutely toxic to macroinvertebrates at concentrations far below full brine contamination levels, meaning even low-level produced water releases can degrade stream food webs supporting both commercial and subsistence fisheries. The treaty implications of surface water contamination in the 1854 Ceded Territory are developed fully in Section V.C. The proposed rules do not require any EAW for sub-threshold projects, and an EAW is the only mechanism under MEPA that would require a developer to inventory, assess, and publicly disclose risks to surface waters - including wild rice waters, trout streams, and Lake Superior tributaries - before a permit is issued.

The four bodies of peer-reviewed literature reviewed in this section establish a consistent and mutually reinforcing evidentiary record. The contamination of drinking water through gas extraction operations is not a theoretical concern or a litigation artifact: it is an area of established science documented across a methodologically diverse body of peer-reviewed literature, spanning controlled field experiments, laboratory incubation studies, natural analog sites, large-scale prospective monitoring designs, and regional groundwater datasets. Methane migration to shallow aquifers through well casing and cementing failures is confirmed across multiple independent studies in Pennsylvania and Texas, with isotopic tracing identifying the contamination pathway with precision (Osborn et al., 2011; Jackson et al., 2013; Darrah et al., 2014; Barth-Naftilan et al., 2018). CO_2 intrusion into groundwater, pH depression, and the subsequent leaching of arsenic, iron, manganese, chromium, lead, barium, and uranium from surrounding rock are documented across laboratory experiments, controlled field injections, and natural analog sites, with outcomes shown to be most severe in poorly buffered, carbonate-poor aquifer systems of the type presented by the Duluth Complex basalt (Kharaka et al., 2010; Little and Jackson, 2010; Trautz et al., 2013; Harvey et al., 2012; Keating et al., 2010; Carroll et al., 2014). Fault-mediated brine migration to shallow aquifers is documented in both North American and Asian shale basin settings, with pre-existing cross-formational fracture pathways identified as the primary conduit, and post-glacial isostatic rebound identified as a driver of fracture permeability enhancement directly applicable to northeastern Minnesota (Dong et al., 2024; Warner et al., 2012). Surface water contamination through spills and wastewater mismanagement is documented at regional scale across major shale development areas, with chloride increases in receiving waters attributable to both permitted discharges and unpermitted releases (Shaheen et al., 2024; Olmstead et al., 2013). What the peer-reviewed literature does not document is the specific behavior of any of these mechanisms in Precambrian basaltic rift geology under gas extraction conditions, because no such study has been conducted. That is not a finding of safety. It is the evidentiary condition that makes the mandatory environmental review threshold the central regulatory question in this rulemaking: every protection the science identifies as necessary, and every baseline monitoring requirement the literature explicitly calls for, is activated or foreclosed by where that threshold is set. The four contamination pathways documented in this section are depicted in consolidated form in Appendix B, Figure 1.

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III. The Absence of Site-Specific Science: A Documented Gap That Justifies Heightened Review

The four risk categories documented above - CO_2 migration into ground water, fugitive hydrocarbon gas migration to groundwater, fault-mediated brine migration to shallow aquifers, and surface water contamination from spills and wastewater mismanagement - are documented across a range of settings. The fugitive hydrocarbon gas contamination literature (Subsection B) and the fault-mediated brine migration literature (Subsection C) are drawn primarily from sedimentary basin settings, principally Appalachian shale formations in Pennsylvania and the Sichuan Basin in China. The CO_2 migration literature in Subsection A, however, is drawn from carbon sequestration leakage research conducted across diverse geological and geographic contexts - controlled field injections in Montana and confined sand aquifers, laboratory incubation studies, natural analog sites in New Mexico, and multi-aquifer reactive transport modeling - none of which are Appalachian shale settings. The surface water contamination literature (Subsection D) draws on large-scale regional datasets from Pennsylvania shale development. This breadth of independent research programs strengthens, rather than weakens, the evidentiary basis for the identified risk mechanisms: the CO_2 contamination pathways are documented not as artifacts of a single industry context but as geochemical mechanisms that operate wherever the relevant pressure, mineralogy, and aquifer conditions are present. The Duluth Complex is geologically distinct: Precambrian basaltic rift geology approximately 1.1 billion years old, with helium trapped in fractured rock at depths of 1,750-2,200 feet within a pressurized system whose formation water chemistry has not been publicly characterized - no published geochemical analysis of Topaz formation waters exists in the peer-reviewed literature or this rulemaking record. No peer-reviewed literature exists examining water quality impacts from helium extraction specifically in this formation type. This is not a minor evidentiary gap; it is a substantive and documentable absence in the scientific record.

The Band is not asserting that identical outcomes are inevitable in the Duluth Complex. We assert that the documented risk mechanisms are plausible in this setting, have not been studied in this setting, and justify a precautionary approach to environmental review thresholds. The absence of site-specific science documented in this section is not a reason to defer review, it is precisely the condition under which the EQB's mandatory category authority matters most. The proposed rules, however, respond to this scientific absence in the opposite direction: by establishing review thresholds under which the most likely class of gas extraction projects in northeastern Minnesota proceeds without any mandatory environmental review at all.

IV. The Structural Gap in the Proposed Rules: When "Already Required" Provides No Protection

Throughout its responses to Tribal input, documented in EQB's April 2026 Packet, Attachment 1 (Tables 2 and 3), EQB repeatedly stated that Tribal-requested protections were "already required for any environmental review," "addressed in the EAW form," or governed by existing program rules such as Minn. R. 4410.0200 and 4410.1000, subpart 4. The Band respectfully but firmly identifies this pattern of response as the central legal inadequacy of the proposed rules - every protection EQB cited is legally operative only when a mandatory EAW threshold is triggered. Understanding why requires examining what that threshold actually is, and what it leaves out.

The proposed mandatory thresholds are: (1) five or more gas wells triggering an EAW; (2) projects in DNR siting prohibition zones triggering an EAW; (3) Class II underground injection control waste disposal wells

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triggering an EAW; (4) projects injecting substances to create chemical reactions triggering an EAW; and (5) high-volume hydraulic fracturing using 100,000 or more gallons triggering an EIS. A gas resource development project with one to four wells using conventional extraction, with no underground injection and no HVHF, triggers no mandatory environmental review under the proposed rules. Such a project proceeds directly through DNR permitting. The five-well threshold converts every protection EQB cited from an operative safeguard into a conditional one, and the condition is structured so that the most likely projects in northeastern Minnesota never satisfy it.

In that scenario, no EAW form is completed, no Responsible Governmental Unit is designated, no cumulative impacts analysis occurs, no groundwater assessment is conducted, and no cultural properties review takes place. Every EQB response citing "the EAW form" or "existing environmental review rules" as sufficient protection is legally void for sub-threshold projects because those protections are only operative when a mandatory threshold has been triggered and an EAW is actually prepared. This is not a technical concern about procedural sequence. It is a substantive gap that leaves the class of projects most likely to affect Tribal resources in northeastern Minnesota - small-scale conventional extraction in treaty-ceded territory near the Lake Superior watershed - entirely outside the scope of mandatory environmental review.

The specific EQB responses that fail for sub-threshold projects are: cumulative impacts analysis ("required for any environmental review" - not if no EAW is triggered); cultural properties assessment ("EAW form item 15" - irrelevant without an EAW); groundwater and drinking water assessment ("EAW form includes it" - irrelevant without an EAW); full project footprint review ("RGU is responsible" - no RGU exists for sub-threshold projects); GHG emissions assessment ("EAW form includes it" - irrelevant without an EAW); treaty-reserved resource impacts ("EAW item 15" - irrelevant without an EAW); early Tribal notification ("ER document distribution is out of scope" - no ER documents are produced for sub-threshold projects); and phased and connected actions aggregation (Minn. R. 4410.1000, subpart 4 - only operative when an EAW threshold is being evaluated). In each case, the answer is the same: the protection exists only on paper for sub-threshold projects. The mechanism EQB described as adequate never activates. This last point deserves particular emphasis. Minn. R. 4410.4300, Subpart 1 - the threshold test that governs the entire mandatory EAW category framework - expressly provides that "multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part." This aggregation requirement means that a developer cannot evade mandatory review by sequencing wells below the threshold. But that anti-evasion protection only functions if the threshold is set low enough to be reachable. A developer proposing four conventional extraction wells in sequence can proceed through DNR permitting without ever triggering the aggregation analysis, because Subpart 1's protections only activate when an EAW threshold is actually under evaluation. The five-well threshold transforms the phased/connected actions rule into a dead letter for the most likely development scenarios in northeastern Minnesota.

The phased and connected actions protection in Subpart 1 has a second, equally serious limitation: it applies only to projects undertaken by the same proposer. The five-well threshold can be nullified not only by a single developer sequencing wells below it but also by multiple independent operators each permitting sub-threshold projects that collectively draw from the same helium deposit - a gap the existing aggregation framework cannot address. The Band addresses this multi-operator fragmentation problem separately in Section V.F below and requests a geographic aggregation trigger to close it.

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EQB may suggest that the DNR retains discretionary authority to order an EAW under Minn. R. 4410.4500 and 4410.1000, subpart three, for sub-threshold projects that present significant environmental concerns. This safety valve is not a sufficient substitute for mandatory categories for two reasons. First, it is entirely discretionary - the DNR has no obligation to act, and no regulatory standard compels it to do so. Second, the DNR is the same agency issuing the extraction permit, creating an inherent structural conflict of interest in self-ordering additional review of its own permitting actions.

The DNR's own draft permitting rules make the structural gap visible. DNR Rule 6124.1000, 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" - is not a drafting oversight; it is a textual admission of the structural gap. The rule requires submission of environmental review documents when they exist - but for sub-threshold projects, they never exist, because no EAW is ever triggered. The phrase "if applicable" will never be applicable for the most likely class of gas development projects in northeastern Minnesota. The DNR permitting file will be empty of environmental review documents not because review was conducted and found unnecessary, but because the threshold was set high enough to ensure it was never required. For sub-threshold projects, environmental review documents are never applicable, because no EAW is ever required under the proposed rules. The DNR permitting process proceeds, the Tribal notice goes out under Minn. R. 6124.3000, Subpart 8, and the permit issues, all without the independent groundwater assessment, cumulative impacts analysis, and cultural property review that an EAW would require. Separately, DNR Rule 6124.2000, which lists the protected areas where gas operations are prohibited or restricted, does not include DWSMAs with vulnerable aquifers. A project sited above a vulnerable DWSMA receives the same DNR permitting treatment as any other project location. This omission in the DNR rules is one more reason the EQB's mandatory category rules must supply the DWSMA trigger that neither framework currently provides.

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Furthermore, the DNR's draft gas resource development rules (Minn. R. Ch. 6124) confirm that every gas resource development project, regardless of size, requires a DNR permit. Under Minn. Stat. § 116D.04, a permit issued by a state agency constitutes a "governmental action." As a matter of statutory definition, every gas resource development project, including a single-well conventional extraction project, is therefore subject to MEPA's environmental review framework. The EQB therefore has legal authority under MEPA to set a mandatory EAW threshold at one well - i.e., any gas resource development project requiring a DNR permit. Because the five-well threshold is a policy choice rather than a legal constraint, the failure to set a lower threshold is a policy failure that this comment record documents and that future rulemaking must address.

The EQB's own submission to the Gas Resources Technical Advisory Committee - the legislatively created body charged with developing Minnesota's first-ever gas extraction regulatory framework, whose participating agencies included EQB, MDH, DNR, MPCA, Department of Commerce, and Department of Revenue - arrived at precisely the opposite conclusion from the proposed rules on this point. In Recommendation EQB-1 (Draft, November 15, 2024), EQB recommended that a mandatory EAW be required for any gas resource development project requiring a DNR permit - with no well-count threshold of any kind. EQB's stated rationale read: "EQB staff believe that for the duration of a temporary regulatory framework it is appropriate to require an EAW for all gas development projects, recognizing that any projects of this type may have the potential for significant environmental effects." EQB further identified the DNR as RGU and expressly tied the mandatory EAW to the same DNR permitting trigger

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analyzed in the preceding paragraph - i.e., the permit required by Minn. Stat. § 93.513 before any gas well may be drilled. The five-well threshold in the 2026 proposed rules is a step backward from EQB's own 2024 recommendation to the GTAC process. That regression demands an explanation in the rulemaking record. The EQB has not provided one, and the absence of one further supports the Band's position that the five-well threshold is a policy choice unsupported by legal or scientific necessity.

V. The Proposed EQB Draft Rules Are Not Sufficiently Protective: Specific Concerns

A. The Five-Well EAW Threshold Is Too High

The draft rule at Minn. R. 4410.4300, Subpart 38(A) establishes a mandatory EAW threshold at five or more gas wells. The Band strongly urges the EQB to lower this threshold to one well, consistent with the legal analysis in Sections IV and VI that every gas resource development project requiring a DNR permit constitutes a governmental action subject to MEPA, and requests at minimum a threshold of three wells.

The purpose of mandatory environmental review categories is to identify project types for which the potential for significant environmental effects is sufficiently established that discretionary review is inadequate. Given the combination of factors present here - no peer-reviewed science on water quality impacts from gas extraction in Precambrian basaltic rift geology; no baseline water quality data for affected aquifers; methane and CO_2 as geochemically co-associated gases in the Topaz deposit at documented concentrations; fractured basalt geology that provides conduit pathways for fugitive gas and produced water migration; and location within the Lake Superior watershed - the appropriate presumption is any production-scale activity has the potential for significant environmental effects.

The EQB's own guidance confirms the governing principle: completing environmental review is "especially beneficial for new project types, because new project types are likely to raise many questions, and the environmental review process informs the public and decision-makers about potential environmental impacts prior to permitting." This principle applies with its greatest force when the project type is not merely new to Minnesota but is new to the world - no analogous commercial gas extraction projects exist in comparable Precambrian rift basalt formations anywhere in the United States. The five-well threshold is irreconcilable with this principle because it leaves all projects below that threshold entirely outside mandatory review, regardless of their novelty, geological setting, or proximity to sensitive resources.

EQB's rationale for choosing five wells over the Tribal-proposed minimum threshold of three wells rested on revised estimates of gas production per well, which indicated lower production rates than initially modeled from Colorado data. This reasoning does not address the fundamental issue. Lower production rates per well may reduce production-volume-based risk, but they do not reduce the risks associated with well drilling mechanics - casing integrity, surface disturbance, produced water generation, and groundwater connectivity in fractured rock - that exist regardless of production volume. The Darrah et al. (2014) literature, for example, identifies well casing and cementing failures as the primary contamination mechanism, a risk that is present at the first well drilled, not the fifth. Darrah et al. further established that the two primary failure modes - annulus cement failure and production casing failure - produce distinguishable geochemical signatures and carry different regulatory implications. Annulus cement failures release gas from intermediate-depth formations through poorly cemented annular space, meaning the contaminating gas may not match the target formation's composition and may go

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undetected by conventional sampling focused on target-zone gases. Production casing failures release target formation gases directly. Both mechanisms are independent of well count, production volume, and extraction method: a four-well project and a single-well project present identical per-well casing and cementing failure risks. The EQB's production-volume-based rationale for the five-well threshold does not engage with this finding. Furthermore, the reasoning about production volume is internally incoherent. A threshold premised on production volume rather than on environmental effect potential conflates a commercial metric with a legal protection standard. As established in Section VI, MEPA's mandatory category authority is premised on the potential for significant environmental effects - not on production thresholds.

This production-volume reasoning also contradicts EQB's own prior analysis submitted to the GTAC process, which is developed fully in Section IV above. The per-well risk EQB identified as triggering review is the act of drilling, which is precisely the risk that Darrah et al. (2014) document as the source of well casing and cementing failures. The GTAC analysis and the peer-reviewed contamination literature converge on the same point: the contamination risk is structural and per-well, not volumetric. A rulemaking record that cites lower per-well production estimates to justify a higher threshold does not engage with either line of authority.

The EAW specifically requires investigation into groundwater proximity, well locations, and aquifer vulnerability. DNR's gas well siting rules require permit applications to map water wells and surface water features within 1,320 feet of the spacing unit. These siting protections do not substitute for the groundwater proximity investigation that an EAW would require, because they operate at the permitting stage after development is proposed and after commitments have often been made. Requiring an EAW from the first or third well ensures that groundwater vulnerability assessments drive project design, not the reverse. Requiring it only at the fifth well allows four wells to be drilled, sited, and permitted without any of that analysis.

The EQB's current position - that the absence of hard data on water quality impacts in this formation justifies a higher threshold rather than a lower one - inverts the precautionary principle that MEPA embodies. The absence of *evidence* of impact is not evidence of the absence of impact, particularly for a project type and geological formation that have never been studied. It is precisely the absence of site-specific science that makes mandatory environmental review most essential.

The empirical record supports the argument that the five-well threshold is set above the most likely development scenario. A project that reaches production at 1 – 3 conventional vertical wells - entirely plausible given the pressure and concentration data at Topaz - would proceed from exploration through production without ever triggering mandatory environmental review.

B. The Drinking Water Supply Management Area Location Trigger Must Be Made Explicit

The most fundamental protection gap in Section V.B concerns private drinking water wells. In rural Cook and Lake Counties, the vast majority of residents obtain drinking water from private wells drilled into the same fractured bedrock aquifers that would be affected by gas extraction activities. These private wells are not part of any public water supply system, are not covered by DWSMA delineations (which apply only to community and non-transient non-community public water supplies under the Safe Drinking Water Act), are not regulated or routinely tested by any state agency, and are entirely outside the geographic scope of the DNR's siting rules. Minnesota Department of Health data confirms that private

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wells are the primary drinking water source for a substantial majority of Cook County households. The Duluth Complex geology means these wells draw from fractured crystalline bedrock - the same fracture networks that Foose and Cooper (1981), Foster and Hudleston (1986), and Warner et al. (2012) document as conduits for fluid migration. A gas extraction project that introduces a contamination pathway into that fracture network potentially affects every private well drawing from the same aquifer system within an unknown radius. The proposed rules require no assessment of that risk for sub-threshold projects. The EAW process is the mechanism MEPA provides to require exactly this assessment: mapping of private wells, characterization of aquifer connectivity, and evaluation of whether the proposed project's design adequately protects the drinking water of people who have no public water supply alternative.

The Board should direct staff to add a mandatory EAW trigger for any gas resource development project located within a drinking water supply management area (DWSMA) where the underlying aquifer has been identified as vulnerable to contamination under Minn. R. Ch. 4720.

Critically, none of the five agency recommendations submitted to GTAC - from EQB, MDH, MPCA, DNR, and the Department of Revenue - included a DWSMA-proximity trigger for mandatory environmental review or as a gas well siting prohibition. The DNR's GTAC-recommended temporary siting framework (draft § 93.5174, Subd. 8, Sec. 15) enumerates national parks, wilderness areas, state scientific and natural areas, calcareous fens, and wild and scenic river districts as restricted or prohibited zones. DWSMAs with vulnerable aquifers do not appear on that list. MDH Recommendation MDH-12 and draft statute 103I.707, Subd. 9 do establish minimum isolation distances - 500 feet from a water supply well, five hundred feet from a residential building, 2,000 feet from a school or childcare center. These are well construction requirements, not environmental review triggers. They set a floor for physical separation at the time of drilling; they impose no requirement to assess cumulative aquifer risk, evaluate DWSMA vulnerability, or establish pre-drilling baseline groundwater conditions. A gas well sited 501 feet from a private drinking water well, directly overlying a vulnerable DWSMA, with no pre-project baseline data and no mandatory EAW, would satisfy every GTAC-recommended requirement without any environmental review of any kind. The GTAC framework's silence on DWSMAs is not a drafting oversight in a single agency's work - it is a gap that runs across the entire recommended regulatory architecture, which makes the EQB mandatory category rules the only available mechanism to supply this protection. Feedlots already face a DWSMA trigger under Minn. R. 4410.4300, Subpart 29(B). Gas extraction projects, which involve subsurface pressurized drilling into the same fractured aquifer system, do not. That asymmetry has no principled regulatory justification, and nothing in the GTAC record supplies one.

The proposed gas development rules contain no equivalent provision. Under the rules as drafted, a company could apply for a DNR permit and drill a well within a DWSMA without that proximity alone triggering any environmental review. DWSMA boundaries for the region can be visualized using the Minnesota Department of Health's Source Water Protection viewer (https://experience.arcgis.com/experience/14825b159b2e4dc686736d98e39ebce7) and cross-referenced against private and public well locations in the Minnesota Well Index (https://mnwellindex.web.health.state.mn.us/). However, the DNR's county-level aquifer mapping program (https://www.dnr.state.mn.us/waters/groundwater_section/mapping/index.html) has not yet completed aquifer characterization for Lake County, the county most directly affected by the Topaz Project, meaning that aquifer vulnerability determinations required to operationalize a DWSMA trigger cannot currently be made for the primary project area. This data gap underscores rather than

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undermines the need for mandatory environmental review: it is precisely because baseline aquifer characterization is incomplete that the EAW process is the appropriate vehicle for generating it before drilling commences.

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. The Minn. R. 4410.4300, Subpart 29(B) feedlot DWSMA trigger - which requires a mandatory EAW for a feedlot of more than five hundred animal units located within a DWSMA where the aquifer is identified as vulnerable - reflects a legislative judgment that certain sensitive locations warrant environmental review independent of the primary threshold test. That same legislative judgment applies with at least equal force to gas extraction projects, which involve subsurface drilling, pressurized gas systems, and the generation of produced water in proximity to drinking water sources. The additional asymmetry is that DNR Rule 6124.2000, which enumerates the protected areas where gas operations are prohibited or restricted, does not include DWSMAs with vulnerable aquifers at all, meaning DWSMAs receive no special protection under either the EQB mandatory category rules or the DNR siting rules. The omission is particularly consequential within the Lake Superior watershed, where basaltic geology creates aquifer vulnerability conditions that have not been characterized in peer-reviewed literature specific to gas extraction impacts, meaning the baseline risk is unknown and cannot be managed through permit conditions alone. As documented in Section II.D above, peer-reviewed research on CO_2 leakage into shallow groundwater - directly applicable to the CO_2-dominant gas composition at Topaz - establishes that poorly buffered aquifers lacking abundant carbonate minerals experience more severe and prolonged pH depression than well-buffered systems (Harvey et al., 2012). The Duluth Complex basalt's buffering capacity against rapid CO_2 intrusion events is uncharacterized. A DWSMA with a vulnerable aquifer designation under Minn. R. Ch. 4720 is precisely the regulatory instrument that identifies an aquifer as susceptible to contamination based on its hydrogeological properties - including, in many cases, limited natural attenuation capacity analogous to the low-buffering conditions that Harvey et al. (2012) identify as producing the most severe outcomes. The legislature has already identified these aquifers as warranting special protection; the EQB need only extend that legislative judgment to gas extraction projects, as it has already done for feedlots. An EAW is the appropriate mechanism to surface and evaluate that risk before it materializes. EQB declined the Tribal-proposed EAW trigger for projects within one mile of a wellhead protection area, deferring to DNR siting rules. This response conflates two distinct regulatory functions. DNR siting rules govern whether a well may be physically located in a given area, a question of surface and subsurface placement. Environmental review governs whether the environmental impacts of that placement have been adequately assessed and disclosed. The existence of DNR siting rules that regulate placement does not substitute for an EAW that assesses impacts - and as established in Section IV, every protection EQB cited in response to Tribal input is operative only when a mandatory EAW threshold has been triggered. The DWSMA trigger the Band requests is consistent with existing Minnesota environmental review precedent - the feedlot trigger in Subpart 29(B) establishes that sensitive locations warrant review independent of the primary threshold test, and the EQB's decision to decline both a wellhead protection area trigger and any DWSMA equivalent leaves public water supply sources without any location-based protection in the mandatory category rules. MEPA itself confirms that location is an independent basis for environmental review. Minn. Stat. § 116D.04, Subd. 2a(h) provides that the scoping process must address "those impacts that, because of the nature or location of the project, have the potential for significant environmental effects." A DWSMA with a vulnerable aquifer is precisely the kind of location that, by definition under Minn. R. Ch. 4720, has

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been identified as susceptible to contamination. The legislature and the EQB have already made the sensitivity determination; the only question is whether gas extraction projects operating above such an aquifer will be required to demonstrate that their specific design, siting, and operations will not compromise it. The proposed rules answer that question: no. That is not consistent with either the letter or purpose of MEPA. Additionally, Minnesota's existing Subpart 29(B) feedlot trigger applies not only to DWSMAs but also to projects within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley - features that, like the fracture networks of the Duluth Complex basalt, represent preferential pathways for subsurface fluid migration. The geological conduits that make the Duluth Complex particularly vulnerable to groundwater contamination are functionally analogous to the karst features that already trigger mandatory review for much smaller agricultural operations.

C. Proximity to Reservation Boundaries or Within Ceded Territories Where Treaty Rights Exist as a Location-Based Trigger

The Band understands that EQB staff have indicated the agency lacks authority under the current expedited rulemaking to include a location-based EAW trigger tied to proximity to Reservation boundaries. We note, however, that this position rests on an implementation complexity argument - that a location-based boundary must be "repeatable and easily implemented" - rather than a legal constraint. Reservation boundaries and DNR Native American Sacred Sites and Burial Grounds inventory locations are legally defined, publicly mapped, and unambiguous. They satisfy any reasonable standard of repeatability and implementability. The decision not to use them as a threshold boundary is a policy choice, not a legal one.

The Band is aware that EQB staff have also raised a separate concern in the course of collaborations: that applying a reservation-proximity trigger to gas extraction projects, but not to other project types that also appear in the mandatory category rules, would create an asymmetry across the rules that the Board is reluctant to introduce. The Band states the following for the rulemaking record. We heard that concern. We are not persuaded that it is a legally sufficient basis for declining to protect Tribal resources from a novel, unregulated project type that is the subject of this specific rulemaking. The solution to asymmetry is not to leave Tribal communities unprotected in the one rulemaking currently before the EQB; it is to apply equivalent proximity-based protections to other project types as they come before the Board in future rulemaking proceedings. A reservation-proximity trigger for gas extraction would not be anomalous within the Minnesota mandatory category framework - it would be the first application of a principle that the Board should, in the Band's opinion, apply broadly. The consistency concern, if genuine, is an argument for expanding Tribal protections across project types, not for withholding them from the one project type currently under review. The Band also notes, for the record, that gas extraction in the Duluth Complex presents a combination of factors - novel geology with no regulatory history, pressurized CO_2-dominant gas, absence of baseline water quality data, location within the Lake Superior watershed, and documented proximity to reservation boundaries and treaty-ceded territory - that do not exist for most other project types in the mandatory category rules. The asymmetry, if any, reflects the extraordinary circumstances of this project type, not a structural preference for Tribal interests over others. The Band submits this response to ensure that the rulemaking record reflects both the EQB's stated concern and the Band's position that it does not constitute a legally adequate basis for declining to include a reservation-proximity trigger in the final rule.

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The affirmative legal and policy foundation for a proximity-based trigger is substantial and directly applicable to EQB's rulemaking authority. Three independent frameworks converge on this point. First, Minn. Stat. § 10.65 establishes the government-to-government relationship between Minnesota state agencies and the eleven federally recognized Minnesota Tribal Nations, and defines "matters that have Tribal implications" as "rules, legislative proposals, policy statements, or other actions that have substantial direct effects on one or more Minnesota Tribal governments, or on the distribution of power and responsibilities between the state and Minnesota Tribal governments." A mandatory EAW threshold that leaves gas extraction projects near Reservation boundaries entirely outside environmental review self-evidently has substantial direct effects on Minnesota Tribal governments whose members rely on the affected water resources. The statute requires that agencies consult with Tribal governments on matters with Tribal implications in a "timely and meaningful" manner, defined as consultation at a time that allows the result to be included in the agency's decision-making process. A rulemaking threshold that eliminates the review process for the most likely development scenarios in treaty territory makes meaningful consultation structurally impossible: there is nothing to consult about once a sub-threshold permit has issued. Second, the EQB's own Tribal Coordination and Consultation Policy, adopted in July 2024 specifically to fulfill the intent of Minn. Stat. § 10.65, commits the Board to "ensure effective communication and coordination, especially on those specific EQB actions and decisions that may affect one or more of the Tribal Nations that share geography with Minnesota." The EQB Policy further states that "[t]he EQB recognizes and supports the unique status of Minnesota Tribal Nations and their right to exist, self-govern, and possess self-determination." A mandatory category rule that omits a proximity-based trigger is an EQB action that directly affects the Tribal Nations that share geography with the Topaz Project area - specifically the Grand Portage, Bois Forte, and Fond du Lac Bands, all of which hold 1854 Treaty rights in the Ceded Territory encompassing northeastern Minnesota. The EQB's own policy framework requires that this effect be addressed, not that it be deferred. Third, and most fundamentally, the 1854 Treaty between the United States and the Lake Superior Chippewa is federal law. Under Article 11 of the 1854 Treaty, the Bois Forte, Fond du Lac, and Grand Portage Bands retain the right to hunt, fish, and gather on the lands ceded to the United States in northeastern Minnesota - rights that predate Minnesota statehood and that cannot be diminished by state regulatory inaction. The U.S. Supreme Court's decision in Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999), reaffirmed that off-reservation usufructuary rights guaranteed by treaty are property rights of the highest legal order. A gas extraction project that contaminates groundwater or surface water in the 1854 Ceded Territory - particularly water bodies used for wild rice harvesting, fishing, or gathering - directly impairs federally guaranteed treaty rights. Minnesota's duty to avoid state actions that substantially impair those rights is not merely a matter of policy preference; it is a legal obligation that runs through every state permitting and rulemaking decision affecting the Ceded Territory. MEPA itself provides the specific mechanism. Minn. Stat. § 116D.04, Subd. 2a(h) requires that the scoping process address "those impacts that, because of the nature or location of the project, have the potential for significant environmental effects." Proximity to a Reservation boundary, trust lands, or an area of actively exercised treaty rights is precisely the kind of locational characteristic that gives rise to significant environmental effects as a matter of law - not because of geological factors alone, but because the legal consequences of groundwater or surface water contamination in those locations are categorically different from contamination elsewhere. The EQB has both the authority and the legal obligation to recognize this in its mandatory category rules.

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The Band, with other Tribes, submitted proposed rule language for a mandatory EAW trigger for projects within five miles of a federally recognized Tribal Nation's reservation or trust lands, within one mile of a water body in the DNR's Native American Sacred Sites inventory, or within an area where a Tribe retained treaty harvesting, fishing, or gathering rights. EQB declined this language as beyond the scope of the current expedited rulemaking. As documented throughout this letter, the result is that a gas project immediately adjacent to Reservation boundaries or within an area where a Band has documented treaty-reserved rights may proceed through DNR permitting with no mandatory environmental review, no mandatory Tribal notification under the EAW rules, and no RGU designation, if it involves fewer than five wells and uses conventional extraction.

Gas extraction projects near Indian Reservations have the potential to affect Tribal trust resources, treaty-protected hunting, fishing, and gathering rights in ceded territories, and the health and safety of Tribal community members who rely on local water resources. A proximity-based trigger is a reasonable and legally defensible mechanism to ensure these risks receive mandatory evaluation, and its inclusion in the final rule is necessary for the rules to be adequate as applied to northeastern Minnesota. The Band urges the EQB to include this provision in the final rule.

D. The Mandatory EIS Category Is Too Narrow

The draft rule at Minn. R. 4410.4400, Subpart 29 limits the mandatory EIS category to projects designed to use high-volume hydraulic fracturing. The Band is concerned that this provision fails to capture the range of circumstances in which a full Environmental Impact Statement, rather than just an EAW, is warranted for gas resource development in northeastern Minnesota.

The concern is compounded by a structural defect in the HVHF-only mandatory EIS trigger that the GTAC record makes explicit. MDH's recommendation to GTAC (MDH-8) proposed a complete statutory prohibition on hydraulic fracturing treatment in gas wells, with the rationale that "helium gas currently being pursued in Minnesota has been identified in the same geologic formation used for supplying drinking water" and that hydraulic fracturing "could connect fractures in the gas well with fractures supplying water to drinking water wells." The proposed draft statute (103I.707, Subd. 5) provides: "Hydraulic fracturing treatment is prohibited in a gas well." If the legislature enacts this prohibition - which MDH itself recommended on drinking water protection grounds - the mandatory EIS threshold at Minn. R. 4410.4400, Subpart 29 would be triggered only by a practice that is simultaneously and categorically unlawful. A mandatory category that can only be reached by violating a statutory prohibition is not a functional regulatory safeguard; it is a nullity. The Band does not oppose the hydraulic fracturing prohibition - MDH's stated rationale for it, the risk of connecting gas well fractures to drinking water fractures in the Duluth Complex basalt, is scientifically sound and consistent with the contamination pathways documented in this letter. But the EQB cannot rely on an HVHF-only EIS trigger in a regulatory framework where HVHF may be forbidden. The mandatory EIS category must be expanded to capture the project characteristics that generate potential for significant environmental effects – independent of hydraulic fracturing method - including location within the Lake Superior watershed, proximity to treaty-protected resources, and the absence of pre-project baseline groundwater data for the affected fractured basalt aquifer system.

An EIS is not simply a longer EAW. It is a substantively different analytical document requiring analysis of alternatives, cumulative impacts, and mitigation at a depth and rigor that an EAW does not. For a project type with no regulatory precedent in Minnesota, no comparable formation geology to reference, and no

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baseline environmental data, many project configurations would benefit from the full EIS process even without meeting the hydraulic fracturing volume threshold. The narrow HVHF-only EIS trigger, combined with the five-well EAW threshold, means that a four-well project using moderate hydraulic fracturing below 100,000 gallons, located in the Lake Superior watershed and proximate to reservation boundaries, could proceed with no mandatory environmental review of any kind. This is precisely the scenario - novel geology, treaty territory, sensitive watershed, data absence - for which MEPA's mandatory category authority was designed.

We are particularly concerned about projects that are: (1) located in the Lake Superior watershed; (2) proximate to Reservation boundaries, Tribal trust lands, or ceded territory; (3) involving extraction from a geological formation that has never been studied for water quality impact; or (4) co-located with significant groundwater resources lacking pre-project baseline data. The EQB's own guidance confirms that the standard environmental review framework "assumes a body of science exists from which to draw impact predictions." Where that science does not exist, the EIS level of analysis is the appropriate instrument for generating it.

E. Early Tribal Notification Provisions

The Tribal draft Subpart 38a provides for written notice to Tribal historic preservation officers and chief governmental officers when an EAW or EIS are required. The Band supports this provision and urges the EQB to set the required notice timing at a minimum of 30 days before publication of the EAW or draft scoping decision in the EQB Monitor.

Notably, DNR's draft gas resource development rules (6124.3000, Subpart 8) require the DNR to provide notice to Minnesota Tribal governments 30 days prior to publication of a draft gas resource development permit in the State Register for every permit, regardless of well count. This means that for all gas resource development projects, early Tribal notification is embedded in the DNR permitting process. The EQB's proposed mandatory category rules should be consistent with this standard and should not create a scenario where projects receive Tribal notification through the DNR permitting process but no corresponding EAW- or EIS-level Tribal engagement.

Thirty days of advance notice before public publication is necessary to allow Tribal governments to prepare substantive, informed input. Tribal nations hold government-to-government relationships with the State of Minnesota and exercise sovereign authority over tribal resources and treaty rights. Notification simultaneous with general public notice does not provide the advance consultation period appropriate to that relationship.

F. Multi-Operator Fragmentation and the Need for a Geographic Aggregation Trigger

As noted in Section V.A, the phased and connected actions protection in Minn. R. 4410.4300, Subpart 1 has a fundamental limitation that the proposed rules do not address: it applies only to projects undertaken by the same proposer. Under Minn. R. Ch. 4410, a "phased action" is explicitly defined as two or more projects to be undertaken by the same proposer that a RGU determines will have environmental effects on the same geographic area and are substantially certain to be undertaken sequentially. A "connected action" similarly presupposes a single developer's project components undertaken as part of a unified proposal. The existing aggregation framework therefore provides no protection against multi-operator fragmentation - the scenario in which the mandatory threshold is

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effectively nullified not by a single developer phasing wells below it, but by multiple independent operators each proposing sub-threshold projects that collectively industrialize the same geological formation and draw from the same deposit.

In the Duluth Complex, where helium exploration rights may be held by multiple entities across overlapping or adjacent lease blocks targeting the same Precambrian basalt formation, multi-operator development is the expected pattern if commercial extraction takes hold in northeastern Minnesota, not a hypothetical edge case. Consider the specific scenario that the proposed rules leave entirely unaddressed: three independent operators each apply for DNR permits to drill four conventional extraction wells in the same township, targeting the same helium-bearing formation at similar depths. Each project, evaluated individually, falls below the five-well mandatory EAW threshold. Each involves a different proposer, so the phased and connected actions aggregation rule does not apply. Each proceeds through DNR permitting independently, with no mandatory EAW, no designated RGU, no cumulative impacts analysis, no assessment of additive groundwater risk, and no Tribal notification under the EAW rules. The result is twelve wells in a single township, all drawing from the same fractured basalt deposit, each permitted without any environmental review of the cumulative system they collectively create. The groundwater, fracture networks, and treaty-reserved resources affected by those twelve wells do not recognize corporate boundaries. The regulatory framework, as proposed, does.

The existing Minnesota environmental review framework contains only one mechanism capable of reaching multi-operator cumulative impacts: the related actions EIS provision at Minn. R. 4410.2000, Subpart 5, which authorizes a single EIS for independent projects with potential cumulative environmental impacts on the same geographic area. This provision has three disqualifying limitations in the present context. First, it applies only at the EIS stage - it is unavailable for mandatory EAW review, which is the instrument the Band is requesting. Second, it is entirely discretionary: the RGU may prepare a related actions EIS, but no standard compels it to do so. Third, and most fundamentally, a related actions EIS requires that an RGU exist - and an RGU is only designated when at least one project has triggered mandatory review. For sub-threshold projects proceeding in parallel with no mandatory trigger, there is no RGU, no related actions EIS authority, and no mechanism in the rules to aggregate their cumulative effects. The discretionary EAW authority under Minn. R. 4410.1000, Subpart 3 has the same limitation: it is entirely discretionary, and for multi-operator sub-threshold projects, no governmental unit has been designated with responsibility to exercise it.

The Band requests that the mandatory EAW category rule for gas resource development at Minn. R. 4410.4300, Subpart 38 be amended to include a geographic aggregation trigger that operates independently of operator identity. Specifically, a mandatory EAW should be required when the cumulative total of gas resource development wells proposed or permitted within a defined geographic area such as a single township, a watershed subunit, or the area of a DNR-designated spacing unit - within a rolling five-year period meets or exceeds the mandatory threshold, regardless of whether those wells are proposed by one operator or several. The appropriate geographic boundary and lookback period are implementation details for EQB staff to develop in consultation with the DNR and affected Tribal Nations; the Band does not prescribe them here. The principle that the comment record requires EQB to address is that the mandatory threshold cannot be administratively fragmented across multiple operators drawing from the same deposit without defeating the purpose of having a threshold at all. MEPA's mandatory review standard is based on the potential for significant environmental effects, not on

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the number of corporate entities producing them. The mandatory category rules must reflect that geological and legal reality.

VI. The Legal Framework Supports Stronger Thresholds

The factual predicates established in the preceding sections - methane, propane, and CO_2 contamination risk documented in peer-reviewed literature; Duluth Complex geology that amplifies those risks; absence of baseline data that makes contamination permanently unattributable; and an EAW threshold set too high to apply to the most likely development scenarios - together establish the potential for significant environmental effects that MEPA's mandatory category authority requires. The EAW threshold, set at five wells rather than one, is a policy choice - not a legal constraint. The legal framework that follows documents why that distinction matters. The Minnesota Environmental Policy Act (MEPA), Minn. Stat. § 116D.04, directs the EQB to identify project types for mandatory environmental review based on the potential for significant environmental effects. The function of mandatory categories is to eliminate the need for case-by-case significance determinations for project types where the potential for significant effects is sufficiently established. Two provisions of MEPA define the outer boundaries of what is legally required and what is at stake. First, Minn. Stat. § 116D.04, Subd. 2a(a) triggers mandatory environmental review "where there is potential for significant environmental effects resulting from any major governmental action." The standard is potential, not proof. MEPA does not require the EQB to demonstrate that significant effects will occur before establishing a mandatory category; it requires only that the EQB identify project types where significant effects are potentially present. The five factual predicates documented in this letter collectively establish that potential beyond reasonable dispute.

Second, Minn. Stat. § 116D.04, Subd. 2b(a) provides the hard stop that gives mandatory categories their legal force: "a project may not be started, and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until" environmental review is complete. For sub-threshold gas projects, this statutory prohibition never activates, because no EAW is ever required, no permit is ever conditioned on completed review, and the Subd. 2b(a) protection is a dead letter. The EQB's threshold decision determines not only when review occurs, but whether that statutory prohibition ever applies at all.

Five factual predicates exist here that, individually and collectively, establish the potential for significant environmental effects that MEPA requires for mandatory category designation. First, there is no peer-reviewed literature characterizing water quality impacts from gas extraction in Precambrian basaltic rift geology. Second, the Duluth Complex sits within the Lake Superior watershed, a source of drinking water for millions of people. Third, methane is geochemically co-associated with helium and CO_2 in the Topaz deposit at documented concentrations in produced gas. Fourth, Minnesota has no regulatory history with this project type, no established baseline environmental data, and no pre-project water quality data for the affected aquifer systems. Fifth, Minnesota's ambient groundwater monitoring programs do not cover the fractured crystalline bedrock aquifers of northeastern Minnesota. Those programs focus on sedimentary aquifers in the Twin Cities metropolitan area and southeastern Minnesota, meaning there is no existing regulatory monitoring network capable of detecting or attributing groundwater contamination in the project area. Sub-threshold projects that proceed without an EAW will operate in a hydrogeological setting with no baseline, no monitoring, and no attribution framework. That is not a regulatory gap that discretionary agency authority can meaningfully address after the fact.

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A separate and independent statutory constraint deserves explicit attention. Minn. Stat. § 116D.04, Subd. 6 provides that "no state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare." This prohibition applies to the DNR's permit-granting authority, not merely to the EQB's rulemaking. For sub-threshold gas projects in the Duluth Complex, the DNR will be issuing permits under Minn. R. Ch. 6124 for a project type with no peer-reviewed site-specific science, no pre-project baseline water quality data, no ambient monitoring coverage, and a documented record of contamination risk from analogous geological settings. A permit issued under those conditions, without any prior environmental review, is precisely the kind of permit that Subd. Six was designed to constrain. Setting a five-well threshold that exempts the most likely class of projects from mandatory review creates the conditions under which that statutory prohibition is systematically violated, not by a single permit, but as a structural feature of the regulatory framework. The combination of five factual predicates identified above - geological novelty, hydrogeological vulnerability within the Lake Superior watershed, demonstrated methane and CO_2 presence in produced gas, complete regulatory vacancy with no baseline data for this project type, and the complete absence of any ambient groundwater monitoring coverage for the affected aquifer system - constitutes precisely the factual record that MEPA's mandatory category authority was designed to address. A mandatory EAW at three wells, or at one well, is the minimum review threshold consistent with the precautionary principle that MEPA embodies and with the factual record before the EQB.

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Furthermore, because every gas resource development project requires a DNR permit under Minn. Stat. § 93.513, and because such a permit constitutes a "governmental action" under Minn. Stat. § 116D.04, the EQB had legal authority to set the mandatory EAW threshold at one well - i.e., coextensive with the DNR permit requirement. The five-well threshold is a policy decision, not a legal constraint, and the rulemaking record should reflect that a lower threshold was legally available and was supported by the factual predicates described above. MEPA's foundational policy declaration, Minn. Stat. § 116D.02, directs the state to "maintain an environment which is healthful for all living things and in which aesthetic, historical, cultural, and natural aspects of our environment are maintained" and to act "with due consideration" for impacts on the environment. The statute further recognizes that "it is in the public interest to provide for" environmental review. Three specific state responsibilities declared in § 116D.02 are directly implicated. First, Subd. 2(1) directs the state to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations", the irreversibility of groundwater contamination in fractured crystalline bedrock is precisely the kind of inter-generational harm that trustee responsibility requires preventing, not merely responding to. Second, Subd. 2(7) directs the state to "define, designate, and protect environmentally sensitive areas"; DWSMAs with vulnerable aquifers have already been defined and designated; the proposed rules simply decline to protect them from gas extraction. Third, Subd. 2(8) directs the state to "establish and maintain statewide environmental information systems sufficient to gauge environmental conditions"; as documented above, no such system exists or can exist for the fractured basalt aquifers of northeastern Minnesota under the current regulatory framework, because sub-threshold projects generate no baseline data and no monitoring requirements. Setting a mandatory EAW threshold at five wells, for a project type with no regulatory history, no peer-reviewed site-specific science, no baseline data, and no ambient monitoring coverage, is not consistent with that declaration of public policy. Groundwater contamination from wellbore failures

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in fractured crystalline bedrock is not readily remediable: once saline brine, methane, or CO_2 migrates into a fractured aquifer serving private drinking water wells, the contamination cannot simply be reversed. Mandatory environmental review before drilling is the mechanism MEPA provides to prevent that outcome. The EQB should use it.

VII. Summary of Requested Changes

The Band respectfully requests the following modifications to the 2026 EQB draft rules:

- **Lower the mandatory EAW threshold** in Minn. R. 4410.4300, Subpart 38(A) from five wells to three wells. To fully close the regulatory gap documented in Section IV of this letter, the threshold should be lowered to one well, consistent with the legal analysis in Sections IV and VI, which holds that every gas resource development project requiring a DNR permit constitutes a governmental action subject to MEPA.
- **Add an explicit location-based EAW trigger** for gas resource development projects located within a drinking water supply management area where the aquifer is identified as vulnerable to contamination, consistent with the standard already established for animal feedlots in existing Minn. R. 4410.4300, Subpart 29(B), and as detailed in Section V.B of this letter.
- **Add an explicit location-based EAW trigger** for any gas resource development project located within five miles of a federally recognized Tribal Nation's reservation boundaries, trust lands, or documented treaty-reserved harvesting, fishing, or gathering areas. The legal and policy foundation for this trigger is documented in Section V.C of this letter. Three independent frameworks - Minn. Stat. § 10.65, the EQB's own July 2024 Tribal Coordination and Consultation Policy, and the 1854 Treaty as federal law - converge on the conclusion that the EQB has both the authority and the obligation to recognize proximity to Tribal sovereign territory as a basis for mandatory environmental review. The Band is aware that EQB staff have expressed concern that applying a reservation-proximity trigger to gas extraction but not to other project types would introduce asymmetry across the mandatory category rules. The Band 's position, stated for the rulemaking record, is that this concern does not constitute a legally adequate basis for declining to include this trigger in the final rule. The solution to asymmetry is to extend equivalent Tribal proximity protections to other project types in future rulemaking proceedings - not to withhold them from the one novel, unregulated project type currently before the Board. Gas extraction in the Duluth Complex presents a combination of circumstances - novel geology, pressurized CO_2-dominant gas, absent baseline data, location within the Lake Superior watershed, and direct proximity to reservation boundaries and treaty-ceded territory - that does not exist for most other project types in the mandatory category rules. That combination is the justification for acting now, not a reason to wait for a more comprehensive cross-project rulemaking that may never occur.
- **Expand mandatory EIS categories** in Minn. R. 4410.4400, Subpart 29 to include any gas resource development project that involves extraction from a geological formation with no peer-reviewed literature characterizing water quality impacts from gas extraction in that formation type or has no pre-project baseline groundwater quality data for the affected aquifer.
- **Commit to mandatory pre-drilling baseline groundwater monitoring** for all gas resource development projects, regardless of well count, as a standalone regulatory requirement

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applicable at the DNR permitting stage, as documented in Sections III and VI of this letter. Without pre-project baseline data, it is legally and practically impossible to attribute post-project groundwater changes to extraction activity. This requirement cannot be accomplished through the EAW form alone because sub-threshold projects never complete an EAW. The Band recognizes that mandatory pre-drilling baseline monitoring for all projects may fall within DNR's gas resource development permitting authority under Minn. R. Ch. 6124 rather than EQB's mandatory category authority. Accordingly, the Band requests that the EQB: (a) formally document in the final rulemaking record that pre-project baseline groundwater quality data is absent for the affected aquifer systems and that this absence creates an attribution gap that cannot be remedied through EAW-level review alone; (b) formally recommend to the DNR that Minn. R. Ch. 6124 be amended to require pre-drilling baseline groundwater monitoring as a permit condition for all gas resource development projects regardless of well count; and (c) condition the adequacy of any EAW prepared under the mandatory category rules on the availability of pre-project baseline data sufficient to support a meaningful cumulative impacts analysis. The need for pre-drilling baseline data is not a novel regulatory demand. Osborn et al. (2011), the foundational peer-reviewed study documenting methane contamination of drinking water near gas wells - explicitly called for systematic and independent groundwater quality data, including dissolved gas concentrations and isotopic compositions, to be collected before drilling begins in a region, noting this is already done in some states. That call was made over a decade ago. Minnesota has not answered it for the Duluth Complex, and the proposed rules would not require it for sub-threshold projects.

- **Set the Early Tribal Notification timing** at a minimum of 30 days prior to publication of the EAW or draft scoping decision in the EQB Monitor, consistent with the 30-day Tribal notification standard already embedded in DNR's draft gas resource development permitting rules at Minn. R. 6124.3000, Subpart 8, as detailed in Section V.E of this letter.
- **Add a geographic aggregation trigger** to Minn. R. 4410.4300, Subpart 38 requiring a mandatory EAW when the cumulative total of gas resource development wells proposed or permitted within a defined geographic area within a rolling five-year period meets or exceeds the mandatory threshold, regardless of whether those wells are proposed by the same or different operators. As documented in Section V.F, the existing phased and connected actions aggregation rule applies only to projects by the same proposer and cannot reach multi-operator fragmentation: the scenario in which multiple independent developers each permit sub-threshold projects that collectively industrialize the same formation and draw from the same deposit. The related actions EIS provision at Minn. R. 4410.2000, Subpart 5 cannot fill this gap because it applies only at the EIS stage, is entirely discretionary, and requires an RGU that does not exist for sub-threshold projects. A geographic aggregation trigger is the only mechanism that ensures the mandatory threshold reflects cumulative environmental reality rather than the number of corporate entities involved in producing it.

VIII. Closing

The Band respectfully submits these comments to the Minnesota Environmental Quality Board. We recognize the genuine care and effort that EQB staff have invested in this process, and we are grateful for the collaborative relationship that has developed. It is precisely because of that relationship and our

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shared commitment to protecting Minnesota's water resources and Tribal sovereignty, that we respectfully insist on these stronger protections.

The proposed rules, as currently drafted, leave the class of gas resource development projects most likely to operate in northeastern Minnesota - small-scale conventional extraction projects below the five-well threshold - entirely outside mandatory environmental review, regardless of their proximity to treaty-ceded territory, reservation boundaries, wild rice waters, drinking water sources, sensitive aquifers, or the Lake Superior watershed. Every protection EQB cited in response to Tribal input throughout the coordination process is conditional on an EAW being triggered. For sub-threshold projects, those protections do not exist.

The absence of science on this project type and this geological formation is not a reason to set lower review thresholds. It is the most compelling reason to set higher ones. We urge the EQB to adopt the changes requested in this letter, and we commit to continuing this work together through whatever mechanisms are available. The Band further notes that these comments are submitted for purposes of creating a complete administrative record. The objections documented herein - to the five-well threshold, the absence of DWSMA and reservation-proximity triggers, the inadequacy of the HVHF-only EIS category, and the structural gap that leaves sub-threshold projects outside mandatory review - are preserved for purposes of any future judicial or administrative review of these rules or of permits issued under them.

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Respectfully submitted,

Signed by:
Robert Deschampe
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Robert Deschampe
Grand Portage Band of Lake Superior Chippewa Tribal Chairman

Date 6/15/2026

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Key Peer-Reviewed and Regulatory Sources Referenced

Peer-Reviewed Scientific Literature

- *Darrah, T.H., Vengosh, A., Jackson, R.B., Warner, N.R., & Poreda, R.J. (2014).* Noble gases identify the mechanisms of fugitive gas contamination in drinking-water wells overlying the Marcellus and Barnett Shales. *Proceedings of the National Academy of Sciences,* 111(39), 14076-81.
- *Jackson, R.B., et al. (2013).* Increased stray gas abundance in a subset of drinking water wells near Marcellus shale gas extraction. *Proceedings of the National Academy of Sciences,* 110(28), 11250-55.
- *Osborn, S.G., Vengosh, A., Warner, N.R., & Jackson, R.B. (2011).* Methane contamination of drinking water accompanying gas-well drilling and hydraulic fracturing. *Proceedings of the National Academy of Sciences,* 108(20), 8172-8176. [Foundational study documenting methane contamination of drinking water wells near gas extraction; establishes 17-fold higher methane concentrations in active extraction areas; calls explicitly for pre-drilling baseline groundwater data collection before operations begin in a region.]
- *Warner, N.R., Jackson, R.B., Darrah, T.H., Osborn, S.G., Down, A., Zhao, K., White, A., & Vengosh, A. (2012).* Geochemical evidence for possible natural migration of Marcellus Formation brine to shallow aquifers in Pennsylvania. *Proceedings of the National Academy of Sciences,* 109(30), 11961-11966. [Documents pre-existing cross-formational brine pathways in Appalachian fractured geology using Sr isotopes and conservative tracers; establishes that areas with natural brine connectivity to deeper formations are at heightened contamination risk from gas extraction; finds buoyant gas migration through fractures occurs on timescales under one year.]
- *Shaheen, S.W., Wen, T., Zheng, Z., Xue, L., Baka, J., & Brantley, S.L. (2024).* Wastewaters coproduced with shale gas drive slight regional salinization of groundwater. *Environmental Science & Technology*, 58(40), 17862-17873.
- *Olmstead, S.M., et al. (2013).* Shale gas development impacts on surface water quality in Pennsylvania. *Proceedings of the National Academy of Sciences,* 110(13), 4962-4967.
- *Dong, Y., et al. (2024).* Salinization of groundwater in shale gas extraction area in the Sichuan Basin, China. *Science of the Total Environment,* 915, 170065.
- *Barth-Naftilan, E., Sohng, J., & Saiers, J.E. (2018).* Methane in groundwater before, during, and after hydraulic fracturing of the Marcellus Shale. *Proceedings of the National Academy of Sciences,* 115(27), 6970-6975. [Two-year prospective study with pre-drill baseline and monthly time-series sampling before, during, and after drilling, HVHF, and production of seven Marcellus Shale gas wells in Susquehanna County, PA; documents drilling-induced groundwater pressure perturbations (compressed air penetrating hundreds of meters into fractured aquifer), casing rupture event with isotopically confirmed Marcellus gas migration to shallow groundwater (peak 0.12 mg/L at 64 m from breach), and natural methane variability up to 70 mg/L in valley wells co-varying with salinity consistent with pre-existing deep brine connectivity; central methodological conclusion is that reliable CH_4 source attribution requires pre- and postdrill baseline observations of dissolved gas geochemistry, hydrologic data, and gas well integrity indicators - a determination impossible without predrill data; recommends prospective studies be conducted “at the outset of the development of a UOG play.” Provides the strongest peer-

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reviewed statement in the contamination literature for why pre-drilling baseline monitoring is legally essential to contamination attribution, and directly validates the Warner et al. (2012) finding that pre-existing brine connectivity creates naturally occurring methane variability that is indistinguishable from SGD contamination without a baseline.]

- *Harkness, J.S., et al. (2016).* Pre-drill groundwater geochemistry in the Karoo Basin, South Africa. *Groundwater,* 56(2), 187-203. [Documents use of helium as tracer for deep brine migration to shallow aquifers in Precambrian-adjacent geology; basis for pre-drill baseline assessment argument in Section III.]
- *Dewandel, B., et al. (2021).* Hydrogeology of weathered crystalline/hard-rock aquifers - guidelines for the operational survey and management of their groundwater resources. *Hydrogeology Journal,* 29, 2253-2276. [Establishes fracture-network transmissivity and spatial heterogeneity of hard-rock crystalline aquifers; basis for fractured basalt vulnerability argument in Section III.]
- *Foose, M.P., & Cooper, R.W. (1981).* Faulting and fracturing in part of the Duluth complex, northeastern Minnesota. *Canadian Journal of Earth Sciences,* 18, 810-814. [First field documentation of extensive faulting within the Duluth Complex; maps three major fault sets in the South Kawishiwi intrusion traceable up to 20 km; concludes fault pattern is likely pervasive across the complex; documents the formation's structural complexity as an inherent geological feature of the Precambrian rift system.]
- *Foster, M.E., & Hudleston, P.J. (1986).* "Fracture cleavage" in the Duluth Complex, northeastern Minnesota. *Geological Society of America Bulletin,* 97(1), 85-96. [Documents closely spaced extensional fracture cleavage in troctolitic rocks of the Duluth Complex at Bardon Peak, formed at high fluid pressures during late-stage continental rifting; serpentine alteration along fracture surfaces confirms fluid migration through fracture networks; fractures localized above a subsurface dike structure that acted as a conduit for upward fluid migration.]
- *Carroll, S.A., Keating, E., Mansoor, K., Dai, Z., Sun, Y., Trainor-Guitton, W., Brown, C., & Bacon, D. (2014).* Key factors for determining groundwater impacts due to leakage from geologic carbon sequestration reservoirs. *International Journal of Greenhouse Gas Control,* 29, 153-168. [Multi-phase reactive transport modeling of CO_2 and brine leakage into representative U.S. drinking water aquifers; documents pH depression, TDS increases, and trace metal mobilization; identifies abandoned wellbores as primary leakage conduits; establishes that contamination plumes persist for decades even without remediation; demonstrates that detection probability using existing wells is below 10%; emphasizes pre-injection baseline groundwater chemistry as essential for operationalizing EPA's no-net-degradation standard. Directly applicable to legacy well penetrations of the Duluth Complex basalt documented in the Minnesota Well Index.]
- *Harvey, O.R., Qafoku, N.P., Cantrell, K.J., & Brown, C.F. (2012).* Geochemical implications of CO_2 leakage associated with geologic storage: A review. PNNL-21550. Pacific Northwest National Laboratory. [Comprehensive literature review of CO_2 leakage impacts on near-surface environments; documents pH reduction of 1-3 units depending on aquifer buffering capacity; identifies poorly buffered siliceous systems as experiencing more severe and prolonged impacts; documents mobilization of As, Pb, Fe, Mn, Cd, Cu, Zn, and U; identifies redox coupling as critically undercharacterized; concludes that robust predictions require formation-specific pH-Eh

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characterization. Directly applicable to the Duluth Complex basalt, whose buffering capacity for CO_2 intrusion at extraction pressures has not been assessed.]

- *Keating, E.H., Fessenden, J., Kanjorski, N., Koning, D.J., & Pawar, R. (2010).* The impact of CO_2 on shallow groundwater chemistry: observations at a natural analog site and implications for carbon sequestration. *Environmental Earth Sciences,* 60, 521-536. [Natural analog study of CO_2 upwelling through a fractured sandstone aquifer; documents co-transport of CO_2 with deep brackish water introducing As, U, and Pb into shallow drinking water; demonstrates that pH monitoring fails as early warning when calcite buffering masks the signal; concludes brine co-leakage may pose greater risk than CO_2 alone. Most directly analogous natural analog to the CO_2-dominant Topaz gas system co-occurring with pressurized saline formation waters in a fault-mediated setting.]

- *Kharaka, Y.K., et al. (2010).* Changes in the chemistry of shallow groundwater related to the 2008 injection of CO_2 at the ZERT field site, Bozeman, Montana. *Environmental Earth Sciences,* 60, 273-284. [Controlled field CO_2 injection study documenting pH 7.0→5.6, alkalinity tripling to 1,330 mg/L, Fe rising to 1,200 ppb, Mn to 1,400 ppb, and BTEX mobilization within days of injection; all concentrations below MCLs in this low-pressure carbonate-buffered sedimentary setting; authors caution that the ~1 bar pCO_2 at ZERT is a fraction of the ~68 bar pressures documented at Topaz Jetstream wells, implying substantially greater geochemical impact potential; establishes pH, alkalinity, and conductance as effective early indicators of CO_2 intrusion, but only interpretable against a pre-disturbance baseline.]

- *Little, M.G., & Jackson, R.B. (2010).* Potential impacts of leakage from deep CO_2 geosequestration on overlying freshwater aquifers. *Environmental Science & Technology,* 44(23), 9225-9232. [Long-duration laboratory incubation study (300+ days) exposing four freshwater aquifer sediment samples to continuous CO_2 under oxidizing conditions; documents pH decline of 1-2 units across all aquifer types, transition metal mobilization exceeding 1,000% above controls (Mn, Fe, Co, Ni, Zn), and time-dependent increases in Ba and U over the entire experimental period; critically establishes that carbonate-poor aquifers - lacking buffering capacity - experience the most severe contamination outcomes; identifies Mn, Fe, Ca, and pH as early-detection geochemical markers detectable within 2 weeks; concludes that aquifer metal availability, carbonate buffering capacity, and redox state must be assessed before CO_2 operations begin. Directly applicable to the Duluth Complex basalt, which lacks the abundant reactive carbonates that moderated outcomes in the carbonate-rich aquifer samples and must be characterized for buffering capacity before gas extraction commences.]

- *Trautz, R.C., Pugh, J.D., Varadharajan, C., Zheng, L., Bianchi, M., Nico, P.S., Spycher, N.F., Newell, D.L., Esposito, R.A., Wu, Y., Dafflon, B., Hubbard, S.S., & Birkholzer, J.T. (2013).* Effect of dissolved CO_2 on a shallow groundwater system: A controlled release field experiment. *Environmental Science & Technology,* 47, 298-305. [Controlled release field experiment injecting dissolved CO_2 into a confined sand aquifer over five months; documents ~3 pH unit drop (baseline 7.4-8.6 to ~5.1), pulse-response mobilization of Ba, Ca, Cr, Sr, Mg, Mn, and Fe, with statistically significant increases in Ba, Be, and Cr across multiple sampling events; EPA-regulated constituents remained below MCLs in this sandy carbonate-poor but sulfide-limited setting; synchrotron XRF confirmed As and Pb in pyrite grains in test interval - their non-mobilization attributed to site-

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specific absence of FeS dissolution conditions, not CO_2 safety in sulfide-bearing formations; concludes pH and total dissolved carbonate are superior early indicators compared to alkalinity and conductivity; explicitly states field-scale experiments are necessary because laboratory conditions cannot replicate in situ redox, mineralogy, and flow conditions - a methodological conclusion directly applicable to the uncharacterized fractured basalt aquifer of the Duluth Complex.]

Pulsar Helium Gas Composition Data (Topaz Project)

- Pulsar Helium Inc. (September 19, 2025). Pulsar Helium Confirms Sustained Helium Concentrations of 7-8% at Jetstream #1, With Positive Reservoir Indicators at Jetstream #2. *Globe Newswire.*
- KAXE/Minn Post (July 10, 2024). What You Need to Know About Minnesota's Helium Deposit.

Minnesota Regulatory Sources

- Minn. R. 4410.4300, Subpart 29(B) - animal feedlot drinking water supply management area sensitive location trigger (basis for consistency argument in Section V.B)
- Minn. R. 4410.4500 and 4410.1000, subpart 3 - discretionary EAW authority (and its limitations, discussed in Section IV)
- Minn. R. 6124.3000, Subpart 8 (DNR draft) - 30-day Tribal notification requirement for all gas resource development permits
- Minn. R. 6124.0300, Subpart 1 (DNR draft) - universal permit requirement for all gas resource development operations
- Minn. R. 6124.1000, Subpart 5(D) (DNR draft) - permit application requirement for any prior environmental review documents "if applicable" (demonstrates structural gap: sub-threshold projects never generate applicable ER documents)
- Minn. R. 6124.2000 (DNR draft) - list of protected areas where gas operations are prohibited or restricted; does not include DWSMAs with vulnerable aquifers (basis for DWSMA omission argument in Section IV)
- Minn. Stat. § 10.65 - Minnesota Tribal consultation policy
- Minn. Stat. § 93.513 / 93.5176 - gas resource development permit requirement
- Minn. Stat. § 116D.04 - Minnesota Environmental Policy Act; definition of governmental action; mandatory category authority
- Minn. Stat. § 116D.02 - MEPA policy declaration; state obligation to maintain healthful environment and provide for environmental review (basis for Section VI closing argument)

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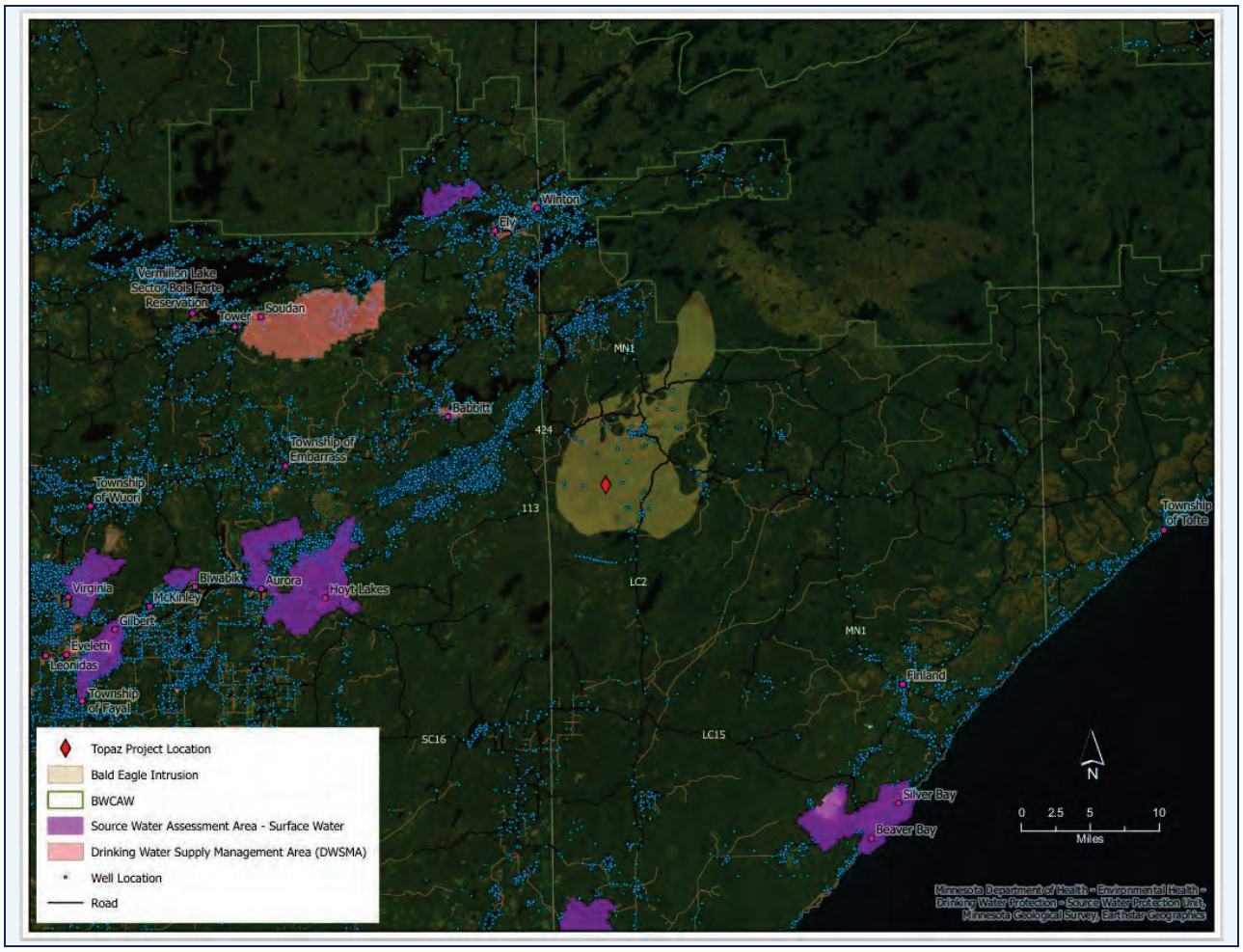
Appendix A: Water Wells Within the Duluth Complex

Figure 1. Private and Public Water Supply Wells Overlying the Duluth Complex, Northeastern Minnesota

Prepared by Heather Fox, GIS Specialist, Grand Portage Band of Lake Superior Chippewa (April 2026)



Description

This map illustrates the concentration of private and public water supply wells in Cook and Lake Counties, northeastern Minnesota, overlaid on the extent of the Duluth Complex - the Precambrian basaltic rift formation within which helium resources have been identified at the Topaz Project site near Babbitt. The map demonstrates that the Duluth Complex is a water-rich geological environment in which fracture-hosted groundwater supplies drinking water to a substantial population of area residents who rely exclusively on private wells. The geographic coincidence of high well density with the Duluth Complex footprint and the known helium resource area is central to the Band's argument that

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mandatory environmental review and pre-drilling baseline groundwater assessment are necessary before any gas extraction commences in this formation.

Data Sources

- **Minnesota Well Index (MDH).** Private and public water supply well locations, Cook and Lake Counties. Minnesota Department of Health. Available at: https://mnwellindex.web.health.state.mn.us/. Accessed April 2026.
- **Minnesota Department of Health Source Water Protection Viewer.** Drinking water supply management area (DWSMA) boundaries and aquifer vulnerability classifications. Available at: https://experience.arcgis.com/experience/14825b159b2e4dc686736d98e39ebce7. Accessed April 2026.
- **Duluth Complex geology.** Formation extent derived from Minnesota Geological Survey mapping. Minnesota Department of Natural Resources. Available at: https://www.dnr.state.mn.us/waters/groundwater_section/mapping/index.html. Note: aquifer characterization for Lake County (Part B of County Geologic Atlas) remains incomplete as of April 2026.

Relevance to This Proceeding

The map directly supports the Band's argument in Sections V.A and V.B that the Duluth Complex is not an underpopulated or remote formation where gas extraction poses minimal risk to human drinking water. The well distribution shown in Figure 1 demonstrates: (1) that a substantial number of Cook and Lake County residents rely on private wells drawing from the same fractured basalt aquifer system targeted by gas extraction; (2) that these wells are distributed across the Duluth Complex footprint, not concentrated in areas remote from the known helium resource; and (3) that the absence of pre-project baseline groundwater quality data for these wells, combined with no ambient monitoring coverage for this aquifer system, means that contamination events would be undetectable and legally unattributable after the fact. The map was prepared by the Grand Portage Band's GIS program using publicly available MDH well location data, and reflects the same dataset that DNR siting rules require permit applicants to map within 1,320 feet of a spacing unit - the difference being that Figure 1 illustrates the formation-wide context that DNR's permit-level mapping does not capture.

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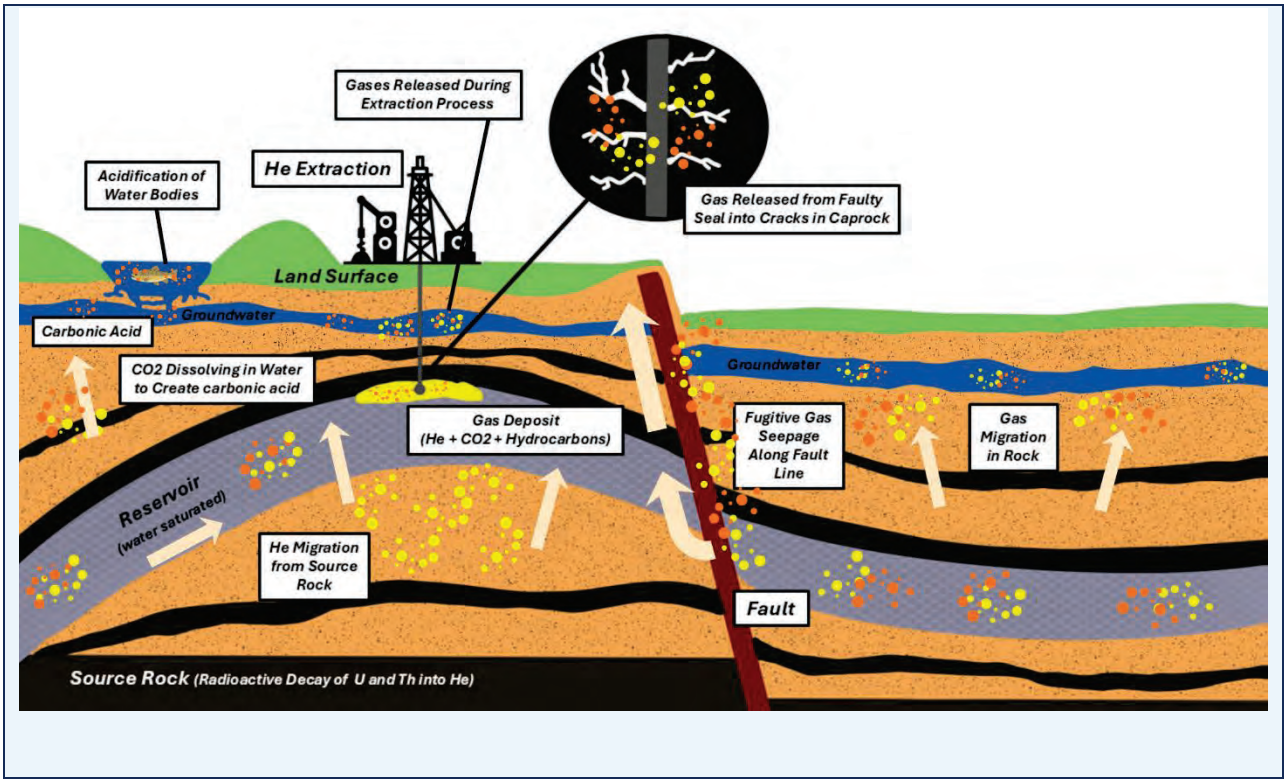
Appendix B: Pathways for Gas and Contaminant Migration to Groundwater in Gas Extraction Settings

Figure 1. Descriptive Model Showing Potential for CO_2 and methane leaks during helium extraction procedures in Duluth Complex, Northeastern Minnesota

Prepared by Alaina Bryant, Environmental Specialist, 1854 Treaty Authority (May 2026)



Description

This diagram illustrates the principal pathways by which CO_2, methane, and co-associated saline formation waters may migrate from the pressurized helium-bearing reservoir of the Duluth Complex into overlying drinking water aquifers during gas extraction operations. The Duluth Complex is depicted in cross-section, showing the target Precambrian basaltic rift formation at depths of approximately 1,750-2,200 feet, where the Topaz Project's Jetstream wells encounter a pressurized gas system (pressures approaching 1,000 psi) composed primarily of CO_2 (approximately 75-80%), helium (7-8%), and trace methane.

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The diagram shows four documented migration pathways: (1) well casing and annulus cement failure, in which gas from the target formation or intermediate-depth strata migrates upward through the annular space between the well casing and surrounding rock due to inadequate or failed cementation; (2) fault- and fracture-mediated gas transport, in which CO_2 and methane travel upward through the documented fault sets and extensional fracture networks of the Duluth Complex – including the three major fault sets mapped by Foose and Cooper (1981) and the high-fluid-pressure extensional fracture cleavage documented by Foster and Huddleston (1986) – into drinking water aquifers; (3) legacy wellbore conduits, in which historic water supply wells penetrating the same fractured basalt formation function as pre-existing vertical conduits for upward gas and brine migration, consistent with the Carroll et al. (2014) leakage modeling conducted for analogous abandoned wellbore settings; and (4) brine co-transport, in which deep saline formation waters co-migrate with CO_2 through fracture pathways, introducing arsenic, uranium, and lead into freshwater – the mechanisms documented at the Chimáo natural analog site by Keating et al. (2010).

The diagram also illustrates the geochemical hazard cascade that occurs when CO_2-dominant gas enters a poorly buffered siliceous basalt aquifer: dissolution of CO_2 into groundwater forms carbonic acid, pH drops by one to three units depending on carbonate buffering capacity, and the resulting acidic conditions leach iron, manganese, arsenic, barium, chromium, and other trace metals from the basalt mineral matrix – outcomes documented under analogous conditions by Kharaka et al. (2010), Little and Jackson (2010), Trautz et al. (2013), and Harvey et al. (2012). The absence of pre-project baseline groundwater data for the Duluth Complex is depicted by the absence of any ambient monitoring reference points in the shallow aquifer zone, illustrating that contamination events occurring through any of the four pathways shown would be undetectable and legally unattributable without a pre-disturbance baseline.

Private drinking water wells are shown penetrating the shallow fractured basalt aquifer across the diagram's surface extent, consistent with the Cook and Lake County well density illustrated in Appendix A, Figure 1. The Duluth Complex's lack of abundant calcite and dolomite – the minerals that provide carbonate buffering in sedimentary settings – is indicated in the geological cross-section notation, consistent with Harvey et al.'s (2012) finding that carbonate-poor siliceous aquifers experience the most severe and prolonged pH depression and metal leaching outcomes under CO_2 intrusion.

Data Sources

- Foose, M.P., & Cooper, R.W. (1981). Faulting and fracturing in part of the Duluth Complex, northeastern Minnesota. *Canadian Journal of Earth Sciences,* 18, 810–814. [Structural fault and fracture mapping of the Duluth Complex; basis for fault-mediated migration pathways.]
- Foster, M.E., & Hudleston, P.J. (1986). "Fracture cleavage" in the Duluth Complex, northeastern Minnesota. *Geological Society of America Bulletin,* 97(1), 85–96. [Documents high-fluid-pressure extensional fracture networks and fluid migration history in the formation.]
- Pulsar Helium Inc. (September 19, 2025). Pulsar Helium Confirms Sustained Helium Concentrations of 7–8% at Jetstream #1. *Globe Newswire.* [Reservoir depth, pressure (~1,000 psi), and gas composition (~75–80% CO_2) data for the Topaz Project.]
- Carroll, S.A., et al. (2014). Key factors for determining groundwater impacts due to leakage from geologic carbon sequestration reservoirs. *International Journal of Greenhouse Gas Control,* 29, 153–168. [Legacy wellbore conduit pathway and contamination plume persistence modeling.]

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- Keating, E.H., et al. (2010). The impact of CO_2 on shallow groundwater chemistry. *Environmental Earth Sciences,* 60, 521–536. [Chimáo natural analog; brine co-transport mechanism with As, U, and Pb.]
- Harvey, O.R., et al. (2012). Geochemical implications of CO_2 leakage associated with geologic storage: A review. PNNL-21550, Pacific Northwest National Laboratory. [pH depression and trace metal mobilization in poorly buffered siliceous formations.]
- Minnesota Well Index (MDH). Private and public water supply well locations, Cook and Lake Counties. Minnesota Department of Health. Available at: https://mnwellindex.web.health.state.mn.us/. Accessed April 2026. [Basis for private well depiction in shallow aquifer zone.]
- Minnesota Geological Survey / DNR County Geologic Atlas. Duluth Complex formation extent and geological cross-section data. Available at: https://www.dnr.state.mn.us/waters/groundwater_section/mapping/index.html. [Formation depth and geology basis for cross-section. Note: Lake County aquifer characterization remains incomplete as of April 2026.]

Relevance to This Proceeding

The diagram directly supports the Band's argument in Sections II, III, and IV by providing a visual synthesis of the four migration pathways through which gas extraction operations could introduce contamination into the drinking water aquifers of Cook and Lake Counties. It illustrates why the proposed rules' five-well threshold for mandatory environmental review is insufficient: every pathway depicted – well casing failure, fault-mediated transport, legacy wellbore conduits, and brine co-transport - is present from the first well drilled, independent of well count or production volume. The diagram makes visually explicit what the peer-reviewed literature establishes analytically: the structural and geological conditions that create contamination risk in the Duluth Complex are features of the formation itself, not consequences of project scale.

The diagram also illustrates the core attribution problem documented in Section II and III: with no pre-project baseline groundwater data for the affected fractured basalt aquifer system, and no ambient monitoring coverage for this geological setting, any contamination that enters the shallow aquifer through the pathways shown cannot be detected against a known baseline, cannot be causally attributed to a specific well or operator, and cannot support regulatory enforcement or remediation requirements. Figure 1 is intended to make that evidentiary gap legible to non-technical reviewers and to establish, on the face of the record, that the conditions requiring mandatory environmental review are present from the inception of any gas development activity in this formation.

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1854 Tribes
Intertribal Task Force on Helium Extraction

June 30, 2026

Minnesota Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155. Filed electronically via eComments website and info.EQB@state.mn.us

RE: Comments on Proposed Rules Amending Minn. R. 4410.4300 and 4410.4400 - Mandatory EAW and EIS Categories for Gas Resource Development Projects

Dear Chair Daubenberger and Members of the Environmental Quality Board:

The Intertribal Taskforce on Helium Extraction (Taskforce) was formed by the Tribal Councils of the Grand Portage Band of Lake Superior Chippewa, the Fond du Lac Band of Lake Superior Chippewa, and the Bois Forte Band of Chippewa – the three 1854 Treaty Bands – memorialized in a Memorandum of Understanding executed in late 2024 and early 2025. The Taskforce was established in direct response to the State's creation of the Minnesota Gas and Oil Resources Technical Advisory Committee (GTAC), which was constituted entirely of state agency representatives and charged with advising on gas and oil permitting and rulemaking. No Tribal representatives were included in GTAC. Its deliberations were not transparent to Tribal governments, and no meaningful consultation with Tribes preceded either the Committee's formation or its recommendations. The 1854 Bands are signatories to the Treaty of La Pointe, September 30, 1854, under which they ceded approximately 6.2 million acres of land in present-day northeastern Minnesota while retaining the right to hunt, fish, and gather within that territory in perpetuity. The gas deposit at the center of this rulemaking lies within the 1854 Ceded Territory. Facing a state regulatory process that was proceeding without Tribal participation, the 1854 Bands exercised their inherent sovereign authority to act collectively, establishing the Intertribal Taskforce to assess the environmental, health, and treaty resource implications of helium extraction, and to ensure that Tribal voices are present in the rulemaking and permitting processes moving forward.

The Taskforce submits these comments because the proposed rules, as written, do not adequately protect northeastern Minnesota's water resources. The core concern, well documented in a substantial body of peer-reviewed literature, is that gas well drilling contaminates groundwater with methane, propane, and CO_2, regardless of extraction method. The fractured Precambrian rift basalt of the Duluth Complex makes these risks more acute, not less. The CO_2-dominant gas deposit at Pulsar's Topaz site, coupled with the geology of the area create contamination pathways more severe than those studied in shale settings, and the body of peer-reviewed literature documents how CO_2 intrusion depresses pH and leaches heavy metals in analogous settings. No baseline groundwater data exists for this formation. Without it, contamination cannot be attributed, remediated, or assigned to a responsible party. An Environmental Assessment Worksheet is the minimum review necessary to require that baseline and to make operative the legal protections the EQB's own responses cite as adequate, but those protections only apply when an EAW threshold is triggered. The five-well threshold ensures it never is for the most likely development scenarios in northeastern Minnesota.

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The Intertribal Taskforce expresses sincere gratitude to EQB staff for the substantial work invested in developing these draft rules under an expedited timeline, and for the direct outreach to Tribal environmental staff that reflects good-faith partnership. These comments are submitted constructively and in the same spirit because the draft, as written, does not yet reflect the threshold recommendations that Tribal staff developed during the collaboration. The following sections document each point in the detail the rulemaking record requires.

I. Background: A Novel Project Type in a Geologically and Hydrologically Distinct Environment

Gas resource development is new to Minnesota. The EQB's own guidance documentation acknowledges this explicitly: because gas production has no regulatory or environmental review history in the state, there is no established body of Minnesota-specific science from which to predict project impacts, no analogous approved projects to reference, and no pre-existing baseline water quality data for the relevant aquifers.

The known gas resource in northeastern Minnesota, centered on Pulsar Helium's Topaz Project near Babbitt, is located within the Precambrian basaltic rock of the Duluth Complex, one of the oldest geological formations in North America. Pulsar's own flow test data confirm that the gas composition from the Jetstream wells is not exclusively helium. Flow testing of the Jetstream #1 well confirmed a gas composition consisting primarily of CO_2 (approximately 75-80%) and helium (7-8%), with methane content recorded at less than 3% (Pulsar Helium, September 2025). An earlier Pulsar sampling event reported a somewhat different composition - up to 71% carbon dioxide, 24% nitrogen, and less than 5% hydrocarbons, including methane and propane - reflecting variability between test stages rather than any inconsistency in the underlying data. The presence of CO_2 and methane in a pressurized gas system hosted in fractured Precambrian basalt within the Lake Superior watershed is a critical data point for the design of environmental review. The density of private drinking water wells overlying the Duluth Complex in this watershed is illustrated in Appendix A, Figure 1.

The Duluth Complex's geology is geochemically distinct from the sedimentary shale and sandstone formations that have formed the basis for existing gas extraction research. No peer-reviewed literature exists that characterizes the hydrogeological behavior of this specific formation under production-scale gas extraction pressure changes. This absence of science is not a reason to proceed without heightened scrutiny; it is the central justification for requiring heightened environmental review.

From this background, one should reasonably conclude that:

1. Gas resource development is genuinely novel in Minnesota: no regulatory history, no approved project comparators, and no pre-existing baseline water quality data for the relevant aquifers.
2. The Topaz deposit is not a conventional hydrocarbon play. Its gas is approximately 75-80% CO_2 at pressures approaching 1,000 psi, a composition that creates a distinct and well-documented hazard profile in combination with the Duluth Complex's fractured basalt geology.
3. The mechanisms of CO_2 intrusion documented in analogous settings are applicable to the Topaz deposit, though no formation-specific study of the Duluth Complex exists.
4. The fractured and faulted character of the Duluth Complex, documented in peer-reviewed field studies conducted within this formation - creates conduit pathways for fugitive gas migration and brine co-transport that are not inferred by analogy; they are mapped. (See Appendix B, Figure 1.)

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5. The combination of these factors – novel project type, distinct and poorly characterized geology, absence of baseline data – creates the precise conditions under which mandatory pre-project environmental review is most essential.

II. The Science from Analogous Settings: What the Peer-Reviewed Literature Documents

Because no peer-reviewed literature addresses the impacts of helium or gas extraction in Precambrian basaltic rift geology, this section draws on the best available peer-reviewed science from analogous settings to establish that the contamination mechanisms - including migration of methane, propane, and CO_2 into drinking water aquifers - are real, documented, and applicable to the Duluth Complex. An important distinction must be drawn at the outset. The absence of peer-reviewed literature characterizing this specific formation under gas extraction conditions does not mean there is no relevant science. To the contrary: there is a substantial, rigorous, and directly applicable body of peer-reviewed literature on CO_2 migration into shallow groundwater, the resulting pH depression, and the subsequent leaching of heavy metals - arsenic, iron, manganese, lead, chromium, barium, and others - from the surrounding rock matrix. That literature was developed primarily in the context of geologic carbon sequestration leakage and natural CO_2 analog sites, but the geochemical mechanisms it documents are not specific to sedimentary basins; they are driven by CO_2 partial pressure and aquifer mineralogy. The Topaz deposit's gas composition (approximately 75-80% CO_2 at pressures approaching 1,000 psi) and the Duluth Complex's poorly buffered siliceous basalt geology place this project squarely within the risk profile that literature addresses. What is absent is formation-specific characterization of the Duluth Complex's buffering capacity and redox baseline, precisely the assessment that pre-drilling baseline monitoring provides and that the proposed rules do not require for sub-threshold projects. We summarize this literature not to draw a direct analogy in every respect, but to establish that the identified risk mechanisms are scientifically documented, plausible in this setting, and require site-specific investigation before drilling commences.

A. CO_2 Migration to Shallow Groundwater: A Directly Applicable Risk Category for the Topaz Project

The migration of CO_2-dominant gas into shallow groundwater is the primary hazard profile specific to the Topaz deposit's gas composition. Pulsar's flow test data document that the Jetstream #1 produced gas is approximately 75-80% CO_2 at pressures approaching 1,000 psi. Any subsurface migration pathway from the Jetstream wells - whether through well casing failure, fault-mediated transport, or pressure-induced fracture reactivation - would deliver CO_2-dominant gas directly into the fractured basalt aquifer system from which Cook and Lake County residents draw drinking water. The literature on geologic CO_2 sequestration leakage was developed specifically for this scenario: the migration of high-concentration CO_2 from a pressurized subsurface reservoir into overlying drinking water aquifers. That the CO_2 at Topaz is a co-product of helium extraction rather than a sequestered industrial emission does not change the geochemical hazard profile; the CO_2 partial pressures, the fracture migration pathways, and the aquifer vulnerability conditions are the same. What the peer-reviewed literature across laboratory, field, modeling, and natural analog study designs establishes is a coherent and well-documented suite of hazards that are (1) directly applicable to the known gas composition at Topaz; (2) dependent on site-specific aquifer properties that have not been characterized for the Duluth Complex; and (3) detectable only against a pre-project baseline that the proposed rules do not require. The principal migration pathways by which these hazards reach aquifers are illustrated in Appendix B, Figure 1.

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When CO_2 dissolves into groundwater, it forms carbonic acid. The resulting pH drop is rapid, consistent across study designs, and well-documented. At the ZERT controlled injection site in Bozeman, Montana, where approximately 300 kg/day of CO_2 was injected at shallow depth, pH fell from 7.0 to 5.6 within days, alkalinity tripled from 400 to 1,330 mg/L, and electrical conductance nearly tripled from 600 to 1,800 µS/cm (Kharaka et al., 2010). Iron rose from 5 to 1,200 ppb and manganese from 5 to 1,400 ppb. BTEX compounds including benzene, toluene, and xylene were detected, driven by organic matter mobilization. Across four freshwater aquifer types subjected to more than 300 days of continuous CO_2 exposure under laboratory conditions, Little and Jackson (2010) found pH declines of 1 to 2 units in every sample, with all exposed experiments falling below EPA's minimum MCL of 6.5; transition metal concentrations including manganese, iron, cobalt, nickel, and zinc increased more than 1,000% above controls. In the most rigorous field study to date, Trautz et al. (2013) documented a sustained 3-unit pH drop, from a baseline of 7.4-8.6 down to approximately 5.1, following controlled dissolved CO_2 release into a confined sand aquifer, with statistically significant increases in barium, beryllium, and chromium across multiple sampling events, and mercury and antimony elevated at one event, with antimony reaching half its MCL. The ZERT study represents a low-pressure analog: its maximum CO_2 partial pressure was approximately 1 bar, compared to roughly 68 bar at the Topaz Jetstream wells. As Kharaka et al. explicitly cautioned, at greater depth and pressure CO_2 dissolution in groundwater is substantially higher, yielding more severe pH depression and correspondingly greater mineral dissolution and trace metal mobilization. The peer-reviewed literature is unambiguous that CO_2 intrusion into shallow groundwater produces rapid, measurable, and in some settings severe water quality degradation, at pressures far below those present at Topaz.

The severity of those impacts, however, is not uniform. It depends critically on the buffering capacity of the receiving aquifer. This is where the Duluth Complex basalt presents a risk profile that the literature identifies as among the most vulnerable. Harvey et al. (2012) documented that CO_2 intrusion causes pH decreases of 1 to 3 units, depending on the host rock's buffering capacity. Well-buffered systems - those rich in reactive carbonates such as calcite and dolomite - resist the most severe pH depression because carbonate dissolution produces bicarbonate that partially neutralizes the introduced acidity. Poorly buffered systems, such as those dominated by siliceous minerals with low carbonate content, offer no such resistance: pH changes are more severe and more prolonged, and they produce the highest concentrations of mobilized metals. Little and Jackson (2010) demonstrated this directly: their carbonate-poor aquifer samples produced the lowest pH values and the highest concentrations of aluminum, cobalt, nickel, zinc, cadmium, arsenic, and selenium - the most severe contamination outcomes of any samples in their study. The Duluth Complex is a Precambrian basaltic rift formation. While basalt contains reactive minerals, including plagioclase feldspar and pyroxene, it lacks the abundant calcite and dolomite that drive buffering in the sedimentary settings where most CO_2 groundwater research has been conducted. Its buffering capacity against rapid CO_2 intrusion at extraction pressures has never been characterized. That absence of characterization is not a technicality; it is the central reason why the proposed rules' failure to require a pre-project baseline assessment constitutes a substantive protection gap, not a procedural one. Little and Jackson expressly concluded that aquifer buffering capacity must be assessed before CO_2 operations begin because it controls the magnitude of harm a given intrusion event will cause. No such assessment has been carried out for the Duluth Complex, and no sub-threshold project under the proposed rules would be required to perform one.

The Duluth Complex basalt presents a second, compounding vulnerability that goes beyond buffering capacity: the coupled pH-redox dynamics that govern arsenic and iron mobilization in iron-sulfide-bearing formations. Harvey et al. (2012) identified redox conditions as a critically under-characterized variable in CO_2 impact assessment, noting that most studies attribute CO_2 geochemical impacts solely to pH changes, while the coupled pH-Eh dynamics that govern metal speciation and dissolution have rarely been measured under field conditions. For the Duluth Complex, this gap is not abstract. Iron-bearing

minerals, including magnetite, ilmenite, and sulfide phases, are documented components of the formation's geochemistry. In formations where these phases are present, Harvey et al. concluded that CO_2 intrusion could mobilize iron, arsenic, and other redox-sensitive metals at concentrations significantly above what pH effects alone would predict. Trautz et al. (2013) confirmed the arsenic pathway with precision: synchrotron-based X-ray fluorescence analysis of pyrite grains in the test interval showed significant arsenic and some lead in direct association with iron sulfide. Arsenic and lead remained below detection limits in the Mississippi field experiment, but the authors explicitly attributed this outcome to the specific absence of FeS dissolution conditions at that site, not to any inherent safety of CO_2 exposure in sulfide-bearing formations. In a formation where pyrite and other iron sulfides are present and exposed to CO_2-induced acid dissolution, arsenic release from the mineral matrix is a documented geochemical mechanism, not a theoretical one. The Duluth Complex contains iron sulfides. Its redox baseline has not been characterized. Harvey et al. concluded that robust predictions of CO_2 impact on aquifer geochemistry require coupling CO_2 plume modeling with formation-specific laboratory and field measurements under actual redox conditions. No such work has been conducted for the Duluth Complex, and the proposed rules do not require it.

A third risk pathway operates independently of aquifer mineralogy: pre-existing wellbores as conduits for CO_2 and brine migration. Carroll et al. (2014), drawing on 700 high-fidelity reactive transport simulations, identified abandoned legacy wells - specifically those from previous oil, gas, or exploration operations - as the most likely conduits for CO_2 and brine leakage into overlying aquifers. Their modeling showed that even a small percentage of wells with leakage pathways, consistent with historical rates of 5% sustained casing pressure in Canadian oil fields, can produce measurable aquifer contamination. Critically, leakage as small as 1-10 tons of brine can produce measurable changes in groundwater quality in carbonate aquifers, and 100-1,000 tons of CO_2 can produce pH changes above detection thresholds in both aquifer types studied. Contamination plumes, once established, are highly persistent: Carroll et al. modeled a tenfold increase in plume volume between 40 and 200 years. The relevance to the Duluth Complex is direct. The Minnesota Well Index documents historic water-supply wells throughout Cook and Lake Counties that were drilled into the same fractured basalt formation targeted by the Topaz Project. Each of those wells represents a penetration of the fractured basalt - a potential pre-existing conduit that, if in proximity to a gas extraction wellbore and the pressurized Topaz reservoir, could function as a leakage pathway of the type Carroll et al. modeled. Carroll et al. further established that the probability of detecting contamination using existing well networks is below 10% for all parameters over a 200-year simulation period, because plume volumes are small relative to well spacing. Most CO_2-induced contamination events in this setting would go undetected by routine monitoring. Carroll et al. concluded explicitly that EPA's "no net degradation" policy for groundwater cannot be operationalized without pre-project baseline data. The proposed rules do not require that baseline for sub-threshold projects.

The literature also documents two interrelated failures of standard monitoring approaches, making pre-project baseline data not merely useful but essential. The first is temporal. Contamination signatures do not stabilize quickly. Little and Jackson (2010) found that while manganese, iron, calcium, and pH all responded within two weeks of CO_2 exposure, making them useful early markers, barium and uranium concentrations continued to increase on a time-dependent logarithmic trajectory throughout the entire 300-day experiment, never reaching equilibrium. For a multi-year extraction operation in a poorly buffered, fractured basalt aquifer with no pre-project baseline, the absence of elevated readings in any given monitoring window cannot be interpreted as safe; it is only interpretable relative to pre-disturbance concentrations that have been established in advance. The second failure mode operates at the geochemical level. When a receiving aquifer has sufficient carbonate content to buffer the pH signal, pH monitoring fails as an early-warning indicator of CO_2 intrusion altogether (Keating et al., 2010). At the Chimáo natural analog site in New Mexico, where deep CO_2-rich water upwells through a fractured sandstone aquifer and produces geysering, Keating et al. documented exactly this failure: buffering

reactions masked the pH signal while contaminant-bearing water arrived and exceeded relevant thresholds. Trautz et al. (2013) confirmed the practical limitation at field scale: pH and total dissolved carbonate are more reliable indicators than alkalinity or conductivity, but even these are interpretable only against a known baseline. For the Duluth Complex, where the buffering capacity is uncharacterized, it is not yet known whether pH monitoring would provide early warning at all, or whether buffering reactions would mask the signal entirely. That unknowing is precisely what pre-project assessment is designed to resolve, and what the proposed rules for sub-threshold projects decline to require.

Finally, CO_2 migration from the Jetstream reservoir would not occur in isolation. The Topaz system is a pressurized, CO_2-dominant gas system hosted in faulted and fractured Precambrian basalt, directly confirmed by Pulsar's flow test data and the peer-reviewed geological literature on the Duluth Complex. Whether the Topaz reservoir co-occurs with saline formation waters has not been publicly characterized: no published geochemical analysis of Topaz formation waters has appeared in the peer-reviewed literature, and no such data has been made available in this rulemaking record. That absence is itself a data gap material to this proceeding. Deep Precambrian rift formation waters are characteristically saline - Warner et al. (2012) documents exactly this chemistry in analogous Appalachian basement formations, and Harkness et al. (2016) uses helium as a tracer for deep saline brine migration through dolerite intrusion pathways in Precambrian-adjacent geology structurally similar to the Duluth Complex. The interference that formation waters at depth in the Topaz reservoir are saline is geochemically well-grounded. But it is an inference, not a direct measurement, and the proposed rules do not require the formation water characterization to resolve it. Any leakage pathway carries not only CO_2, but the potential for brine co-transport - a compound hazard documented directly at the Chimáo natural analog site, where Keating et al (2010) found that co-transport of CO_2 with deep brackish water introduced arsenic, uranium, and lead directly into shallow freshwater. In that setting, As, U, and Pb concentrations in monitoring wells correlated with chloride - a conservative tracer for the deep brine source - rather than with CO_2 partial pressure alone, demonstrating that the contamination was driven by the carrier fluid, not merely by CO_2-induced dissolution in the shallow aquifer. The structural setting at Chimáo - CO_2-rich water upwelling through a fault system into a shallow aquifer - is precisely what Foose and Cooper (1981) and Foster and Hudleston (1986) documented within the Duluth Complex. For the Topaz system, this means that an extractive operation introducing CO_2 at 1,000 psi into fractured basalt does not present a risk profile limited to CO_2 alone, but also pressurized saline formation It presents the compound risk of CO_2 plus co-transported deep brine, carrying arsenic, uranium, lead, and other trace metals characteristic of deep Precambrian formation waters of the type identified by Warner et al. (2011), migrating upward through the fault and fracture networks that Foose and Cooper (1981) mapped as pervasive across the Duluth Complex, into the shallow drinking water aquifers that Cook and Lake County residents depend on. This compound mechanism is not hypothetical. It is documented at a natural analog site. Whether it is operative at Topaz specifically cannot be determined without the formation water characterization that the proposed rules do not require for sub-threshold projects. That is not a reason to dismiss the risk; it is the precise condition under which the precautionary purpose of mandatory environmental review applies with greatest force. The EQB must set the mandatory EAW threshold at a level that requires this assessment before, not after, drilling begins.

B. Fugitive Hydrocarbon Gas Migration to Groundwater

Osborn et al. (2011) provided the foundational peer-reviewed documentation of methane contamination of drinking water associated with shale gas extraction, analyzing sixty-eight private drinking water wells in northeastern Pennsylvania and upstate New York. In active gas extraction areas (one or more gas wells within 1 km), average methane concentrations were 17 times higher than in neighboring nonextraction areas (19.2 mg CH_4 L^{-1} versus 1.1 mg L^{-1}; $P < 0.05$), with a maximum observed value of 64 mg L^{-1} - well above the US Department of the Interior's action level for hazard mitigation. Carbon and hydrogen isotopic signatures of dissolved methane in active extraction areas were consistent with deeper

thermogenic sources matching gas-well geochemistry from nearby production wells, whereas nonactive areas showed signatures consistent with biogenic or mixed biogenic/thermogenic sources. The study found no evidence of contamination from deep saline brines or fracturing fluids, suggesting that leaky well casings, rather than upward fluid migration, were the more likely contamination pathway. Critically for the present rulemaking, Osborn et al. (2011) explicitly called for systematic and independent groundwater quality data, including dissolved gas concentrations and isotopic compositions, to be collected before drilling operations begin in a region, stating that such baseline data would improve environmental safety, scientific knowledge, and public confidence. This call for pre-drilling baseline data, made in 2011 by the research team that first documented the contamination problem, has not been answered for the Duluth Complex. Jackson et al. (2013) analyzed 141 drinking water wells in northeastern Pennsylvania and found methane in 82% of samples, with average concentrations six times higher in homes within 1 kilometer of natural gas wells. Darrah et al. (2014) documented fugitive gas contamination attributable primarily to well casing and cementing failures, with gas traveling up the outside of the borehole and discharging directly into drinking water aquifers. Darrah et al. (2014) employed noble gas geochemistry - specifically measurements of helium-4, neon-20, and argon-36 - as non-reactive tracers that are unaffected by microbial activity or chemical reactions, allowing them to distinguish anthropogenic contamination from naturally occurring gas migration and to identify the specific mechanical pathway through which contamination occurred. Using this methodology, the study identified eight discrete clusters of fugitive gas contamination, seven in Pennsylvania overlying the Marcellus Shale and one in Texas overlying the Barnett Shale. Noble gas and hydrocarbon data attributed four contamination clusters to gas leakage from intermediate-depth geologic strata through failures of annulus cement - meaning gas from formations above the target shale traveled upward through the space between the well casing and the surrounding rock due to inadequate cementation - and three clusters to leakage of target production gases through faulty production casings. One additional cluster was attributed to an underground gas well mechanical failure. Critically, the noble gas data ruled out upward migration of gas from depth through overlying geological strata, triggered by horizontal drilling or hydraulic fracturing, as a mechanism for the observed contamination. This finding has direct methodological relevance for the Duluth Complex context: the contamination pathways identified by Darrah et al. (2014) are structural well integrity failures that are independent of formation geology, meaning they represent risks present in any gas extraction context, including conventional extraction in crystalline rock, regardless of whether hydraulic fracturing is employed.

The implication for the Duluth Complex is significant: even without hydraulic fracturing, the mechanical act of drilling, casing, and completing production wells through fractured Precambrian basalt creates pathways for fugitive gas migration into shallow aquifers. Well integrity failures in this setting would be particularly concerning given the fractured nature of the Duluth Complex basalt, which provides natural conduit pathways not present in intact sedimentary sequences. The pressurized nature of the Topaz deposit, documented by Pulsar at pressures approaching 1,000 psi at depths exceeding 2,100 feet, compounds this concern. The fractured and faulted character of the Duluth Complex is not merely inferred from general crystalline geology principles; it is directly documented in peer-reviewed literature specific to this formation. Foose and Cooper (1981, Canadian Journal of Earth Sciences) provided the first field documentation of extensive faulting within the Duluth Complex, mapping a 48 km² area of the South Kawishiwi intrusion and identifying three major fault sets with steep dips trending N35°E, N05°W, and N40°W. Many lineaments associated with mapped faults could be traced for as far as 20 km beyond the mapped area, indicating a structural pattern likely pervasive across much of the Duluth Complex. Foster and Hudleston (1986, Geological Society of America Bulletin) documented a system of closely spaced extensional fracture cleavage in troctolitic rocks of the Duluth Complex at Bardon Peak, formed at high fluid pressures during late-stage continental rifting, with serpentine alteration along fracture surfaces confirming that fluids were present and mobile within these fracture networks during formation. Together, these studies establish that the Duluth Complex contains documented fault and fracture systems that are

structural features of the formation itself, and that fluid migration through these fractures occurred during its geological history. The conduit pathways that make well integrity failures particularly consequential in this setting are not hypothetical; they are mapped. Appendix B, Figure 1 illustrates these pathways in cross-section for the Duluth Complex setting.

C. Fault-Mediated Brine Migration to Shallow Aquifers

Dong et al. (2024, Science of the Total Environment) investigated shallow groundwater quality in the Wufeng-Longmaxi shale gas region of the Sichuan Basin, China, a tectonically complex setting with extensively developed fault systems, analyzing 156 groundwater samples and twenty-three flowback/produced water samples from both operational and prospective extraction areas. The study found no significant correlation between groundwater quality and proximity to shale gas well pads; critically, salinized groundwater samples were located farther from well pads (1.3 to 8.4 km), not closer. Using a sensitivity assessment model and conservative mixing model based on strontium isotopes ($^{87}Sr/^{86}Sr$), chloride, bromide, lithium, and other conservative tracers, the authors identified Triassic formation brines, not flowback water from hydraulic fracturing, as the primary source of shallow groundwater salinization. All salinized samples were located in close proximity to fault zones (0.1 to 1.3 km), and the faults were identified as hydraulic conduits establishing connectivity between deep Triassic brine aquifers and shallower groundwater layers. Mixing proportions of Triassic brine in the salinized samples ranged from 0.5 to 15 percent. The study further found that hydraulic fracturing can trigger microseismicity and reactivate pre-existing fault systems through subtle stress perturbations, increases in pore pressure, and poroelastic effects, and that reactivated faults may serve as conduits for upward migration of deep brines and hydrocarbon gases driven by pressure differentials between deep and shallow layers. The authors concluded that shale gas extraction in complex tectonic regions with well-developed faults requires careful well placement away from areas of high fault density, strict control of hydraulic fracturing scale to mitigate microseismic risk, and continuous groundwater monitoring throughout extraction. The relevance to the Duluth Complex is direct: the Precambrian basaltic rift geology of northeastern Minnesota is structurally characterized by fracture networks that function as natural hydraulic conduits analogous to the fault systems documented in the Dong et al. (2024) study. The Dong et al. findings establish that brine migration risk in fault- and fracture-rich settings is a documented, quantifiable phenomenon that is not dependent on direct hydraulic fracturing fluid invasion, it can occur through reactivation of pre-existing structural conduits by microseismic activity associated with extraction operations. This is precisely the risk category that pre-project baseline geochemical assessment is designed to detect and characterize before drilling commences.

The North American analog for this brine migration pathway is directly documented in peer-reviewed literature. Warner et al. (2012) analyzed 426 shallow groundwater samples from the Appalachian Plateaus of northeastern Pennsylvania, integrating chemical data (Br, Cl, Na, Ba, Sr, Li) and isotopic ratios ($^{87}Sr/^{86}Sr$, $^{2}H/H$, $^{18}O/^{16}O$, and $^{228}Ra/^{226}Ra$) across 83 northern Appalachian brine samples. The study documented geochemical evidence of cross-formational pathways, unrelated to recent drilling activity, connecting deep Marcellus Formation brines to shallow drinking water aquifers in some locations, with strontium isotope signatures of salinized Type D groundwater matching Marcellus brine fingerprints and being distinctly different from those of shallower Upper Devonian formation brines. These brine-influenced areas were associated with valley bottoms and lower hydrodynamic pressure zones rather than proximity to gas wells, and salinized groundwater with this Marcellus brine signature was present in the historical dataset predating rapid shale gas development, confirming these as naturally occurring cross-formational connections rather than drilling-induced contamination. The study's central regulatory conclusion is that areas with preexisting evidence of brine connectivity to deeper formations are at heightened risk of contamination from shale gas development, because those same natural pathways - fracture zones, fault systems, and hydrodynamic conduits - represent the most likely routes for fugitive gas migration once drilling begins. The authors further found that buoyant flow of methane gas bubbles through fractures is

far more rapid than head-driven flow of dense brine, occurring on timescales of less than a year, meaning that areas with documented brine connectivity should be treated as priority zones for pre-drilling baseline assessment and mandatory environmental review. Warner et al. (2012) also identified a geomechanical mechanism particularly relevant to northeastern Minnesota: in the Michigan Basin, upward migration of saline fluid into overlying glacial sediments was interpreted to reflect isostatic rebound following the retreat of glaciers, leading to fracture intensification and increased permeability. The same mechanism - lithostatic and isostatic rebound following glacial retreat - also significantly increased fracture intensification and permeability in the Upper Devonian aquifers of the Pennsylvania study area. Northeastern Minnesota was subject to the same Laurentide glaciation and post-glacial isostatic rebound processes, meaning the fracture and fault networks documented by Foose and Cooper (1981) and Foster and Hudleston (1986) within the Duluth Complex may have experienced the same post-glacial permeability enhancement that Warner et al. identify as a driver of cross-formational fluid connectivity in the Appalachian Basin. This provides an independent geomechanical basis for expecting that pre-existing fracture pathways in the Duluth Complex basalt may be hydraulically active in the contemporary setting, not merely relict features from the Precambrian rifting event. Applied to the Duluth Complex: if pre-existing cross-formational pathways are present in the fractured Precambrian basalt of northeastern Minnesota, and the fractured crystalline geology and post-glacial rebound history make their existence structurally plausible, those pathways represent not only a brine salinization risk but a faster-acting pathway for the pressurized gas mixture documented at the Topaz site (CO_2, helium, methane at pressures approaching 1,000 psi) to reach shallow drinking water aquifers once production begins. The absence of pre-project baseline geochemical data means these pathways cannot be identified, mapped, or mitigated before drilling commences, which is precisely the evidentiary gap that mandatory environmental review under MEPA is designed to fill.

The Warner et al. (2012) findings about pre-existing brine connectivity and attribution complexity are directly confirmed and extended by the most methodologically rigorous prospective study in the peer-reviewed literature. Barth-Naftilan et al. (2018) conducted a two-year prospective study of groundwater quality in Susquehanna County, Pennsylvania, installing eight multilevel monitoring wells within bedrock aquifers of a 25 km² area before seven shale gas wells were drilled, hydraulically fractured, and placed into production. Monthly sampling before, during, and after each stage of development allowed the study to do what the broader contamination literature had not: directly test whether observed groundwater changes could be attributed to specific shale gas drilling (SGD) activities against a known pre-drill baseline. The study's findings are instructive for the Duluth Complex context on four grounds. First, and most directly applicable to this rulemaking, the study confirmed that the absence of pre-drill baseline data is the definitive impediment to contamination attribution. Barth-Naftilan et al. (2018) explicitly noted that prior studies attributing methane contamination to SGD had been challenged by critics who argued that methane predated development - a challenge that would have been unanswerable without the prospective design. The authors found that "reliable conclusions on CH_4 source attribution could not be made solely on the basis of [CH_4] changes relative to the timing of SGD operations, but required consideration of pre- and postdrill observations of hydrocarbon composition of dissolved gases from discrete-depth sampling, as well as hydrologic observations and access to indicators of gas well integrity." This is the clearest statement in the peer-reviewed literature of why baseline data is not merely useful but legally essential: without it, no regulatory body, no court, and no agency can determine whether a detected change was caused by development or was pre-existing. For sub-threshold projects proceeding without a mandatory EAW - and therefore without any requirement for pre-drilling baseline groundwater monitoring - this attribution problem is not merely theoretical; it is structurally guaranteed by the proposed rules. Second, the study directly documented drilling-induced perturbations in groundwater pressure. At hilltop monitoring wells sited within 100 m of gas well pads, groundwater pressures dropped abruptly within hours of top-hole drilling beginning - driven by compressed air from the air-hammer drill bit - and then recovered. The study cited field and model results showing that compressed air from drilling can

penetrate hundreds of meters into fractured aquifers and create pressure gradients extending over similar distances. For the Duluth Complex, where the target formation is fractured Precambrian basalt with documented fault and fracture networks mapped across tens of kilometers by Foose and Cooper (1981), these drilling-induced pressure perturbations could propagate further and persist longer than in the comparatively lower-permeability sedimentary settings studied in Susquehanna County, potentially redistributing naturally occurring dissolved gases and brines across a wider radius - effects that would be undetectable and unattributable without a pre-drill baseline. Third, the study documented a casing rupture event at a gas well 64 m from a monitoring well. Small ruptures in the production and intermediate casings at 20 m depth allowed gas to enter the groundwater system, and methane concentrations at the nearest monitoring well subsequently peaked at 0.12 mg/L - isotopically consistent with Marcellus gas migration - within seven months of the rupture. The casing failure was detected only because the study's continuous pressure monitoring identified a pressure anomaly on the day of the rupture, enabling attribution. Without near-field hydrologic monitoring against a known baseline, the methane increase would have been undetectable as a casing failure event and indistinguishable from natural variability. Fourth, and most directly confirming the Warner et al. (2012) brine connectivity findings, the valley monitoring wells in the study showed methane concentrations ranging from below detection to 70 mg/L, with the deepest ports exhibiting the highest and most variable concentrations, and methane increases co-varying with salinity - a pattern the authors attributed to persistent shifts in the mixing ratio between shallow freshwater and comparatively saline, methane-rich deep groundwater, consistent with pre-existing cross-formational brine connectivity of the type Warner et al. (2012) documented. The co-varying methane and salinity trends in the valley wells had their closest analog in Warner et al.'s observation that deep basin brine connectivity is a pre-existing feature of fractured Appalachian geology - not an artifact of development. Barth-Naftilan et al. (2018) concluded explicitly that this natural variability "complicates contaminant source attribution and suggests that regulatory monitoring programs may need to collect samples with higher frequency in locations with significant [CH_4]." They further concluded that prospective studies "should be conducted in conjunction with larger scale studies of drinking water quality at the outset of the development of an unconventional oil and gas (UOG) play" - a recommendation that the proposed rules, by failing to require pre-drilling baseline monitoring for sub-threshold projects, structurally prevent from being implemented. For the Duluth Complex - where the naturally occurring methane content of the formation has not been characterized, where the fracture network connectivity between deep and shallow aquifers has not been mapped, and where no ambient monitoring program covers the affected aquifer system - the Barth-Naftilan et al. (2018) study establishes that proceeding without a pre-drill baseline does not merely create uncertainty; it creates a regulatory setting in which contamination, if it occurs, can never be attributed, remediated, or assigned to a responsible party. That is not a gap the EAW form fills after the fact. It is precisely the gap that a mandatory EAW threshold is designed to close before the first well is drilled.

D. Surface Water Impacts from Spills and Wastewater Mismanagement

Shaheen et al. (2024) analyzed approximately 29,000 groundwater samples from the Marcellus shale development region in Pennsylvania and identified small but statistically significant regional increases in salt concentrations associated with unconventional oil and gas development, attributing these increases primarily to surface spills and faulty impoundments. This large-scale dataset establishes that surface management of produced water is as significant a contamination vector as subsurface pathways, and that spills and impoundment failures are the primary driver of the groundwater salinization signal observed at a regional scale.

Olmstead et al. (2013) found that shale gas wells and the release of treated shale gas waste by permitted facilities were associated with downstream increases in chloride concentrations in surface water. For a gas development project within the Lake Superior watershed - a source of drinking water for millions of people, with cold-water stream systems supporting documented trout habitat - the downstream

consequences of surface water contamination are of regional and national significance. Olmstead et al. (2013) identified two distinct contamination pathways: direct discharge from permitted wastewater treatment facilities handling shale gas waste, and surface spills from drilling and production operations. Both pathways are relevant to the Topaz Project context. Together, Shaheen and Olmstead establish that both subsurface and surface pathways are active vectors of contamination, reinforcing the need for a comprehensive review before any gas development proceeds. The surface water protection concern is acute in northeastern Minnesota for several compounding reasons that go beyond what either study was designed to address. First, Lake Superior is the largest freshwater lake in the world by surface area and a drinking water source for communities in Minnesota, Wisconsin, Michigan, and Ontario. It is protected under the Great Lakes-St. Lawrence River Basin Water Resources Compact, which imposes the most stringent freshwater protection framework in North America. Any chloride or produced water contamination entering Lake Superior tributaries in the St. Louis River watershed or the North Shore drainages carries potential consequences that extend well beyond state boundaries and implicate federal and binational jurisdiction. Second, the cold-water tributary streams of the North Shore - including the Baptism, Caribou, Manitou, and Brule Rivers - support documented habitat for steelhead, brook trout, and lake trout. These are streams to which the 1854 Treaty ceded territory tribes hold treaty-reserved fishing rights; chloride contamination is acutely toxic to macroinvertebrates at concentrations far below full brine contamination levels, meaning even low-level produced water releases can degrade stream food webs supporting both commercial and subsistence fisheries. The treaty implications of surface water contamination in the 1854 Ceded Territory are developed fully in Section V.C. The proposed rules do not require any EAW for sub-threshold projects, and an EAW is the only mechanism under MEPA that would require a developer to inventory, assess, and publicly disclose risks to surface waters - including wild rice waters, trout streams, and Lake Superior tributaries - before a permit is issued.

The four bodies of peer-reviewed literature reviewed in this section establish a consistent and mutually reinforcing evidentiary record. The contamination of drinking water through gas extraction operations is not a theoretical concern or a litigation artifact: it is an area of established science documented across a methodologically diverse body of peer-reviewed literature, spanning controlled field experiments, laboratory incubation studies, natural analog sites, large-scale prospective monitoring designs, and regional groundwater datasets. Methane migration to shallow aquifers through well casing and cementing failures is confirmed across multiple independent studies in Pennsylvania and Texas, with isotopic tracing identifying the contamination pathway with precision (Osborn et al., 2011; Jackson et al., 2013; Darrah et al., 2014; Barth-Naftilan et al., 2018). CO_2 intrusion into groundwater, pH depression, and the subsequent leaching of arsenic, iron, manganese, chromium, lead, barium, and uranium from surrounding rock are documented across laboratory experiments, controlled field injections, and natural analog sites, with outcomes shown to be most severe in poorly buffered, carbonate-poor aquifer systems of the type presented by the Duluth Complex basalt (Kharaka et al., 2010; Little and Jackson, 2010; Trautz et al., 2013; Harvey et al., 2012; Keating et al., 2010; Carroll et al., 2014). Fault-mediated brine migration to shallow aquifers is documented in both North American and Asian shale basin settings, with pre-existing cross-formational fracture pathways identified as the primary conduit, and post-glacial isostatic rebound identified as a driver of fracture permeability enhancement directly applicable to northeastern Minnesota (Dong et al., 2024; Warner et al., 2012). Surface water contamination through spills and wastewater mismanagement is documented at regional scale across major shale development areas, with chloride increases in receiving waters attributable to both permitted discharges and unpermitted releases (Shaheen et al., 2024; Olmstead et al., 2013). What the peer-reviewed literature does not document is the specific behavior of any of these mechanisms in Precambrian basaltic rift geology under gas extraction conditions, because no such study has been conducted. That is not a finding of safety. It is the evidentiary condition that makes the mandatory environmental review threshold the central regulatory question in this rulemaking: every protection the science identifies as necessary, and every baseline monitoring requirement the literature explicitly calls for, is activated or foreclosed by where that threshold

is set. The four contamination pathways documented in this section are depicted in consolidated form in Appendix B, Figure 1.

III. The Absence of Site-Specific Science: A Documented Gap That Justifies Heightened Review

The four risk categories documented above - CO_2 migration into ground water, fugitive hydrocarbon gas migration to groundwater, fault-mediated brine migration to shallow aquifers, and surface water contamination from spills and wastewater mismanagement - are documented across a range of settings. The fugitive hydrocarbon gas contamination literature (Subsection B) and the fault-mediated brine migration literature (Subsection C) are drawn primarily from sedimentary basin settings, principally Appalachian shale formations in Pennsylvania and the Sichuan Basin in China. The CO_2 migration literature in Subsection A, however, is drawn from carbon sequestration leakage research conducted across diverse geological and geographic contexts - controlled field injections in Montana and confined sand aquifers, laboratory incubation studies, natural analog sites in New Mexico, and multi-aquifer reactive transport modeling - none of which are Appalachian shale settings. The surface water contamination literature (Subsection D) draws on large-scale regional datasets from Pennsylvania shale development. This breadth of independent research programs strengthens, rather than weakens, the evidentiary basis for the identified risk mechanisms: the CO2 contamination pathways are documented not as artifacts of a single industry context but as geochemical mechanisms that operate wherever the relevant pressure, mineralogy, and aquifer conditions are present. The Duluth Complex is geologically distinct: Precambrian basaltic rift geology approximately 1.1 billion years old, with helium trapped in fractured rock at depths of 1,750-2,200 feet within a pressurized system whose formation water chemistry has not been publicly characterized - no published geochemical analysis of Topaz formation waters exists in the peer-reviewed literature or this rulemaking record. No peer-reviewed literature exists examining water quality impacts from helium extraction specifically in this formation type. This is not a minor evidentiary gap; it is a substantive and documentable absence in the scientific record.

The Intertribal Taskforce is not asserting that identical outcomes are inevitable in the Duluth Complex. We assert that the documented risk mechanisms are plausible in this setting, have not been studied in this setting, and justify a precautionary approach to environmental review thresholds. The absence of site-specific science documented in this section is not a reason to defer review; it is precisely the condition under which the EQB's mandatory category authority matters most. The proposed rules, however, respond to this scientific absence in the opposite direction: by establishing review thresholds under which the most likely class of gas extraction projects in northeastern Minnesota proceeds without any mandatory environmental review at all.

IV. The Structural Gap in the Proposed Rules: When “Already Required” Provides No Protection

Throughout its responses to Tribal input, documented in EQB’s April 2026 Packet, Attachment 1 (Tables 2 and 3), EQB repeatedly stated that Tribal-requested protections were “already required for any environmental review,” “addressed in the EAW form,” or governed by existing program rules such as Minn. R. 4410.0200 and 4410.1000, subpart 4. The Intertribal Taskforce respectfully but firmly identifies this pattern of response as the central legal inadequacy of the proposed rules every protection EQB cited is legally operative only when a mandatory EAW threshold is triggered. Understanding why requires examining what that threshold actually is, and what it leaves out.

The proposed mandatory thresholds are: (1) five or more gas wells triggering an EAW; (2) projects in DNR siting prohibition zones triggering an EAW; (3) Class II underground injection control waste disposal

wells triggering an EAW; (4) projects injecting substances to create chemical reactions triggering an EAW; and (5) high-volume hydraulic fracturing using 100,000 or more gallons triggering an EIS. A gas resource development project with one to four wells using conventional extraction, with no underground injection and no HVHF, triggers no mandatory environmental review under the proposed rules. Such a project proceeds directly through DNR permitting. The five-well threshold converts every protection EQB cited from an operative safeguard into a conditional one, and the condition is structured so that the most likely projects in northeastern Minnesota never satisfy it.

In that scenario, no EAW form is completed, no Responsible Governmental Unit is designated, no cumulative impacts analysis occurs, no groundwater assessment is conducted, and no cultural properties review takes place. Every EQB response citing “the EAW form” or “existing environmental review rules” as sufficient protection is legally void for sub-threshold projects because those protections are only operative when a mandatory threshold has been triggered and an EAW is actually prepared. This is not a technical concern about procedural sequence. It is a substantive gap that leaves the class of projects most likely to affect Tribal resources in northeastern Minnesota - small-scale conventional extraction in treaty-ceded territory near the Lake Superior watershed - entirely outside the scope of mandatory environmental review.

The specific EQB responses that fail for sub-threshold projects are: cumulative impacts analysis (“required for any environmental review” - not if no EAW is triggered); cultural properties assessment (“EAW form item 15” - irrelevant without an EAW); groundwater and drinking water assessment (“EAW form includes it” - irrelevant without an EAW); full project footprint review (“RGU is responsible” - no RGU exists for sub-threshold projects); GHG emissions assessment (“EAW form includes it” - irrelevant without an EAW); treaty-reserved resource impacts (“EAW item 15” - irrelevant without an EAW); early Tribal notification (“ER document distribution is out of scope” - no ER documents are produced for sub-threshold projects); and phased and connected actions aggregation (Minn. R. 4410.1000, subpart 4 - only operative when an EAW threshold is being evaluated). In each case, the answer is the same: the protection exists only on paper for sub-threshold projects. The mechanism EQB described as adequate never activates. This last point deserves particular emphasis. Minn. R. 4410.4300, Subpart 1 - the threshold test that governs the entire mandatory EAW category framework - expressly provides that “multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part.” This aggregation requirement means that a developer cannot evade mandatory review by sequencing wells below the threshold. But that anti-evasion protection only functions if the threshold is set low enough to be reachable. A developer proposing four conventional extraction wells in sequence can proceed through DNR permitting without ever triggering the aggregation analysis, because Subpart 1’s protections only activate when an EAW threshold is actually under evaluation. The five-well threshold transforms the phased/connected actions rule into a dead letter for the most likely development scenarios in northeastern Minnesota.

The phased and connected actions protection in Subpart 1 has a second, equally serious limitation: it applies only to projects undertaken by the same proposer. The five-well threshold can be nullified not only by a single developer sequencing wells below it but also by multiple independent operators each permitting sub-threshold projects that collectively draw from the same helium deposit - a gap the existing aggregation framework cannot address. The Taskforce addresses this multi-operator fragmentation problem separately in Section V.F below and requests a geographic aggregation trigger to close it.

EQB may suggest that the DNR retains discretionary authority to order an EAW under Minn. R. 4410.4500 and 4410.1000, subpart three, for sub-threshold projects that present significant environmental concerns. This safety valve is not a sufficient substitute for mandatory categories for two reasons. First, it is entirely discretionary - the DNR has no obligation to act, and no regulatory standard

compels it to do so. Second, the DNR is the same agency issuing the extraction permit, creating an inherent structural conflict of interest in self-ordering additional review of its own permitting actions.

The DNR's own draft permitting rules make the structural gap visible. DNR Rule 6124.1000, 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" - is not a drafting oversight; it is a textual admission of the structural gap. The rule requires submission of environmental review documents when they exist - but for sub-threshold projects, they never exist, because no EAW is ever triggered. The phrase "if applicable" will never be applicable for the most likely class of gas development projects in northeastern Minnesota. The DNR permitting file will be empty of environmental review documents not because review was conducted and found unnecessary, but because the threshold was set high enough to ensure it was never required. For sub-threshold projects, environmental review documents are never applicable, because no EAW is ever required under the proposed rules. The DNR permitting process proceeds, the Tribal notice goes out under Minn. R. 6124.3000, Subpart 8, and the permit issues, all without the independent groundwater assessment, cumulative impacts analysis, and cultural property review that an EAW would require. Separately, DNR Rule 6124.2000, which lists the protected areas where gas operations are prohibited or restricted, does not include DWSMAs with vulnerable aquifers. A project sited above a vulnerable DWSMA receives the same DNR permitting treatment as any other project location. This omission in the DNR rules is one more reason the EQB's mandatory category rules must supply the DWSMA trigger that neither framework currently provides.

Furthermore, the DNR's draft gas resource development rules (Minn. R. Ch. 6124) confirm that every gas resource development project, regardless of size, requires a DNR permit. Under Minn. Stat. § 116D.04, a permit issued by a state agency constitutes a "governmental action." As a matter of statutory definition, every gas resource development project, including a single-well conventional extraction project, is therefore subject to MEPA's environmental review framework. The EQB therefore has legal authority under MEPA to set a mandatory EAW threshold at one well, i.e., any gas resource development project requiring a DNR permit. Because the five-well threshold is a policy choice rather than a legal constraint, the failure to set a lower threshold is a policy failure that this comment record documents and that future rulemaking must address.

The EQB's own submission to the Gas Resources Technical Advisory Committee - the legislatively created body charged with developing Minnesota's first-ever gas extraction regulatory framework, whose participating agencies included EQB, MDH, DNR, MPCA, Department of Commerce, and Department of Revenue - arrived at precisely the opposite conclusion from the proposed rules on this point. In Recommendation EQB-1 (Draft, November 15, 2024), EQB recommended that a mandatory EAW be required for any gas resource development project requiring a DNR permit - with no well-count threshold of any kind. EQB's stated rationale read: "EQB staff believe that for the duration of a temporary regulatory framework it is appropriate to require an EAW for all gas development projects, recognizing that any projects of this type may have the potential for significant environmental effects." EQB further identified the DNR as RGU and expressly tied the mandatory EAW to the same DNR permitting trigger analyzed in the preceding paragraph - i.e., the permit required by Minn. Stat. § 93.513 before any gas well may be drilled. The five-well threshold in the 2026 proposed rules is a step backward from EQB's own 2024 recommendation to the GTAC process. That regression demands an explanation in the rulemaking record. The EQB has not provided one, and the absence of one further supports the Taskforce's position that the threshold is a policy choice unsupported by legal or scientific necessity.

V. The Proposed EQB Draft Rules Are Not Sufficiently Protective: Specific Concerns

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A. The Five-Well EAW Threshold Is Too High

The draft rule at Minn. R. 4410.4300, Subpart 38(A) establishes a mandatory EAW threshold at five or more gas wells. The Intertribal Taskforce strongly urges the EQB to lower this threshold to three wells, and notes that the Grand Portage Band of Lake Superior Chippewa has advocated for a one-well threshold consistent with the analysis in Section IV above.

The purpose of mandatory environmental review categories is to identify project types for which the potential for significant environmental effects is sufficiently established that discretionary review is inadequate. Given the combination of factors present here - no peer-reviewed science on water-quality impacts from gas extraction in Precambrian basaltic rift geology; no baseline water-quality data for affected aquifers; methane and CO2 as geochemically co-associated gases in the Topaz deposit at documented concentrations; fractured basalt geology that provides conduit pathways for fugitive gas and produced water migration; and location within the Lake Superior watershed - the appropriate presumption is that any production-scale activity has the potential for significant environmental effects.

The EQB's own guidance confirms the governing principle: completing environmental review is "especially beneficial for new project types, because new project types are likely to raise many questions, and the environmental review process informs the public and decision-makers about potential environmental impacts prior to permitting." This principle applies with greatest force when the project type is not merely new to Minnesota but is new to the world - no analogous commercial gas extraction projects exist in comparable Precambrian rift basalt formations anywhere in the United States. The five-well threshold is irreconcilable with this principle because it leaves all projects below that threshold entirely outside mandatory review, regardless of their novelty, geological setting, or proximity to sensitive resources.

EQB's rationale for choosing five wells over the Tribal-proposed threshold of three wells rested on revised estimates of gas production per well, which indicated lower production rates than initially modeled from Colorado data. This reasoning does not address the fundamental issue. Lower production rates per well may reduce production-volume-based risk, but they do not reduce the risks associated with well drilling mechanics - casing integrity, surface disturbance, produced water generation, and groundwater connectivity in fractured rock - that exist regardless of production volume. The Darrah et al. (2014) literature, for example, identifies well casing and cementing failures as the primary contamination mechanism, a risk that is present at the first well drilled, not the fifth. Darrah et al. further established that the two primary failure modes - annulus cement failure and production casing failure - produce distinguishable geochemical signatures and carry different regulatory implications. Annulus cement failures release gas from intermediate-depth formations through poorly cemented annular space, meaning the contaminating gas may not match the target formation's composition and may go undetected by conventional sampling focused on target-zone gases. Production casing failures release target formation gases directly. Both mechanisms are independent of well count, production volume, and extraction method: a four-well project and a single-well project present identical per-well casing and cementing failure risks. The EQB's production-volume-based rationale for the five-well threshold does not engage with this finding. Furthermore, the reasoning about production volume is internally incoherent. A threshold premised on production volume rather than on environmental effect potential conflates a commercial metric with a legal protection standard. As established in Section VI, MEPA's mandatory category authority is premised on the potential for significant environmental effects - not on production thresholds.

This production-volume reasoning also contradicts EQB's own prior analysis submitted to the GTAC process, which is developed fully in Section IV above. The per-well risk EQB identified as triggering review is the act of drilling, which is precisely the risk that Darrah et al. (2014) document as the source of well casing and cementing failures. The GTAC analysis and the peer-reviewed contamination literature

converge on the same point: the contamination risk is structural and per-well, not volumetric. A rulemaking record that cites lower per-well production estimates to justify a higher threshold does not engage with either line of authority.

The EAW specifically requires investigation into groundwater proximity, well locations, and aquifer vulnerability. DNR's gas well siting rules require permit applications to map water wells and surface water features within 1,320 feet of the spacing unit. These siting protections do not substitute for the groundwater proximity investigation that an EAW would require, because they operate at the permitting stage after development is proposed and after commitments have often been made. Requiring an EAW from the first or third well ensures that groundwater vulnerability assessments drive project design, not the reverse. Requiring it only at the fifth well allows four wells to be drilled, sited, and permitted without any of that analysis.

The EQB's current position - that the absence of hard data on water quality impacts in this formation justifies a higher threshold rather than a lower one - inverts the precautionary principle that MEPA embodies. The absence of *evidence* of impact is not evidence of the absence of impact, particularly for a project type and geological formation that have never been studied. It is precisely the absence of site-specific science that makes mandatory environmental review most essential.

The empirical record supports the argument that the five-well threshold is set above the most likely development scenario. A project that reaches production at 1 – 3 conventional vertical wells - entirely plausible given the pressure and concentration data at Topaz - would proceed from exploration through production without ever triggering mandatory environmental review.

B. The Drinking Water Supply Management Area Location Trigger Must Be Made Explicit

The most fundamental protection gap in Section V.B concerns private drinking water wells. In rural Cook and Lake Counties, the vast majority of residents obtain drinking water from private wells drilled into the same fractured bedrock aquifers that would be affected by gas extraction activities. These private wells are not part of any public water supply system, are not covered by DWSMA delineations (which apply only to community and non-transient non-community public water supplies under the Safe Drinking Water Act), are not regulated or routinely tested by any state agency, and are entirely outside the geographic scope of the DNR's siting rules. Minnesota Department of Health data confirms that private wells are the primary drinking water source for a substantial majority of Cook County households. The Duluth Complex geology means these wells draw from fractured crystalline bedrock - the same fracture networks that Foose and Cooper (1981), Foster and Hudleston (1986), and Warner et al. (2012) document as conduits for fluid migration. A gas extraction project that introduces a contamination pathway into that fracture network potentially affects every private well drawing from the same aquifer system within an unknown radius. The proposed rules require no assessment of that risk for sub-threshold projects. The EAW process is the mechanism MEPA provides to require exactly this assessment: mapping of private wells, characterization of aquifer connectivity, and evaluation of whether the proposed project's design adequately protects the drinking water of people who have no alternative public water supply.

The Board should direct staff to add a mandatory EAW trigger for any gas resource development project located within a drinking water supply management area (DWSMA) where the underlying aquifer has been identified as vulnerable to contamination under Minn. R. Ch. 4720.

Critically, none of the five agency recommendations submitted to GTAC - from EQB, MDH, MPCA, DNR, and the Department of Revenue - included a DWSMA-proximity trigger for mandatory environmental review or as a gas well siting prohibition. The DNR's GTAC-recommended temporary siting framework (draft § 93.5174, Subd. 8, Sec. 15) enumerates national parks, wilderness areas, state scientific and natural areas, calcareous fens, and wild and scenic river districts as restricted or prohibited zones.

DWSMAs with vulnerable aquifers do not appear on that list. MDH Recommendation MDH-12 and draft statute 103I.707, Subd. 9 do establish minimum isolation distances - 500 feet from a water supply well, five hundred feet from a residential building, 2,000 feet from a school or childcare center. These are well construction requirements, not environmental review triggers. They set a floor for physical separation at the time of drilling; they impose no requirement to assess cumulative aquifer risk, evaluate DWSMA vulnerability, or establish pre-drilling baseline groundwater conditions. A gas well sited 501 feet from a private drinking water well, directly overlying a vulnerable DWSMA, with no pre-project baseline data and no mandatory EAW, would satisfy every GTAC-recommended requirement without any environmental review of any kind. The GTAC framework's silence on DWSMAs is not a drafting oversight in a single agency's work - it is a gap that runs across the entire recommended regulatory architecture, which makes the EQB mandatory category rules the only available mechanism to supply this protection. Feedlots already face a DWSMA trigger under Minn. R. 4410.4300, Subpart 29(B). Gas extraction projects, which involve subsurface pressurized drilling into the same fractured aquifer system, do not. That asymmetry has no principled regulatory justification, and nothing in the GTAC record supplies one.

The proposed gas development rules contain no equivalent provision. Under the rules as drafted, a company could apply for a DNR permit and drill a well within a DWSMA without that proximity alone triggering any environmental review. DWSMA boundaries for the region can be visualized using the Minnesota Department of Health's Source Water Protection viewer (https://experience.arcgis.com/experience/14825b159b2e4dc686736d98e39ebce7) and cross-referenced against private and public well locations in the Minnesota Well Index (https://mnwellindex.web.health.state.mn.us/). However, the DNR's county-level aquifer mapping program (https://www.dnr.state.mn.us/waters/groundwater_section/mapping/index.html) has not yet completed aquifer characterization for Lake County, the county most directly affected by the Topaz Project, meaning that aquifer vulnerability determinations required to operationalize a DWSMA trigger cannot currently be made for the primary project area. This data gap underscores rather than undermines the need for mandatory environmental review: it is precisely because baseline aquifer characterization is incomplete that the EAW process is the appropriate vehicle for generating it before drilling commences.

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. The Minn. R. 4410.4300, Subpart 29(B) feedlot DWSMA trigger - which requires a mandatory EAW for a feedlot of more than five hundred animal units located within a DWSMA where the aquifer is identified as vulnerable - reflects a legislative judgment that certain sensitive locations warrant environmental review independent of the primary threshold test. That same legislative judgment applies with at least equal force to gas extraction projects, which involve subsurface drilling, pressurized gas systems, and the generation of produced water in proximity to drinking water sources. The additional asymmetry is that DNR Rule 6124.2000, which enumerates the protected areas where gas operations are prohibited or restricted, does not include DWSMAs with vulnerable aquifers at all, meaning DWSMAs receive no special protection under either the EQB mandatory category rules or the DNR siting rules. The omission is particularly consequential within the Lake Superior watershed, where basaltic geology creates aquifer vulnerability conditions that have not been characterized in peer-reviewed literature specific to gas extraction impacts, meaning the baseline risk is unknown and cannot be managed through permit conditions alone. As documented in Section II.D above, peer-reviewed research on CO_2 leakage into shallow groundwater - directly applicable to the CO_2-dominant gas composition at Topaz - establishes that poorly buffered aquifers lacking abundant carbonate minerals experience more severe and prolonged pH depression than well-buffered systems (Harvey et al., 2012). The Duluth Complex basalt's buffering capacity against rapid CO_2 intrusion events is uncharacterized. A DWSMA with a vulnerable aquifer designation under Minn. R. Ch. 4720 is precisely the regulatory instrument that identifies an aquifer as susceptible to contamination based on its hydrogeological properties - including, in many cases, limited natural attenuation capacity analogous to the low-buffering conditions that Harvey et al. (2012) identify as

producing the most severe outcomes. The legislature has already identified these aquifers as warranting special protection; the EQB need only extend that legislative judgment to gas extraction projects, as it has already done for feedlots. An EAW is the appropriate mechanism to surface and evaluate that risk before it materializes. EQB declined the Tribal-proposed EAW trigger for projects within one mile of a wellhead protection area, deferring to DNR siting rules. This response conflates two distinct regulatory functions. DNR siting rules govern whether a well may be physically located in a given area, a question of surface and subsurface placement. Environmental review governs whether the environmental impacts of that placement have been adequately assessed and disclosed. The existence of DNR siting rules that regulate placement does not substitute for an EAW that assesses impacts - and as established in Section IV, every protection EQB cited in response to Tribal input is operative only when a mandatory EAW threshold has been triggered. The DWSMA trigger the Taskforce requests is consistent with existing Minnesota environmental review precedent - the feedlot trigger in Subpart 29(B) establishes that sensitive locations warrant review independent of the primary threshold test, and the EQB's decision to decline both a wellhead protection area trigger and any DWSMA equivalent leaves public water supply sources without any location-based protection in the mandatory category rules. MEPA itself confirms that location is an independent basis for environmental review. Minn. Stat. § 116D.04, Subd. 2a(h) provides that the scoping process must address “those impacts that, because of the nature or location of the project, have the potential for significant environmental effects.” A DWSMA with a vulnerable aquifer is precisely the kind of location that, by definition under Minn. R. Ch. 4720, has been identified as susceptible to contamination. The legislature and the EQB have already made the sensitivity determination; the only question is whether gas extraction projects operating above such an aquifer will be required to demonstrate that their specific design, siting, and operations will not compromise it. The proposed rules answer that question: no. That is not consistent with either the letter or purpose of MEPA. Additionally, Minnesota’s existing Subpart 29(B) feedlot trigger applies not only to DWSMAs but also to projects within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley - features that, like the fracture networks of the Duluth Complex basalt, represent preferential pathways for subsurface fluid migration. The geological conduits that make the Duluth Complex particularly vulnerable to groundwater contamination are functionally analogous to the karst features that already trigger mandatory review for much smaller agricultural operations.

C. Proximity to Reservation Boundaries or Within Ceded Territories Where Treaty Rights Exist as a Location-Based Trigger

The Intertribal Taskforce understands that EQB staff have indicated the agency lacks authority under the current expedited rulemaking to include a location-based EAW trigger tied to proximity to Reservation boundaries. We note, however, that this position rests on an implementation complexity argument - that a location-based boundary must be “repeatable and easily implemented” - rather than a legal constraint. Reservation boundaries and DNR Native American Sacred Sites and Burial Grounds inventory locations are legally defined, publicly mapped, and unambiguous. They satisfy any reasonable standard of repeatability and implementability. The decision not to use them as a threshold boundary is a policy choice, not a legal one.

The Intertribal Taskforce is aware that EQB staff have also raised a separate concern in the course of collaborations: that applying a reservation-proximity trigger to gas extraction projects, but not to other project types that also appear in the mandatory category rules, would create an asymmetry across the rules that the Board is reluctant to introduce. The Taskforce states the following for the rulemaking record. We heard that concern. We are not persuaded that it is a legally sufficient basis for declining to protect Tribal resources from a novel, unregulated project type that is the subject of this specific rulemaking. The solution to asymmetry is not to leave Tribal communities unprotected in the one rulemaking currently before the EQB; it is to apply equivalent proximity-based protections to other project types as they come before the Board in future rulemaking proceedings. A reservation-proximity trigger for gas extraction

would not be anomalous within the Minnesota mandatory category framework - it would be the first application of a principle that the Board should, in the Taskforce's view, apply broadly. The consistency concern, if genuine, is an argument for expanding Tribal protections across project types, not for withholding them from the one project type currently under review. The Taskforce also notes, for the record, that gas extraction in the Duluth Complex presents a combination of factors - novel geology with no regulatory history, pressurized CO_2-dominant gas, absence of baseline water quality data, location within the Lake Superior watershed, and documented proximity to reservation boundaries and treaty-ceded territory - that do not exist for most other project types in the mandatory category rules. The asymmetry, if any, reflects the extraordinary circumstances of this project type, not a structural preference for Tribal interests over others. The Intertribal Taskforce submits this response to ensure that the rulemaking record reflects both the EQB's stated concern and the Taskforce's position that it does not constitute a legally adequate basis for declining to include a reservation-proximity trigger in the final rule.

The affirmative legal and policy foundation for a proximity-based trigger is substantial and directly applicable to EQB's rulemaking authority. Three independent frameworks converge on this point. First, Minn. Stat. § 10.65 establishes the government-to-government relationship between Minnesota state agencies and the eleven federally recognized Minnesota Tribal Nations, and defines "matters that have Tribal implications" as "rules, legislative proposals, policy statements, or other actions that have substantial direct effects on one or more Minnesota Tribal governments, or on the distribution of power and responsibilities between the state and Minnesota Tribal governments." A mandatory EAW threshold that leaves gas extraction projects near Reservation boundaries entirely outside environmental review self-evidently has substantial direct effects on Minnesota Tribal governments whose members rely on the affected water resources. The statute requires that agencies consult with Tribal governments on matters with Tribal implications in a "timely and meaningful" manner, defined as consultation at a time that allows the result to be included in the agency's decision-making process. A rulemaking threshold that eliminates the review process for the most likely development scenarios in treaty territory makes meaningful consultation structurally impossible: there is nothing to consult about once a sub-threshold permit has issued. Second, the EQB's own Tribal Coordination and Consultation Policy, adopted in July 2024 specifically to fulfill the intent of Minn. Stat. § 10.65, commits the Board to "ensure effective communication and coordination, especially on those specific EQB actions and decisions that may affect one or more of the Tribal Nations that share geography with Minnesota." The EQB Policy further states that "[t]he EQB recognizes and supports the unique status of Minnesota Tribal Nations and their right to exist, self-govern, and possess self-determination." A mandatory category rule that omits a proximity-based trigger is an EQB action that directly affects the Tribal Nations that share geography with the Topaz Project area - specifically the Grand Portage, Bois Forte, and Fond du Lac Bands, all of which hold 1854 Treaty rights in the Ceded Territory encompassing northeastern Minnesota. The EQB's own policy framework requires that this effect be addressed, not that it be deferred. Third, and most fundamentally, the 1854 Treaty between the United States and the Lake Superior Chippewa is federal law. Under Article 11 of the 1854 Treaty, the Bois Forte, Fond du Lac, and Grand Portage Bands retain the right to hunt, fish, and gather on the lands ceded to the United States in northeastern Minnesota - rights that predate Minnesota statehood and that cannot be diminished by state regulatory inaction. The U.S. Supreme Court's decision in Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999), reaffirmed that off-reservation usufructuary rights guaranteed by treaty are property rights of the highest legal order. A gas extraction project that contaminates groundwater or surface water in the 1854 Ceded Territory - particularly water bodies used for wild rice harvesting, fishing, or gathering - directly impairs federally guaranteed treaty rights. Minnesota's duty to avoid state actions that substantially impair those rights is not merely a matter of policy preference; it is a legal obligation that runs through every state permitting and rulemaking decision affecting the Ceded Territory. MEPA itself provides the specific mechanism. Minn. Stat. § 116D.04, Subd. 2a(h) requires that the scoping process address "those impacts that, because of the nature or location of the project, have the potential for significant environmental effects."

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Proximity to a Reservation boundary, trust lands, or an area of actively exercised treaty rights is precisely the kind of locational characteristic that gives rise to significant environmental effects as a matter of law - not because of geological factors alone, but because the legal consequences of groundwater or surface water contamination in those locations are categorically different from contamination elsewhere. The EQB has both the authority and the legal obligation to recognize this in its mandatory category rules.

The Tribal Gas Extraction Task Force submitted proposed rule language to establish a mandatory EAW trigger for projects within five miles of a federally recognized Tribal Nation's reservation or trust lands, within one mile of a water body in the DNR's Native American Sacred Sites inventory, or within an area where a Tribe retained treaty harvesting, fishing, or gathering rights. EQB declined this language as beyond the scope of the current expedited rulemaking. As documented throughout this letter, the result is that a gas project immediately adjacent to Reservation boundaries or within an area where a Band has documented treaty-reserved rights may proceed through DNR permitting with no mandatory environmental review, no mandatory Tribal notification under the EAW rules, and no RGU designation, if it involves fewer than five wells and uses conventional extraction.

Gas extraction projects near Indian Reservations have the potential to affect Tribal trust resources, treaty-protected hunting, fishing, and gathering rights in ceded territories, and the health and safety of Tribal community members who rely on local water resources. A proximity-based trigger is a reasonable and legally defensible mechanism to ensure these risks receive mandatory evaluation, and its inclusion in the final rule is necessary for the rules to be adequate as applied to northeastern Minnesota. The Intertribal Taskforce urges the EQB to include this provision in the final rule.

D. The Mandatory EIS Category Is Too Narrow

The draft rule at Minn. R. 4410.4400, Subpart 29 limits the mandatory EIS category to projects designed to use high-volume hydraulic fracturing. The Intertribal Taskforce is concerned that this provision fails to capture the range of circumstances in which a full Environmental Impact Statement, rather than just an EAW, is warranted for gas resource development in northeastern Minnesota.

The concern is compounded by a structural defect in the HVHF-only mandatory EIS trigger that the GTAC record makes explicit. MDH's recommendation to GTAC (MDH-8) proposed a complete statutory prohibition on hydraulic fracturing treatment in gas wells, with the rationale that "helium gas currently being pursued in Minnesota has been identified in the same geologic formation used for supplying drinking water" and that hydraulic fracturing "could connect fractures in the gas well with fractures supplying water to drinking water wells." The proposed draft statute (103I.707, Subd. 5) provides: "Hydraulic fracturing treatment is prohibited in a gas well." If the legislature enacts this prohibition - which MDH itself recommended on drinking water protection grounds - the mandatory EIS threshold at Minn. R. 4410.4400, Subpart 29 would be triggered only by a practice that is simultaneously and categorically unlawful. A mandatory category that can only be reached by violating a statutory prohibition is not a functional regulatory safeguard; it is a nullity. The Intertribal Taskforce does not oppose the hydraulic fracturing prohibition - MDH's stated rationale for it, the risk of connecting gas well fractures to drinking water fractures in the Duluth Complex basalt, is scientifically sound and consistent with the contamination pathways documented in this letter. But the EQB cannot rely on an HVHF-only EIS trigger in a regulatory framework where HVHF may be forbidden. The mandatory EIS category must be expanded to capture the project characteristics that generate potential for significant environmental effects - independent of hydraulic fracturing method - including location within the Lake Superior watershed, proximity to treaty-protected resources, and the absence of pre-project baseline groundwater data for the affected fractured basalt aquifer system.

An EIS is not simply a longer EAW. It is a substantively different analytical document requiring analysis of alternatives, cumulative impacts, and mitigation at a depth and rigor that an EAW does not. For a project

type with no regulatory precedent in Minnesota, no comparable formation geology to reference, and no baseline environmental data, many project configurations would benefit from the full EIS process even without meeting the hydraulic fracturing volume threshold. The narrow HVHF-only EIS trigger, combined with the five-well EAW threshold, means that a four-well project using moderate hydraulic fracturing below 100,000 gallons, located in the Lake Superior watershed and proximate to reservation boundaries, could proceed with no mandatory environmental review of any kind. This is precisely the scenario - novel geology, treaty territory, sensitive watershed, data absence - for which MEPA's mandatory category authority was designed.

We are particularly concerned about projects that are: (1) located in the Lake Superior watershed; (2) proximate to Reservation boundaries, Tribal trust lands, or ceded territory; (3) involving extraction from a geological formation that has never been studied for water quality impact; or (4) co-located with significant groundwater resources lacking pre-project baseline data. The EQB's own guidance confirms that the standard environmental review framework "assumes a body of science exists from which to draw impact predictions." Where that science does not exist, the EIS level of analysis is the appropriate instrument for generating it.

E. Early Tribal Notification Provisions

The Tribal draft Subpart 38a provides for written notice to Tribal historic preservation officers and chief governmental officers when an EAW or EIS is required. The Intertribal Taskforce supports this provision and urges the EQB to set the required notice timing at a minimum of 30 days before publication of the EAW or draft scoping decision in the EQB Monitor.

Notably, DNR's own draft gas resource development rules (6124.3000, Subpart 8) already require the DNR to provide notice to Minnesota Tribal governments 30 days prior to publication of a draft gas resource development permit in the State Register for every permit, regardless of well count. The EQB's proposed mandatory category rules should be consistent with this standard and should not create a scenario where projects receive Tribal notification through the DNR permitting process but no corresponding EAW- or EIS-level Tribal engagement.

Thirty days of advance notice before public publication is necessary to allow Tribal governments to prepare substantive, informed input. Tribal nations hold government-to-government relationships with the State of Minnesota and exercise sovereign authority over tribal resources and treaty rights. Notification simultaneous with general public notice does not provide the advance consultation period appropriate to that relationship.

F. Multi-Operator Fragmentation and the Need for a Geographic Aggregation Trigger

As noted in Section V.A, the phased and connected actions protection in Minn. R. 4410.4300, Subpart 1 has a fundamental limitation that the proposed rules do not address: it applies only to projects undertaken by the same proposer. Under Minn. R. Ch. 4410, a "phased action" is explicitly defined as two or more projects to be undertaken by the same proposer that a RGU determines will have environmental effects on the same geographic area and are substantially certain to be undertaken sequentially. A "connected action" similarly presupposes a single developer's project components undertaken as part of a unified proposal. The existing aggregation framework therefore provides no protection against multi-operator fragmentation - the scenario in which the mandatory threshold is effectively nullified not by a single developer phasing wells below it, but by multiple independent operators each proposing sub-threshold projects that collectively industrialize the same geological formation and draw from the same aquifer system.

In the Duluth Complex, where helium exploration rights may be held by multiple entities across overlapping or adjacent lease blocks targeting the same Precambrian basalt formation, multi-operator development is the expected pattern if commercial extraction takes hold in northeastern Minnesota, not a hypothetical edge case. Consider the specific scenario that the proposed rules leave entirely unaddressed: three independent operators each apply for DNR permits to drill four conventional extraction wells in the same township, targeting the same helium-bearing formation at similar depths. Each project, evaluated individually, falls below the five-well mandatory EAW threshold. Each involves a different proposer, so the phased and connected actions aggregation rule does not apply. Each proceeds through DNR permitting independently, with no mandatory EAW, no designated RGU, no cumulative impacts analysis, no assessment of additive groundwater risk, and no Tribal notification under the EAW rules. The result is twelve wells in a single township, all drawing from the same fractured basalt deposit, each permitted without any environmental review of the cumulative system they collectively create. The groundwater, fracture networks, and treaty-reserved resources affected by those twelve wells do not recognize corporate boundaries. The regulatory framework, as proposed, does.

The existing Minnesota environmental review framework contains only one mechanism capable of reaching multi-operator cumulative impacts: the related actions EIS provision at Minn. R. 4410.2000, Subpart 5, which authorizes a single EIS for independent projects with potential cumulative environmental impacts on the same geographic area. This provision has three disqualifying limitations in the present context. First, it applies only at the EIS stage - it is unavailable for mandatory EAW review, which is the instrument the Taskforce is requesting. Second, it is entirely discretionary: the RGU may prepare a related actions EIS, but no standard compels it to do so. Third, and most fundamentally, a related actions EIS requires that an RGU exist - and an RGU is only designated when at least one project has triggered mandatory review. For sub-threshold projects proceeding in parallel with no mandatory trigger, there is no RGU, no related actions EIS authority, and no mechanism in the rules to aggregate their cumulative effects. The discretionary EAW authority under Minn. R. 4410.1000, Subpart 3 has the same limitation: it is entirely discretionary, and for multi-operator sub-threshold projects, no governmental unit has been designated with responsibility to exercise it.

The Taskforce requests that the mandatory EAW category rule for gas resource development at Minn. R. 4410.4300, Subpart 38 be amended to include a geographic aggregation trigger that operates independently of operator identity. Specifically, a mandatory EAW should be required when the cumulative total of gas resource development wells proposed or permitted within a defined geographic area such as a single township, a watershed subunit, or the area of a DNR-designated spacing unit - within a rolling five-year period meets or exceeds the mandatory threshold, regardless of whether those wells are proposed by one operator or several. The appropriate geographic boundary and lookback period are implementation details for EQB staff to develop in consultation with the DNR and affected Tribal Nations; the Taskforce does not prescribe them here. The principle that the comment record requires EQB to address is that the mandatory threshold cannot be administratively fragmented across multiple operators drawing from the same deposit without defeating the purpose of having a threshold at all. MEPA's mandatory review standard is based on the potential for significant environmental effects, not on the number of corporate entities producing them. The mandatory category rules must reflect that geological and legal reality.

VI. The Legal Framework Supports Stronger Thresholds

The factual predicates established in the preceding sections - methane, propane, and CO_2 contamination risk documented in peer-reviewed literature; Duluth Complex geology that amplifies those risks; absence of baseline data that makes contamination permanently unattributable; and an EAW threshold set too high to apply to the most likely development scenarios - together establish the potential for significant

environmental effects that MEPA's mandatory category authority requires. The EAW threshold, set at five wells rather than one, is a policy choice - not a legal constraint. The legal framework that follows documents why that distinction matters. The Minnesota Environmental Policy Act (MEPA), Minn. Stat. § 116D.04, directs the EQB to identify project types for mandatory environmental review based on the potential for significant environmental effects. The function of mandatory categories is to eliminate the need for case-by-case significance determinations for project types where the potential for significant effects is sufficiently established. Two provisions of MEPA define the outer boundaries of what is legally required and what is at stake. First, Minn. Stat. § 116D.04, Subd. 2a(a) triggers mandatory environmental review "where there is potential for significant environmental effects resulting from any major governmental action." The standard is potential, not proof. MEPA does not require the EQB to demonstrate that significant effects will occur before establishing a mandatory category; it requires only that the EQB identify project types where significant effects are potentially present. The five factual predicates documented in this letter collectively establish that potential beyond reasonable dispute. Second, Minn. Stat. § 116D.04, Subd. 2b(a) provides the hard stop that gives mandatory categories their legal force: "a project may not be started, and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until" environmental review is complete. For sub-threshold gas projects, this statutory prohibition never activates, because no EAW is ever required, no permit is ever conditioned on completed review, and the Subd. 2b(a) protection is a dead letter. The EQB's threshold decision determines not only when review occurs, but whether that statutory prohibition ever applies at all.

Five factual predicates exist here that, individually and collectively, establish the potential for significant environmental effects that MEPA requires for mandatory category designation. First, there is no peer-reviewed literature characterizing water quality impacts from gas extraction in Precambrian basaltic rift geology. Second, the Duluth Complex sits within the Lake Superior watershed, a source of drinking water for millions of people. Third, methane is geochemically co-associated with helium and CO_2 in the Topaz deposit at documented concentrations in produced gas. Fourth, Minnesota has no regulatory history with this project type, no established baseline environmental data, and no pre-project water quality data for the affected aquifer systems. Fifth, Minnesota's ambient groundwater monitoring programs do not cover the fractured crystalline bedrock aquifers of northeastern Minnesota. Those programs focus on sedimentary aquifers in the Twin Cities metropolitan area and southeastern Minnesota, meaning there is no existing regulatory monitoring network capable of detecting or attributing groundwater contamination in the project area. Sub-threshold projects that proceed without an EAW will operate in a hydrogeological setting with no baseline, no monitoring, and no attribution framework. That is not a regulatory gap that discretionary agency authority can meaningfully address after the fact.

A separate and independent statutory constraint deserves explicit attention. Minn. Stat. § 116D.04, Subd. 6 provides that "no state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare." This prohibition applies to the DNR's permit-granting authority, not merely to the EQB's rulemaking. For sub-threshold gas projects in the Duluth Complex, the DNR will be issuing permits under Minn. R. Ch. 6124 for a project type with no peer-reviewed site-specific science, no pre-project baseline water quality data, no ambient monitoring coverage, and a documented record of contamination risk from analogous geological settings. A permit issued under those conditions, without any prior environmental review, is precisely the kind of permit that Subd. Six was designed to constrain. Setting a five-well threshold that exempts the most likely class of projects from mandatory review creates the conditions under which that statutory prohibition is systematically violated, not by a single permit, but as a structural feature of the regulatory framework. The combination of five factual predicates identified above - geological novelty, hydrogeological vulnerability

within the Lake Superior watershed, demonstrated methane and CO_2 presence in produced gas, complete regulatory vacancy with no baseline data for this project type, and the complete absence of any ambient groundwater monitoring coverage for the affected aquifer system - constitutes precisely the factual record that MEPA's mandatory category authority was designed to address. A mandatory EAW at three wells, or at one well, is the minimum review threshold consistent with the precautionary principle that MEPA embodies and with the factual record before the EQB.

Furthermore, because every gas resource development project requires a DNR permit under Minn. Stat. § 93.513, and because such a permit constitutes a "governmental action" under Minn. Stat. § 116D.04, the EQB had legal authority to set the mandatory EAW threshold at one well - i.e., coextensive with the DNR permit requirement. The five-well threshold is a policy decision, not a legal constraint, and the rulemaking record should reflect that a lower threshold was legally available and was supported by the factual predicates described above. MEPA's foundational policy declaration, Minn. Stat. § 116D.02, directs the state to "maintain an environment which is healthful for all living things and in which aesthetic, historical, cultural, and natural aspects of our environment are maintained" and to act "with due consideration" for impacts on the environment. The statute further recognizes that "it is in the public interest to provide for" environmental review. Three specific state responsibilities declared in § 116D.02 are directly implicated. First, Subd. 2(1) directs the state to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations", the irreversibility of groundwater contamination in fractured crystalline bedrock is precisely the kind of inter-generational harm that trustee responsibility requires preventing, not merely responding to. Second, Subd. 2(7) directs the state to "define, designate, and protect environmentally sensitive areas"; DWSMAs with vulnerable aquifers have already been defined and designated; the proposed rules simply decline to protect them from gas extraction. Third, Subd. 2(8) directs the state to "establish and maintain statewide environmental information systems sufficient to gauge environmental conditions"; as documented above, no such system exists or can exist for the fractured basalt aquifers of northeastern Minnesota under the current regulatory framework, because sub-threshold projects generate no baseline data and no monitoring requirements. Setting a mandatory EAW threshold at five wells, for a project type with no regulatory history, no peer-reviewed site-specific science, no baseline data, and no ambient monitoring coverage, is not consistent with that declaration of public policy. Groundwater contamination from wellbore failures in fractured crystalline bedrock is not readily remediable: once saline brine, methane, or CO_2 migrates into a fractured aquifer serving private drinking water wells, the contamination cannot simply be reversed. Mandatory environmental review before drilling is the mechanism MEPA provides to prevent that outcome. The EQB should use it.

VII. Summary of Requested Changes

The Intertribal Taskforce respectfully requests the following modifications to the 2026 EQB draft rules:

- **Lower the mandatory EAW threshold** in Minn. R. 4410.4300, Subpart 38(A), from five wells to three wells. To fully close the regulatory gap documented in Section IV of this letter, the threshold should be lowered to one well, consistent with the legal analysis in Sections IV and VI, which holds that every gas resource development project requiring a DNR permit constitutes a governmental action subject to MEPA.
- **Add an explicit location-based EAW trigger** for gas resource development projects located within a drinking water supply management area where the aquifer is identified as vulnerable to contamination, consistent with the standard already established for animal feedlots in existing Minn. R. 4410.4300, Subpart 29(B), and as detailed in Section V.B of this letter.

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- **Add an explicit location-based EAW trigger** for any gas resource development project located within five miles of a federally recognized Tribal Nation's reservation boundaries, trust lands, or documented treaty-reserved harvesting, fishing, or gathering areas. The legal and policy foundation for this trigger is documented in Section V.C of this letter. Three independent frameworks - Minn. Stat. § 10.65, the EQB's own July 2024 Tribal Coordination and Consultation Policy, and the 1854 Treaty as federal law - converge on the conclusion that the EQB has both the authority and the obligation to recognize proximity to Tribal sovereign territory as a basis for mandatory environmental review. The Intertribal Taskforce is aware that EQB staff have expressed concern that applying a reservation-proximity trigger to gas extraction but not to other project types would introduce asymmetry across the mandatory category rules. The Taskforce's position, stated for the rulemaking record, is that this concern does not constitute a legally adequate basis for declining to include this trigger in the final rule. The solution to asymmetry is to extend equivalent Tribal proximity protections to other project types in future rulemaking proceedings - not to withhold them from the one novel, unregulated project type currently before the Board. Gas extraction in the Duluth Complex presents a combination of circumstances - novel geology, pressurized CO_2-dominant gas, absent baseline data, location within the Lake Superior watershed, and direct proximity to reservation boundaries and treaty-ceded territory - that does not exist for most other project types in the mandatory category rules. That combination is the justification for acting now, not a reason to wait for a more comprehensive cross-project rulemaking that may never occur.
- **Expand mandatory EIS categories** in Minn. R. 4410.4400, Subpart 29 to include any gas resource development project that involves extraction from a geological formation with no peer-reviewed literature characterizing water quality impacts from gas extraction in that formation type or has no pre-project baseline groundwater quality data for the affected aquifer.
- **Commit to mandatory pre-drilling baseline groundwater monitoring** for all gas resource development projects, regardless of well count, as a standalone regulatory requirement applicable at the DNR permitting stage, as documented in Sections III and VI of this letter. Without pre-project baseline data, it is legally and practically impossible to attribute post-project groundwater changes to extraction activity. This requirement cannot be accomplished through the EAW form alone because sub-threshold projects never complete an EAW. The Intertribal Taskforce recognizes that mandatory pre-drilling baseline monitoring for all projects may fall within DNR's gas resource development permitting authority under Minn. R. Ch. 6124 rather than EQB's mandatory category authority. Accordingly, the Taskforce requests that the EQB: (a) formally document in the final rulemaking record that pre-project baseline groundwater quality data is absent for the affected aquifer systems and that this absence creates an attribution gap that cannot be remedied through EAW-level review alone; (b) formally recommend to the DNR that Minn. R. Ch. 6124 be amended to require pre-drilling baseline groundwater monitoring as a permit condition for all gas resource development projects regardless of well count; and (c) condition the adequacy of any EAW prepared under the mandatory category rules on the availability of pre-project baseline data sufficient to support a meaningful cumulative impacts analysis. The need for pre-drilling baseline data is not a novel regulatory demand. Osborn et al. (2011,), the foundational peer-reviewed study documenting methane contamination of drinking water near gas wells - explicitly called for systematic and independent groundwater quality data, including dissolved gas concentrations and isotopic compositions, to be collected before drilling begins in a region, noting this is already done in some states. That call was made over a decade ago. Minnesota has not answered it for the Duluth Complex, and the proposed rules would not require it for sub-threshold projects.
- **Set the Early Tribal Notification timing** at a minimum of 30 days prior to publication of the EAW or draft scoping decision in the EQB Monitor, consistent with the 30-day Tribal notification

standard already embedded in DNR's draft gas resource development permitting rules at Minn. R. 6124.3000, Subpart 8, as detailed in Section V.E of this letter

- **Add a geographic aggregation trigger** to Minn. R. 4410.4300, Subpart 38 requiring a mandatory EAW when the cumulative total of gas resource development wells proposed or permitted within a defined geographic area within a rolling five-year period meets or exceeds the mandatory threshold, regardless of whether those wells are proposed by the same or different operators. As documented in Section V.F, the existing phased and connected actions aggregation rule applies only to projects by the same proposer and cannot reach multi-operator fragmentation: the scenario in which multiple independent developers each permit sub-threshold projects that collectively industrialize the same formation and draw from the same deposit. The related actions EIS provision at Minn. R. 4410.2000, Subpart 5 cannot fill this gap because it applies only at the EIS stage, is entirely discretionary, and requires an RGU that does not exist for sub-threshold projects. A geographic aggregation trigger is the only mechanism that ensures the mandatory threshold reflects cumulative environmental reality rather than the number of corporate entities involved in producing it.

VIII. Closing

The Intertribal Taskforce respectfully submits these comments to the Minnesota Environmental Quality Board. We recognize the genuine care and effort EQB staff have invested in this process, and we are grateful for the collaborative relationship that has developed. It is precisely because of that relationship and our shared commitment to protecting Minnesota's water resources and Tribal sovereignty that we respectfully insist on these stronger protections.

The proposed rules, as currently drafted, leave the class of gas resource development projects most likely to operate in northeastern Minnesota - small-scale conventional extraction projects below the five-well threshold - entirely outside mandatory environmental review, regardless of their proximity to treaty-ceded territory, reservation boundaries, wild rice waters, drinking water sources, sensitive aquifers, or the Lake Superior watershed. Every protection EQB cited in response to Tribal input throughout the coordination process is conditional on an EAW being triggered. For sub-threshold projects, those protections do not exist.

The absence of science on this project type and this geological formation is not a reason to set lower review thresholds. It is the most compelling reason to set higher ones. We urge the EQB to adopt the changes requested in this letter, and we commit to continuing this work together through whatever mechanisms are available. The Intertribal Taskforce further notes that these comments are submitted for purposes of creating a complete administrative record. The objections documented herein — to the five-well threshold, the absence of DWSMA and reservation-proximity triggers, the inadequacy of the HVHF-only EIS category, and the structural gap that leaves sub-threshold projects outside mandatory review — are preserved for purposes of any future judicial or administrative review of these rules or of permits issued under them.

Respectfully submitted,

The Intertribal Taskforce on Helium Extraction

(Signature pages attached)

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Key Peer-Reviewed and Regulatory Sources Referenced

Peer-Reviewed Scientific Literature

- *Darrah, T.H., Vengosh, A., Jackson, R.B., Warner, N.R., & Poreda, R.J. (2014).* Noble gases identify the mechanisms of fugitive gas contamination in drinking-water wells overlying the Marcellus and Barnett Shales. *Proceedings of the National Academy of Sciences,* 111(39), 14076-81.
- *Jackson, R.B., et al. (2013).* Increased stray gas abundance in a subset of drinking water wells near Marcellus shale gas extraction. *Proceedings of the National Academy of Sciences,* 110(28), 11250-55.
- *Osborn, S.G., Vengosh, A., Warner, N.R., & Jackson, R.B. (2011).* Methane contamination of drinking water accompanying gas-well drilling and hydraulic fracturing. *Proceedings of the National Academy of Sciences,* 108(20), 8172-8176. [Foundational study documenting methane contamination of drinking water wells near gas extraction; establishes 17-fold higher methane concentrations in active extraction areas; calls explicitly for pre-drilling baseline groundwater data collection before operations begin in a region.]
- *Warner, N.R., Jackson, R.B., Darrah, T.H., Osborn, S.G., Down, A., Zhao, K., White, A., & Vengosh, A. (2012).* Geochemical evidence for possible natural migration of Marcellus Formation brine to shallow aquifers in Pennsylvania. *Proceedings of the National Academy of Sciences,* 109(30), 11961-11966. [Documents pre-existing cross-formational brine pathways in Appalachian fractured geology using Sr isotopes and conservative tracers; establishes that areas with natural brine connectivity to deeper formations are at heightened contamination risk from gas extraction; finds buoyant gas migration through fractures occurs on timescales under one year.]
- *Shaheen, S.W., Wen, T., Zheng, Z., Xue, L., Baka, J., & Brantley, S.L. (2024).* Wastewaters coproduced with shale gas drive slight regional salinization of groundwater. *Environmental Science & Technology*, 58(40), 17862-17873.
- *Olmstead, S.M., et al. (2013).* Shale gas development impacts on surface water quality in Pennsylvania. *Proceedings of the National Academy of Sciences,* 110(13), 4962-4967.
- *Dong, Y., et al. (2024).* Salinization of groundwater in shale gas extraction area in the Sichuan Basin, China. *Science of the Total Environment,* 915, 170065.
- *Barth-Naftilan, E., Sohng, J., & Saiers, J.E. (2018).* Methane in groundwater before, during, and after hydraulic fracturing of the Marcellus Shale. *Proceedings of the National Academy of Sciences,* 115(27), 6970-6975. [Two-year prospective study with pre-drill baseline and monthly time-series sampling before, during, and after drilling, HVHF, and production of seven Marcellus Shale gas wells in Susquehanna County, PA; documents drilling-induced groundwater pressure perturbations (compressed air penetrating hundreds of meters into fractured aquifer), casing rupture event with isotopically confirmed Marcellus gas migration to shallow groundwater (peak 0.12 mg/L at 64 m from breach), and natural methane variability up to 70 mg/L in valley wells co-varying with salinity consistent with pre-existing deep brine connectivity; central methodological conclusion is that reliable CH_4 source attribution requires pre- and postdrill baseline observations of dissolved gas geochemistry, hydrologic data, and gas well integrity indicators - a determination impossible without predrill data; recommends prospective studies be conducted “at the outset of the development of a UOG play.” Provides the strongest peer-reviewed statement in the contamination literature for why pre-drilling baseline monitoring is legally essential to contamination attribution, and directly validates the Warner et al. (2012) finding that pre-existing

brine connectivity creates naturally occurring methane variability that is indistinguishable from SGD contamination without a baseline.]

- *Harkness, J.S., et al. (2016).* Pre-drill groundwater geochemistry in the Karoo Basin, South Africa. *Groundwater,* 56(2), 187-203. [Documents use of helium as tracer for deep brine migration to shallow aquifers in Precambrian-adjacent geology; basis for pre-drill baseline assessment argument in Section III.]
- *Dewandel, B., et al. (2021).* Hydrogeology of weathered crystalline/hard-rock aquifers - guidelines for the operational survey and management of their groundwater resources. *Hydrogeology Journal,* 29, 2253-2276. [Establishes fracture-network transmissivity and spatial heterogeneity of hard-rock crystalline aquifers; basis for fractured basalt vulnerability argument in Section III.]
- *Foose, M.P., & Cooper, R.W. (1981).* Faulting and fracturing in part of the Duluth complex, northeastern Minnesota. *Canadian Journal of Earth Sciences,* 18, 810-814. [First field documentation of extensive faulting within the Duluth Complex; maps three major fault sets in the South Kawishiwi intrusion traceable up to 20 km; concludes fault pattern is likely pervasive across the complex; documents the formation's structural complexity as an inherent geological feature of the Precambrian rift system.]
- *Foster, M.E., & Hudleston, P.J. (1986).* "Fracture cleavage" in the Duluth Complex, northeastern Minnesota. *Geological Society of America Bulletin,* 97(1), 85-96. [Documents closely spaced extensional fracture cleavage in troctolitic rocks of the Duluth Complex at Bardon Peak, formed at high fluid pressures during late-stage continental rifting; serpentine alteration along fracture surfaces confirms fluid migration through fracture networks; fractures localized above a subsurface dike structure that acted as a conduit for upward fluid migration.]
- *Carroll, S.A., Keating, E., Mansoor, K., Dai, Z., Sun, Y., Trainor-Guitton, W., Brown, C., & Bacon, D. (2014).* Key factors for determining groundwater impacts due to leakage from geologic carbon sequestration reservoirs. *International Journal of Greenhouse Gas Control,* 29, 153-168. [Multi-phase reactive transport modeling of CO_2 and brine leakage into representative U.S. drinking water aquifers; documents pH depression, TDS increases, and trace metal mobilization; identifies abandoned wellbores as primary leakage conduits; establishes that contamination plumes persist for decades even without remediation; demonstrates that detection probability using existing wells is below 10%; emphasizes pre-injection baseline groundwater chemistry as essential for operationalizing EPA's no-net-degradation standard. Directly applicable to legacy well penetrations of the Duluth Complex basalt documented in the Minnesota Well Index.]
- *Harvey, O.R., Qafoku, N.P., Cantrell, K.J., & Brown, C.F. (2012).* Geochemical implications of CO_2 leakage associated with geologic storage: A review. PNNL-21550. Pacific Northwest National Laboratory. [Comprehensive literature review of CO_2 leakage impacts on near-surface environments; documents pH reduction of 1-3 units depending on aquifer buffering capacity; identifies poorly buffered siliceous systems as experiencing more severe and prolonged impacts; documents mobilization of As, Pb, Fe, Mn, Cd, Cu, Zn, and U; identifies redox coupling as critically undercharacterized; concludes that robust predictions require formation-specific pH-Eh characterization. Directly applicable to the Duluth Complex basalt, whose buffering capacity for CO_2 intrusion at extraction pressures has not been assessed.]
- *Keating, E.H., Fessenden, J., Kanjorski, N., Koning, D.J., & Pawar, R. (2010).* The impact of CO_2 on shallow groundwater chemistry: observations at a natural analog site and implications for carbon sequestration. *Environmental Earth Sciences,* 60, 521-536. [Natural analog study of CO_2 upwelling through a fractured sandstone aquifer; documents co-transport of CO_2 with deep brackish water introducing As, U, and Pb into shallow drinking water; demonstrates that pH

monitoring fails as early warning when calcite buffering masks the signal; concludes brine co-leakage may pose greater risk than CO_2 alone. Most directly analogous natural analog to the CO_2-dominant Topaz gas system co-occurring with pressurized saline formation waters in a fault-mediated setting.]

- *Kharaka, Y.K., et al. (2010).* Changes in the chemistry of shallow groundwater related to the 2008 injection of CO_2 at the ZERT field site, Bozeman, Montana. *Environmental Earth Sciences,* 60, 273-284. [Controlled field CO_2 injection study documenting pH 7.0→5.6, alkalinity tripling to 1,330 mg/L, Fe rising to 1,200 ppb, Mn to 1,400 ppb, and BTEX mobilization within days of injection; all concentrations below MCLs in this low-pressure carbonate-buffered sedimentary setting; authors caution that the ~1 bar pCO_2 at ZERT is a fraction of the ~68 bar pressures documented at Topaz Jetstream wells, implying substantially greater geochemical impact potential; establishes pH, alkalinity, and conductance as effective early indicators of CO_2 intrusion, but only interpretable against a pre-disturbance baseline.]

- *Little, M.G., & Jackson, R.B. (2010).* Potential impacts of leakage from deep CO_2 geosequestration on overlying freshwater aquifers. *Environmental Science & Technology,* 44(23), 9225-9232. [Long-duration laboratory incubation study (300+ days) exposing four freshwater aquifer sediment samples to continuous CO_2 under oxidizing conditions; documents pH decline of 1-2 units across all aquifer types, transition metal mobilization exceeding 1,000% above controls (Mn, Fe, Co, Ni, Zn), and time-dependent increases in Ba and U over the entire experimental period; critically establishes that carbonate-poor aquifers - lacking buffering capacity - experience the most severe contamination outcomes; identifies Mn, Fe, Ca, and pH as early-detection geochemical markers detectable within 2 weeks; concludes that aquifer metal availability, carbonate buffering capacity, and redox state must be assessed before CO_2 operations begin. Directly applicable to the Duluth Complex basalt, which lacks the abundant reactive carbonates that moderated outcomes in the carbonate-rich aquifer samples and must be characterized for buffering capacity before gas extraction commences.]

- *Trautz, R.C., Pugh, J.D., Varadharajan, C., Zheng, L., Bianchi, M., Nico, P.S., Spycher, N.F., Newell, D.L., Esposito, R.A., Wu, Y., Dafflon, B., Hubbard, S.S., & Birkholzer, J.T. (2013).* Effect of dissolved CO_2 on a shallow groundwater system: A controlled release field experiment. *Environmental Science & Technology,* 47, 298-305. [Controlled release field experiment injecting dissolved CO_2 into a confined sand aquifer over five months; documents ~3 pH unit drop (baseline 7.4-8.6 to ~5.1), pulse-response mobilization of Ba, Ca, Cr, Sr, Mg, Mn, and Fe, with statistically significant increases in Ba, Be, and Cr across multiple sampling events; EPA-regulated constituents remained below MCLs in this sandy carbonate-poor but sulfide-limited setting; synchrotron XRF confirmed As and Pb in pyrite grains in test interval - their non-mobilization attributed to site-specific absence of FeS dissolution conditions, not CO_2 safety in sulfide-bearing formations; concludes pH and total dissolved carbonate are superior early indicators compared to alkalinity and conductivity; explicitly states field-scale experiments are necessary because laboratory conditions cannot replicate in situ redox, mineralogy, and flow conditions - a methodological conclusion directly applicable to the uncharacterized fractured basalt aquifer of the Duluth Complex.]

Pulsar Helium Gas Composition Data (Topaz Project)

- Pulsar Helium Inc. (September 19, 2025). Pulsar Helium Confirms Sustained Helium Concentrations of 7-8% at Jetstream #1, With Positive Reservoir Indicators at Jetstream #2. *Globe Newswire.*

- KAXE/Minn Post (July 10, 2024). What You Need to Know About Minnesota's Helium Deposit.

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Minnesota Regulatory Sources

- Minn. R. 4410.4300, Subpart 29(B) - animal feedlot drinking water supply management area sensitive location trigger (basis for consistency argument in Section V.B)
- Minn. R. 4410.4500 and 4410.1000, subpart 3 - discretionary EAW authority (and its limitations, discussed in Section IV)
- Minn. R. 6124.3000, Subpart 8 (DNR draft) - 30-day Tribal notification requirement for all gas resource development permits
- Minn. R. 6124.0300, Subpart 1 (DNR draft) - universal permit requirement for all gas resource development operations
- Minn. R. 6124.1000, Subpart 5(D) (DNR draft) - permit application requirement for any prior environmental review documents “if applicable” (demonstrates structural gap: sub-threshold projects never generate applicable ER documents)
- Minn. R. 6124.2000 (DNR draft) - list of protected areas where gas operations are prohibited or restricted; does not include DWSMAs with vulnerable aquifers (basis for DWSMA omission argument in Section IV)
- Minn. Stat. § 10.65 - Minnesota Tribal consultation policy
- Minn. Stat. § 93.513 / 93.5176 - gas resource development permit requirement
- Minn. Stat. § 116D.04 - Minnesota Environmental Policy Act; definition of governmental action; mandatory category authority
- Minn. Stat. § 116D.02 - MEPA policy declaration; state obligation to maintain healthful environment and provide for environmental review (basis for Section VI closing argument)

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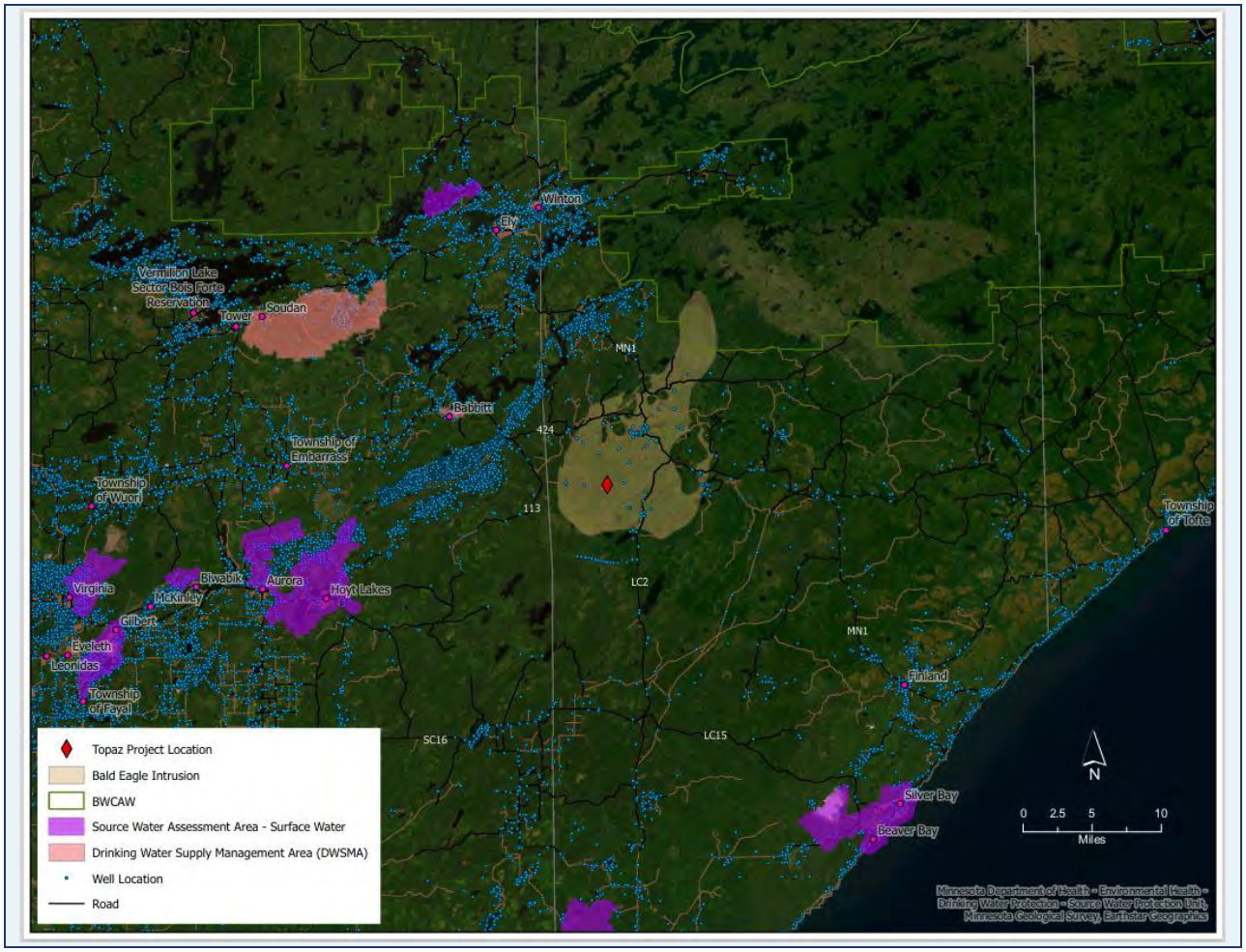
Appendix A: Water Wells Within the Duluth Complex

Figure 1. Private and Public Water Supply Wells Overlying the Duluth Complex, Northeastern Minnesota

Prepared by Heather Fox, GIS Specialist, Grand Portage Band of Lake Superior Chippewa (April 2026)



Description

This map illustrates the concentration of private and public water supply wells in Cook and Lake Counties, northeastern Minnesota, overlaid on the extent of the Duluth Complex - the Precambrian basaltic rift formation within which helium resources have been identified at the Topaz Project site near Babbitt. The map demonstrates that the Duluth Complex is a water-rich geological environment in which fracture-hosted groundwater supplies drinking water to a substantial population of area residents who rely exclusively on private wells. The geographic coincidence of high well density with the Duluth Complex footprint and the known helium resource area is central to the Intertribal Taskforce's argument that

mandatory environmental review and pre-drilling baseline groundwater assessment are necessary before any gas extraction commences in this formation.

Data Sources

- **Minnesota Well Index (MDH).** Private and public water supply well locations, Cook and Lake Counties. Minnesota Department of Health. Available at: https://mnwellindex.web.health.state.mn.us/. Accessed April 2026.
- **Minnesota Department of Health Source Water Protection Viewer.** Drinking water supply management area (DWSMA) boundaries and aquifer vulnerability classifications. Available at: https://experience.arcgis.com/experience/14825b159b2e4dc686736d98e39ebce7. Accessed April 2026.
- **Duluth Complex geology.** Formation extent derived from Minnesota Geological Survey mapping. Minnesota Department of Natural Resources. Available at: https://www.dnr.state.mn.us/waters/groundwater_section/mapping/index.html. Note: aquifer characterization for Lake County (Part B of County Geologic Atlas) remains incomplete as of April 2026.

Relevance to This Proceeding

The map directly supports the Intertribal Taskforce's argument in Sections V.A and V.B that the Duluth Complex is not an underpopulated or remote formation where gas extraction poses minimal risk to human drinking water. The well distribution shown in Figure 1 demonstrates: (1) that a substantial number of Cook and Lake County residents rely on private wells drawing from the same fractured basalt aquifer system targeted by gas extraction; (2) that these wells are distributed across the Duluth Complex footprint, not concentrated in areas remote from the known helium resource; and (3) that the absence of pre-project baseline groundwater quality data for these wells, combined with no ambient monitoring coverage for this aquifer system, means that contamination events would be undetectable and legally unattributable after the fact. The map was prepared by the Grand Portage Band's GIS program using publicly available MDH well location data, and reflects the same dataset that DNR siting rules require permit applicants to map within 1,320 feet of a spacing unit - the difference being that Figure 1 illustrates the formation-wide context that DNR's permit-level mapping does not capture.

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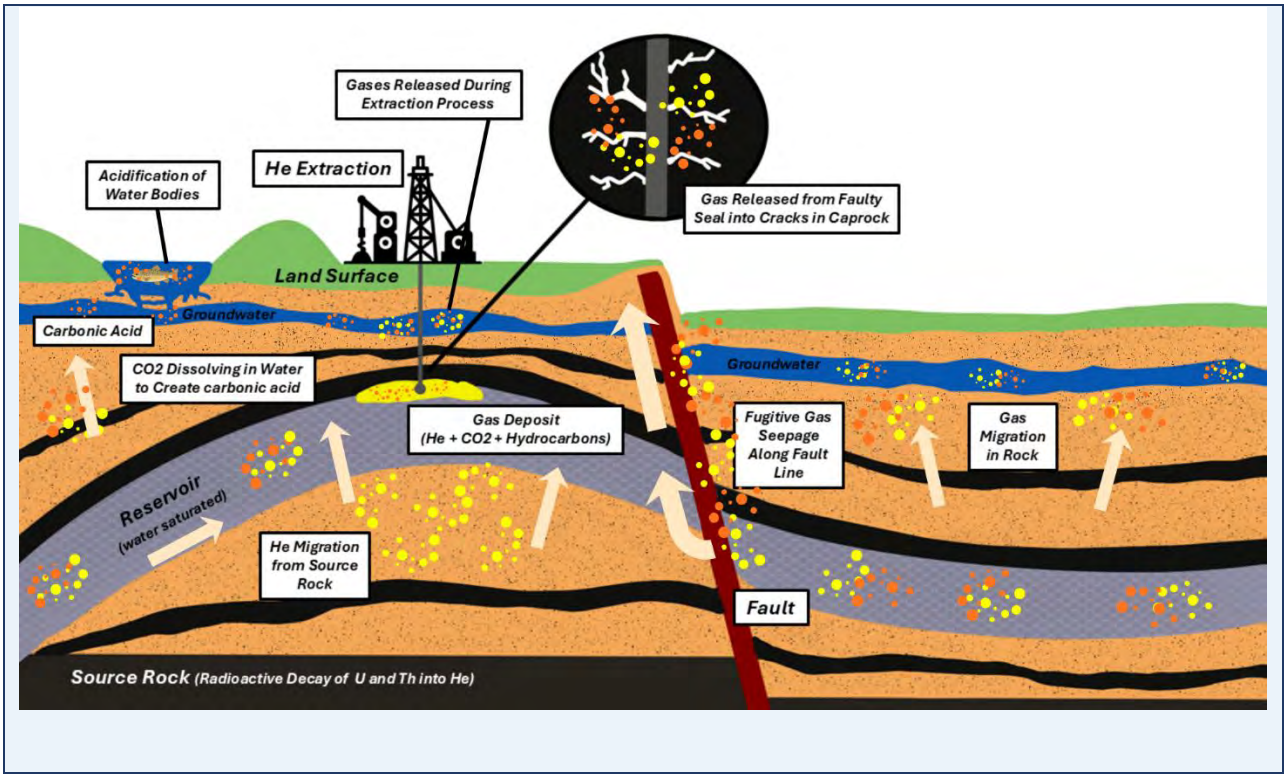
Appendix B: Pathways for Gas and Contaminant Migration to Groundwater in Gas Extraction Settings

Figure 1. Descriptive Model Showing Potential for CO_2 and methane leaks during helium extraction procedures in Duluth Complex, Northeastern Minnesota

Prepared by Alaina Bryant, Environmental Specialist, 1854 Treaty Authority (May 2026)



Description

This diagram illustrates the principle pathways by which CO_2, methane, and co-associated saline formation waters may migrate from the pressurized helium-bearing reservoir of the Duluth Complex into overlying drinking water aquifers during gas extraction operations. The Duluth Complex is depicted in cross-section, showing the target Precambrian basaltic rift formation at depths of approximately 1,750-2,200 feet, where the Topaz Project's Jetstream wells encounter a pressurized gas system (pressures approaching 1,000 psi) composed primarily of CO_2 (approximately 75-80%), helium (7-8%), and trace methane.

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The diagram shows four documented migration pathways: (1) well casing and annulus cement failure, in which gas from the target formation or intermediate-depth strata migrates upward through the annular space between the well casing and surrounding rock due to inadequate or failed cementation; (2) fault- and fracture-mediated gas transport, in which CO_2 and methane travel upward through the documented fault sets and extensional fracture networks of the Duluth Complex – including the three major fault sets mapped by Foose and Cooper (1981) and the high-fluid-pressure extensional fracture cleavage documented by Foster and Huddleston (1986) – into drinking water aquifers; (3) legacy wellbore conduits, in which historic water supply wells penetrating the same fractured basalt formation function as pre-existing vertical conduits for upward gas and brine migration, consistent with the Carroll et al. (2014) leakage modeling conducted for analogous abandoned wellbore settings; and (4) brine co-transport, in which deep saline formation waters co-migrate with CO_2 through fracture pathways, introducing arsenic, uranium, and lead into freshwater – the mechanisms documented at the Chimáo natural analog site by Keating et al. (2010).

The diagram also illustrates the geochemical hazard cascade that occurs when CO_2-dominant gas enters a poorly buffered siliceous basalt aquifer: dissolution of CO_2 into groundwater forms carbonic acid, pH drops by one to three units depending on carbonate buffering capacity, and the resulting acidic conditions leach iron, manganese, arsenic, barium, chromium, and other trace metals from the basalt mineral matrix – outcomes documented under analogous conditions by Kharaka et al. (2010), Little and Jackson (2010), Trautz et al. (2013), and Harvey et al. (2012). The absence of pre-project baseline groundwater data for the Duluth Complex is depicted by the absence of any ambient monitoring reference points in the shallow aquifer zone, illustrating that contamination events occurring through any of the four pathways shown would be undetectable and legally unattributable without a pre-disturbance baseline.

Private drinking water wells are shown penetrating the shallow fractured basalt aquifer across the diagram's surface extent, consistent with the Cook and Lake County well density illustrated in Appendix A, Figure 1. The Duluth Complex's lack of abundant calcite and dolomite – the minerals that provide carbonate buffering in sedimentary settings – is indicated in the geological cross-section notation, consistent with Harvey et al.'s (2012) finding that carbonate-poor siliceous aquifers experience the most severe and prolonged pH depression and metal leaching outcomes under CO_2 intrusion.

Data Sources

- Foose, M.P., & Cooper, R.W. (1981). Faulting and fracturing in part of the Duluth Complex, northeastern Minnesota. *Canadian Journal of Earth Sciences,* 18, 810–814. [Structural fault and fracture mapping of the Duluth Complex; basis for fault-mediated migration pathways.]
- Foster, M.E., & Hudleston, P.J. (1986). "Fracture cleavage" in the Duluth Complex, northeastern Minnesota. *Geological Society of America Bulletin,* 97(1), 85–96. [Documents high-fluid-pressure extensional fracture networks and fluid migration history in the formation.]
- Pulsar Helium Inc. (September 19, 2025). Pulsar Helium Confirms Sustained Helium Concentrations of 7–8% at Jetstream #1. *Globe Newswire.* [Reservoir depth, pressure (~1,000 psi), and gas composition (~75–80% CO_2) data for the Topaz Project.]
- Carroll, S.A., et al. (2014). Key factors for determining groundwater impacts due to leakage from geologic carbon sequestration reservoirs. *International Journal of Greenhouse Gas Control,* 29, 153–168. [Legacy wellbore conduit pathway and contamination plume persistence modeling.]
- Keating, E.H., et al. (2010). The impact of CO_2 on shallow groundwater chemistry. *Environmental Earth Sciences,* 60, 521–536. [Chimáo natural analog; brine co-transport mechanism with As, U, and Pb.]

- Harvey, O.R., et al. (2012). Geochemical implications of CO_2 leakage associated with geologic storage: A review. PNNL-21550, Pacific Northwest National Laboratory. [pH depression and trace metal mobilization in poorly buffered siliceous formations.]
- Minnesota Well Index (MDH). Private and public water supply well locations, Cook and Lake Counties. Minnesota Department of Health. Available at: https://mnwellindex.web.health.state.mn.us/. Accessed April 2026. [Basis for private well depiction in shallow aquifer zone.]
- Minnesota Geological Survey / DNR County Geologic Atlas. Duluth Complex formation extent and geological cross-section data. Available at: https://www.dnr.state.mn.us/waters/groundwater_section/mapping/index.html. [Formation depth and geology basis for cross-section. Note: Lake County aquifer characterization remains incomplete as of April 2026.]

Relevance to This Proceeding

The diagram directly supports the Intertribal Taskforce's argument in Sections II, III, and IV by providing a visual synthesis of the four migration pathways through which gas extraction operations could introduce contamination into the drinking water aquifers of Cook and Lake Counties. It illustrates why the proposed rules' five-well threshold for mandatory environmental review is insufficient: every pathway depicted – well casing failure, fault-mediated transport, legacy wellbore conduits, and brine co-transport - is present from the first well drilled, independent of well count or production volume. The diagram makes visually explicit what the peer-reviewed literature establishes analytically: the structural and geological conditions that create contamination risk in the Duluth Complex are features of the formation itself, not consequences of project scale.

The diagram also illustrates the core attribution problem documented in Section II and III: with no pre-project baseline groundwater data for the affected fractured basalt aquifer system, and no ambient monitoring coverage for this geological setting, any contamination that enters the shallow aquifer through the pathways shown cannot be detected against a known baseline, cannot be causally attributed to a specific well or operator, and cannot support regulatory enforcement or remediation requirements. Figure 1 is intended to make that evidentiary gap legible to non-technical reviewers and to establish, on the face of the record, that the conditions requiring mandatory environmental review are present from the inception of any gas development activity in this formation.

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Intertribal Task Force on Helium Extraction

SIGNATURE PAGE

to the Intertribal Taskforce on Helium Extraction Comments on the Proposed EQB Mandatory Category Rules, Minn. R. ch. 4410 (submitted June 30, 2026)

The undersigned certifies that this signature page accompanies and is incorporated into the foregoing comments of the Intertribal Taskforce on Helium Extraction, and reflects the official position of the signing Tribal government regarding the proposed rules.

Bois Forte Band of Chippewa

Signed by:
38A0C1B3E2714E3...
Carlos Hernandez

Chairman

6/30/2026
Date_____

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1854 Tribes

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Fond du Lac Band of Lake Superior Chippewa

Signed by:
Bruce Savage
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Bruce Savage

Chairman

6/30/2026
Date_____

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1854 Tribes
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Grand Portage Band of Lake Superior Chippewa

Signed by:
Robert Deschampe
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Robert Deschampe

Chairman

6/30/2026
Date_____

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7/2/2026

July 1, 2026

Jesse Krzenski
Environmental Review Program Director
Minnesota Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155
jesse.krzenski@state.mn.us

Re: Pulsar Helium Comments on Proposed Expedited Amendments to Rules Governing the Environmental Review Program Addressing Gas Resource Development Projects, Minnesota Rules, Chapter 4410, Revisor's ID Number R-04945

Mr. Krzenski:

Pulsar Helium Inc. ("Pulsar") appreciates the opportunity to provide comments to the Minnesota Environmental Quality Board (EQB) on the EQB's Proposed Expedited Amendments to Rules Governing the Environmental Review Program Addressing Gas Resource Development Projects, Minnesota Rules, Chapter 4410, Revisor's ID Number R-04945 (the "Proposed Rules"). Pulsar is a helium project developer operating in Northeastern Minnesota. The company is focused on exploring and advancing the development of primary (geologic) helium resources to secure a stable, long-term domestic helium supply to support economic and national security across vital industries in Minnesota and the United States.

I. INTRODUCTION

The State of Minnesota's decision to establish a comprehensive regulatory framework and policy pathway to develop its unique and vital helium resource is to be applauded. Establishing a regulatory framework for gas exploration and development in a manner that protects the environment, water, and critical habitat, promotes economic development and job creation, and ensures critical U.S. industries, research laboratories, and academic institutions have helium supply chain security are all priorities shared by Pulsar.

The Proposed Rules represent an important step in implementing the Legislature's new framework for helium resource development. These rulemakings provide a timely opportunity to establish a clear, science-based pathway that both safeguards Minnesota's

environmental resources and supports the reliable supply of helium, which plays an essential role in public health and safety.

For background, helium is a noble gas. It is inert, non-toxic, and nonradioactive. Helium does not pollute the land, water, or air. In fact, helium is naturally occurring, non-flammable, and found underground in certain geological formations. Helium has extremely low chemical reactivity and it is lighter than air.

There are two helium isotopes: helium-4 and helium-3. The overwhelming abundance of helium is helium-4, which is produced at industrial scale for commercial distribution. With a boiling point of -452 Fahrenheit, helium-4's cryogenic characteristics make it essential to manufacturing MRI machines and semiconductors, and vital to industries such as aerospace, shipbuilding, satellites, and scientific research.

Helium-3 is very rare and has unique sub-atomic and cryogenic properties that make it essential to national security and research applications including nuclear detection, quantum computing, and advanced semiconductor manufacturing. In the U.S., Helium-3 is not traded in the marketplace and is only produced as a biproduct of nuclear weapons maintenance resulting from the decay of tritium. The National Nuclear Security Administration of the U.S. Department of Energy controls the production, distribution, and sale of helium-3. Presently, helium-3 is priced at approximately $20,000,000 per kilogram. The future demand for helium-3 is projected to be so critical to the economic and national security of the United States that the U.S. House Appropriations Committee in May 2026 urged NASA to "support the development of technology for the prospecting of Helium-3 on the lunar surface" where helium-3 concentrations approximate those found in Northeastern Minnesota.

In 2024, Pulsar Helium announced a significant helium discovery at its Topaz site near Babbitt, Minnesota. Testing confirmed helium concentrations are as much as 1,000% higher than concentrations commonly observed in hydrocarbon-associated helium fields. While 95% of global helium production is associated with oil and natural gas production, the Topaz site is hydrocarbon free containing only helium and carbon dioxide gases. Only a limited number of primary helium systems globally have advanced toward commercial development. Pulsar's Minnesota discovery represents one of the most advanced confirmed primary helium systems in North America, possibly the world.

In January 2026, independent analysis by the U.S. Geological Survey Noble Gas Laboratory and Lawrence Livermore National Laboratory confirmed the presence of helium-4 and helium-3 at the Topaz site. In raw samples from Jetstream #1, exploratory well testing confirmed concentrations of helium-3 in the range of 11.2-11.9 parts-per-billion (ppb) and helium-4 at concentrations of 7.7-8.0%. These concentrations represent a helium asset of national significance that can provide vital supply chain security for U.S. economic and national security requirements.

The U.S., Russia, Algeria, and Qatar remain the world's primary helium producers, together accounting for nearly all global supply. With the sale of the U.S. Federal Helium Reserve in 2024, the U.S. no longer maintains a strategic stockpile to prevent shocks in the helium market. Developing domestic primary helium systems strengthens national resilience and reduces reliance on geopolitically volatile sources.

This is particularly true in 2026 as a rising global demand for helium driven by semiconductor production and other advanced technology industries has been met with a dramatic 40% decrease in global helium supply and the resulting skyrocketing prices. This devastating supply chain disruption has been due to the destruction of helium production in Qatar (33% of global supply) during the Iran war and Russian export controls resulting from their war with Ukraine. While the U.S. remains the world's largest producer of helium, global demand will continue to far outstrip supply for the foreseeable future, providing Minnesota with a unique opportunity to establish a thriving helium gas industry and help ensure supply chain security for the U.S.

The Topaz discovery represents one of the most significant new resource development opportunities in Northeastern Minnesota in decades, with implications for strategic materials supply, economic growth, and national security. When Topaz moves into production it will have important implications for Minnesota's economy and infrastructure development. It is presently estimated that 325,000 Minnesota jobs are associated with helium dependent industries. Minnesota's aerospace, semiconductor, medical, and research sectors already rely on helium. Currently, all helium used in the state is imported from out-of-state or international suppliers, exposing critical industries to supply chain disruptions and price volatility. When Topaz moves to production, thousands of jobs in Northeastern Minnesota and across the state will be required to support gas production and distribution, as well as the associated industries dependent upon access to Minnesota helium.

Currently, Pulsar has seven exploration wells that have demonstrated the presence of a high-pressure reservoir of helium. While production, liquidation, and distribution of helium will be Pulsar's primary commercial activity, the company also intends to commercialize the production of the reservoir's carbon dioxide for sale to the food and beverage industry, hospital grade gas, and for other industrial uses. All gas produced at the Topaz site is expected to be utilized to meet essential commercial needs within Minnesota and across the U.S.

In pursuing helium and carbon dioxide production, Pulsar supports and embraces the fact that all drilling and production activity must be done in compliance with Minnesota's environmental and regulatory standards. Pulsar respects the unique ecological character of Northeastern Minnesota's public lands, especially the Boundary Waters Canoe Area Wilderness, and applauds the clear environmental protections presented in the proposed rules. Ensuring that environmental standards are met or exceeded is a commitment Pulsar takes seriously. Therefore, Pulsar's helium-only Topaz project:

- Will not involve hydraulic fracturing;
- Will not require large-scale water injection;
- Will not generate tailings or acid mine drainage; and
- Will not involve chemical leaching processes.

Helium gas production at the Topaz site will require compact surface infrastructure, with fewer wells and smaller processing facilities compared to conventional oil, gas, or mining operations. Standard drilling materials and operations will be regulated under Minnesota environmental law.

As previously stated, helium is chemically inert, non-toxic, and nonradioactive. As a naturally occurring element it does not pollute air, water, or land. Helium is not a greenhouse gas, nor does it deplete ozone. An accidental helium release does not create hazardous air pollutants. In fact, the U.S. Geological Survey reported in 2014 that geological formations within Yellowstone National Park release 60 tons of helium per year with no negative environmental impact.

Pulsar intends to continue to work closely with state, federal, local, and Tribal governments to ensure the Topaz project proceeds to production in a manner that protects the environment, contributes to Minnesota's economy, and creates good paying jobs for Minnesotans. At the same time, the development of a regulatory framework in Minnesota to

enable helium gas production requires technical expertise within state agencies, input from all stakeholders, and a shared commitment to act with the public interest in mind. Ensuring helium supply chain security for critical industries across the U.S. are also matters of concern and urgency. In all these areas, Pulsar is committed to collaborating with the State of Minnesota, as well as local and Tribal government partners, in a cooperative and constructive manner.

The Topaz project is an opportunity for Minnesota to establish a new industry, attract the industries of the future that require access to helium, and play a generational role in ensuring critical supply chain security for the industries and innovations that will drive the economic future for Minnesota and the U.S.

Dr. Joseph DiVerdi, a chemist from Colorado State University, wrote in the New York Times in September 2019 during another helium market shock, *"Liquid helium is a quiet engine of American research and business. It is essential to a broad range of technologies, from cutting edge quantum computing to M.R.I. scanners in hospitals. It has fostered the development of billion-dollar industries, fueled essential lifesaving medical tools, supported work leading to more than 5,000 patents and helped generate numerous Nobel Prizes. In short, it is crucial to innovation."*

Pulsar appreciates and respects the Minnesota rulemaking process. We look forward to working with the State of Minnesota to advance helium gas production. Most of all, we look forward to providing businesses, innovators, academic institutions, and America's national laboratories with the secure supply of helium-4 and helium-3 that will drive the industries and innovations to keep Minnesota and the U.S. strong, safe, and successful.

II. COMMENTS

Pulsar is generally supportive of the Proposed Rules. We have anticipated that our Topaz Helium Project would require an environmental assessment worksheet (EAW), and we look forward to cooperating with the EQB to understand any potential significant environmental impacts from the project and find ways to mitigate them.

Given the significant economic and strategic potential of helium development in Minnesota, we look forward to remaining actively engaged in the EQB's rulemaking process and working with the EQB to ensure that the final rules facilitate the safe, environmentally responsible, and commercially viable development of the state's helium and other gas resources.

Sincerely,

Cliff Cain
President

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7/2/2026

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July 2, 2026

Submitted electronically to Court of Administrative Hearings

Administrative Law Judge Suzanne Todnem
Court of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164

RE: Proposed Amendments to Rules Governing the Environmental Review Program [Mandatory EAW and EIS Categories] for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

Dear Judge Todnem,

These comments are submitted on behalf of WaterLegacy, the Minnesota Center for Environmental Advocacy, Northeastern Minnesotans for Wilderness, and CURE.

We appreciate the chance to comment on the Minnesota Environmental Quality Board's ("EQB") proposed expedited rules setting mandatory categories for preparation of an environmental assessment worksheet ("EAW") or an environmental impact statement ("EIS") for gas resource development projects ("EQB Proposed Gas Rules" or "Proposed Rules"), provided in **Attachment A**. Minnesota has never had a gas resources development industry, and many of the substantive and policy issues raised by gas resource extraction, production, and processing are novel to Minnesota.

The legal framework for the EQB Proposed Gas Rules is problematic. The 2024 statute that authorized EQB to adopt rules to "establish mandatory categories for environmental review" as they pertain to "gas production," Minn. Stat. § 93.514, provided no policy or substantive standards, but required an expedited process pursuant to Minn. Stat. § 14.389 should EQB choose to adopt rules. The EQB Proposed Gas Rules then incorporated draft gas rules—in development but not adopted—by the Minnesota Department of Natural Resources ("DNR"), delegating EQB's authority to another agency contrary to Minnesota Statutes chapters 116C and 116D. Finally, several provisions of the EQB's Proposed Gas Rules are inconsistent with Gas Resource Development statutory provisions signed by Governor Tim Walz on May 20, 2026 and adopted in 2026 Sess. Laws, chapter 127, article 2 ("2026 Gas Law"), copied in **Attachment B**.

We respectfully request that this Court of Administrative Hearings ("CAH") disapprove the Proposed EQB Gas Rules on the following grounds:

1. EQB's Proposed Gas Rules must be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100, item D because they conflict with definitions

in the 2026 Gas Law and do not comply with its provisions that prohibit fracking in gas wells and limit injection of substances in gas wells.

2. EQB's Proposed Gas Rules must be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100, items D and F, because they improperly delegate conditions for mandatory EAW review to DNR, in conflict with Minn. Stat. §§ 116C.03, subd. 2 and 116D.04, subd. 2a(b), and improperly incorporate materials that fail to meet the requirements of Minn. Stat. § 14.07, subd. 4.

3. EQB's Proposed Gas Rules must be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100, items D and E because EQB expedited rulemaking without legislative standards fails to meet Article 3 constitutional requirements for separation of powers.

In addition to requesting that this Court disapprove EQB's Proposed Gas Rules, WaterLegacy requests that EQB withdraw its Proposed Gas Rules pursuant to Minn. Stat. § 14.05, subd. 3; Minn. R. 1400.2410, subp. 4. Most of EQB's Proposed Rules conflict with applicable legal requirements and must be disapproved as a matter of law. What would remain is inadequate on its face. Policies in the 2026 Gas Law and EQB's documentation in its Rule Summary and Justification Memo[1] demonstrate that the Proposed Rules are neither reasonable nor rationally related to the EQB's objective to ensure adequate EAW screening when there may be a potential for significant cumulative environmental effects and EIS environmental review when a project has the potential for significant cumulative environmental effects.

EQB'S PROPOSED GAS RULES SHOULD BE DISAPPROVED

Minnesota's Administrative Procedure Act ("MAPA"), Minn. Stat. ch. 14, ordinarily requires that agencies proposing rules prepare and publish a Statement of Need and Reasonableness ("SONAR"), Minn. Stat. § 14.131 and — if 25 or more persons request it — conduct a public hearing before an Administrative Law Judge ("ALJ"). Minn. Stat. § 14.22, subd. 1. The ALJ then issues a report finding the rules to be "needed and reasonable" (or not) before they can take effect. Minn. Stat. § 14.50.

The expedited rulemaking process under Minn. Stat. § 14.389 bypasses the SONAR requirement and public hearing. Instead, the agency submits a "Rule Summary and Justification" to the Court of Administrative Hearings ("CAH"), a 45-day public comment period is held, and the CAH reviews the proposed rules only for legality and procedural compliance. This is a significantly reduced level of "public participation in the formulation of administrative rules," Minn. Stat. § 14.001(5) and "public accountability of administrative agencies," *id.*, (2).

In expedited rulemaking CAH has the authority to "review the agency's filing and either approve or disapprove it . . . In reviewing the filing, the judge must decide whether the rule

[1] EQB, Environmental review: Mandatory Category for Gas Resource Development Projects Rule Summary and Justification Memo, April 3, 2026, **Attachment C**.

meets the standards of part 1400.2100, items A and C to H." Part 1400.2100 requires in pertinent part:

> A rule must be disapproved by the judge or chief judge if the rule:
>
> ***
>
> **D.** exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;
> **E.** is unconstitutional or illegal;
> **F.** improperly delegates the agency's powers to another agency, person, or group;

EQB's Proposed Gas Rules fail to meet the standards of Minn. R. 1400.2100, items D, E, and F. They must be disapproved in accordance with part 1400.2410, subp. 3 and to uphold applicable Minnesota statutes and constitutional requirements.

1. EQB Proposed Gas Rules Must be Disapproved Because They Conflict with Explicit Provisions in the 2026 Gas Law.

EQB's Proposed Gas Rules should be disapproved because they conflict with the 2026 Gas Law. An administrative judge is required to "approve or disapprove" an expedited rule "as to its legality." Minn. Stat. § 14.389, subd. 4. A rule "must be disapproved by the judge," among other reasons, if the rule "exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law." Minn. R. 1400.2410, subp. 3; Minn. R. 1400.2100, item D.

EQB's Proposed Gas Rules relating to fracking and injections into wells conflict with the 2026 Gas Law. They propose environmental review for activities that are explicitly prohibited and undermine the protection of natural resources, health, and safety, as provided in that Law. The following EQB Proposed Gas Rules should be stricken due to conflict with the 2026 Gas Law and its amendments to Minnesota Statutes, chapter 103I.

A. EQB Proposed Rule 4410.0200, subp. 38a defining "high-volume hydraulic fracturing" with 100,000 gallons or more of fluids must be disapproved since it provides a definition for the extreme form of an activity that is prohibited by the 2026 Gas Law.

B. EQB Proposed Rule 4410.4400, subp. 29, providing an EIS for a gas resource development project "designed to use high-volume hydraulic fracturing techniques" must be disapproved because any hydraulic fracturing is prohibited by the 2026 Gas Law.

The 2026 Gas Law defines "hydraulic fracturing treatment" to mean "all stages of the treatment of a gas well by the application of fluid under pressure that is expressly intended to initiate or propagate fractures in a target geologic formation to enhance production of oil and gas." Sec. 7, amending Minn. Stat. § 103I.005 to add subd. 11a. This statutory definition

clearly intends to regulate all stages and all volumes of fracking. EQB's definition of "high-volume" fracking is inconsistent with the statutory definition of hydraulic fracturing.

Moreover, the 2026 Gas Law requires the Minnesota Department of Health ("MDH") to adopt rules that "include a prohibition against hydraulic fracturing treatment." Sec. 13, adding Minn. Stat. § 103I.706, subd. 1. The 2026 Gas Law also explicitly prohibits fracking, stating: "Hydraulic fracturing treatment is prohibited in a gas well." 2026 Gas Law, Sec. 16, adding Minn. Stat. § 103I.709, subd. 2.

EQB's Rule at part 4410.4400, subp. 29, proposes that even "high-volume" fracking is allowed so long as the DNR conducts an EIS, when the Legislature has stated clearly and explicitly that fracking in a gas well is prohibited. This Rule provision directly conflicts with and undermines the statutory prohibition on any hydraulic fracturing in a gas well, as detailed above. 2026 Gas Law, Sec. 13, adding Minn. Stat. § 103I.706, subd. 1 and Sec. 16, adding Minn. Stat. § 103I.709, subd. 2.

EQB's Proposed Gas Rule 4410.0200, subp. 38a and part 4410.4400, subp. 29 must be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100(D) because they conflict with applicable law.

EQB's Proposed Rule has no other mandatory category for an EIS, other than this provision in part 4410.4400, subp. 29 requiring an EIS for "high-volume" fracking.

Once EQB's sole mandatory EIS category for high-volume fracking is rejected, EQB has proposed no mandatory category for EIS environmental review, only categories for an EAW screening document "which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required." Minn. Stat. § 116D.04, subd. 1(c), Since the enabling statute, Minn. Stat. § 93.514, authorized "mandatory categories for environmental review," not mandatory categories only for EAW screening, the scope of EQB's Proposed Gas Rules is inconsistent with this enabling statute. On these grounds alone, EQB's Proposed Gas Rules should be disapproved or withdrawn in their entirety.

C. EQB Proposed Gas Rule 4410.4300, subp. 38, item E requiring an EAW for a "gas resource development project designed to produce gas created by injecting a substance into the subsurface to create or stimulate a chemical reaction" must be disapproved because it is inconsistent with the 2026 Gas Law. Proposed Rule **4410.4300, subp. 38, items D and E** are also inconsistent with the delegation of authority in applicable statutes.

EQB Proposed Rule part 4410.4300, subp. 38, item E would require an EAW and implicitly authorize gas resource development that injects any "substance" into the "subsurface" at any location "to create or stimulate a chemical reaction." This provision conflicts with provisions of the 2026 Gas Law that require the MDH to draft rules establishing "a prohibition against the injection or disposal of surface water, groundwater, or any other liquid, gas, or chemical except for approved drilling fluids." Sec. 13, adding Minn. Stat. § 103I.706, subd. 1; Sec. 16, adding Minn. Stat. § 103I.709, subd. 1 (prohibiting injection into gas wells of substances other

than "approved drilling fluids"). Item E must be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100(D) because its terms conflict with the 2026 Gas Law.

EQB Rules also propose to require an EAW for construction of a gas development project that is "designed to include one or more class II underground injection wells, as defined in Code of Federal Regulations, title 40, section 144.6(b), for waste disposal." EQB Proposed Rule, 4410.4300, subp. 38, item D. The 2026 Gas Law does not categorically prohibit injections if a class II well permit is obtained for a gas well. 2026 Gas Law, Sec. 16, subd. 1(2).[2]

However, EQB's Proposed Rules in part 4410.4300, subpart 38 conflict with the 2026 Gas Law and Minnesota Statutes, chapter 103I by requiring that DNR serve as the responsible governmental unit ("RGU") to prepare an EAW for gas development projects involving class II well injections. Both the 2026 Gas Law and chapter 103I of Minnesota Statutes vest responsibility with MDH for gas wells and class II injections into gas wells to ensure protection of water, health, and safety. *See* Minn. Stat. § 103I.101 (MDH authority); 2026 Gas Law, Sec. 13 (adopting Minn. Stat. § 103I.706, subd. 1 and directing MDH to conduct rulemaking restricting injections into gas wells); and *id.*, Sec. 16 (adopting Minn. Stat. § 103I.709, subd. 1 placing constraints on injections in ch. 103I, under the authority of MDH).

After EQB Proposed Gas Rules are disapproved or withdrawn, EQB should consider MDH authority over wells, groundwater, health, and safety as well as DNR's responsibilities in determining the RGU for gas resource development projects.

D. EQB Proposed Gas Rule 4410.0200, subp. 32d defining a "gas well" as a "well that is intended for gas production and that is included as part of a gas resource development project" must be disapproved because it conflicts with the definition and allocation of authority in the 2026 Gas Law.

[2] EQB's Proposed Gas Rules seem to assume that Minnesota will not apply for regulatory authority under the Federal Safe Drinking Water Act ("SDWA") Underground Injection Control ("UIC"). EQB Rule Justification Memo at 15-16. However, if a gas resource development program is contemplated, it is vital that Minnesota apply for and obtain primacy to administer its own class II program by maintaining federal minimum requirements and adequate records. *See* 42 U.S.C. § 300h-1. The EPA's SDWA program establishes a minimum floor, rather than a maximum ceiling for regulation to protect water and health, and expressly preserves states authority to impose more stringent regulations—including prohibitions—on top of federal minimums. 42 U.S.C. §300h-2(d). WaterLegacy recommends that the State of Minnesota apply for and obtain primacy to administer its own class II underground injection program to reflect the value and vulnerability of Minnesota waters.

EQB's proposed definition of "gas well" in part 4410.0200, subp. 32d to mean a well that is "intended for gas production and included as part of a gas resource development project" conflicts with the definition of "gas well" in the 2026 Gas Law. The Legislature has defined "gas well" to mean "an excavation that is constructed to locate, extract, or produce gas." 2026 Gas Law, Sec. 5, adding subd. 10b to Minn. Stat. § 103I.001. This difference is substantive. The 2026 Gas Law also sets statutory controls on "gas wells" constructed to locate and extract gas—not just the use of gas wells at the production stage—and assigns these responsibilities to MDH under Minnesota Statutes chapter 103I. Pertinent provisions include the following:

> Conversion of a "gas well" to any other type of well or boring is prohibited unless specified conditions are met. 2026 Gas Law, Sec. 11 and Sec. 12, amending Minn. Stat. § 103I.601 to add subds. 11 and 12.
>
> MDH is directed to adopt rules for "gas wells," including prohibitions on fracking and injections of any substance other than approved drilling fluids, which "rules must distinguish between types of gas based on the risks they pose to groundwater quality, health, and safety" *Id.*, Sec. 13, adding Minn. Stat. § 103I.706, subd. 1.
>
> A moratorium is imposed on "gas well" conversion and construction pending MDH rulemaking and statutes authorizing permits and fees. *Id.*, Sec. 14, adding Minn. Stat. § 103I.707.
>
> Construction of a "gas well" for the "primary purpose of producing a gas" is restricted to "gas wells" for helium in certain counties. *Id.*, Sec. 15, adding Minn. Stat. § 103I.708.

EQB's definition of a "gas well" in part 4410.0200, subp. 32d must be disapproved under parts 1400.2410 and 1400.2100.

2. EQB Proposed Gas Rules Must be Disapproved Due to Improper Delegation to DNR and Improper Incorporations by Reference.

EQB's Proposed Gas Rule, 4410.4300, subp. 38, items B and C, must be disapproved because this portion of the Rule "improperly delegates the agency's powers to another agency" and fails to comply with applicable law under MAPA precluding incorporation by reference of uncertain and unadopted rules. Minn. R. 1400.2100, items D and F. As shown below, EQB has proposed EAW mandatory categories based on "rules adopted by the DNR."

> **EQB Proposed Rule 4410.4300, subp. 38, item B,** requires an EAW for a gas development project "using horizontal or directional drilling methods <u>beneath an area subject to only surface disturbance siting prohibitions in rules adopted by the DNR</u>, if the target resource for extraction is less than one-quarter mile below the surface" (emphasis added).

> **EQB Proposed Rule 4410.4300, subp. 38, item C,** requires an EAW for a gas development project "designed to produce gas from beneath an area subject to both surface disturbance and directional drilling siting prohibitions in rules adopted by the DNR" (emphasis added).

However, as EQB knew when submitting its Proposed Gas Rules to the CAH for review, DNR's proposed gas rules have not been "adopted" and may or may not be disapproved, modified, or withdrawn.[3] EQB Rules for part 4410.4300, subpart 38 were proposed on April 8, 2026. On that date, DNR proposed gas development rules had not yet been noticed for public comment,[4] let alone reviewed by the CAH or adopted.

Rather than specifying locations that EQB had determined were suitable for a mandatory EAW, EQB delegated to DNR the responsibility to determine which sites may or may not have potential significant environmental impacts from gas production and require an EAW. Neither EQB's Proposed Rule nor its Summary and Justification Memo provide any independent analysis of the types of sites that should or should not require an EAW before a gas development project is permitted. *See e.g.,* **Attachment C** at 14.

EQB lacked authority to delegate mandatory EAW categories to DNR. The enabling statute for this rulemaking, Minn. Stat. § 93.514(a)(3), authorizes the EQB, not DNR, to "establish mandatory categories for environmental review as they pertain to gas and oil resources." In addition, the Minnesota Environmental Policy Act ("MEPA") grants the EQB, not DNR, the authority to "by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets must be prepared." Minn. Stat. § 116D.04, subd. 2a(b). DNR is a potential RGU under MEPA; nothing more.

Case law is unequivocal. "The legislature has authorized the MEQB to establish by rule, categories of actions for which an EIS is required." *City of Bloomington v. City of Burnsville,* 666 N.W.2d 414, 418 (Minn. App. 2003). EQB determines what an RGU must consider regarding environmental review, not the other way around. *See e.g., Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 380 (Minn. Ct. App. 2009) (EQB sets forth criteria that an RGU "is required to analyze when determining whether a proposed project has the potential for significant environmental effects").

EQB may not delegate its environmental review rulemaking authority to DNR. Each agency is required to "adopt, amend, suspend, or repeal its rules. . . only pursuant to authority delegated by law and in full compliance with its duties and obligations." Minn Stat. § 14.05, subd. 1. MEPA also emphasizes that EQB board members "may not delegate their powers

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[3] WaterLegacy's comments on DNR's Proposed Gas Rules demonstrate that DNR's siting provisions conflict with Minn. Stat. § 93.513, subd. 1, which requires that any gas resource development permit "must be protective of natural resources" and other applicable law.

[4] DNR Gas Rules were made available for public comment on May 18, 2026. DNR, Email: Public comment period open now through July 2 on draft rules for permitting gas resource development, May 18, 2026. **Attachment D**.

and responsibilities as board members to any other person." Minn. Stat. § 116C.03, subd. 2. This prohibition precludes delegation to the commissioner of DNR.

EQB Proposed Rule provisions in part 4410.4300, subpart 38, items B and C should also be disapproved because they fail to comply with applicable law in MAPA that limits incorporation by reference into rules. An agency may incorporate by reference text from Minnesota Statutes or Minnesota Rules that have been officially adopted. Minn. Stat. § 14.07, subd. 4(a). Under MAPA, EQB cannot incorporate DNR's unpromulgated and uncertain draft rules for siting of gas resource development to determine gas mandatory EAW categories.

EQB's reliance on DNR unpromulgated rules without even a semblance of independent analysis must be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100 (D) and (F) as an improper delegation and failure to comply with applicable law.

3. EQB Proposed Gas Rules Should be Disapproved due to Failure to Meet Constitutional Requirements.

EQB's Proposed Gas Rules should be disapproved in their entirety because they reflect a novel and troubling delegation of legislative powers to the executive branch that violates separation of powers. These Proposed Gas Rules should be disapproved as "unconstitutional" under Minn. R. 1400.2100, item E and Minn. R. 1400.2410, subp. 3.

Minnesota's Constitution clearly provides for a division of powers:

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Minn. Constitution, Art. 3, Sec. 1.

There are no provisions in the Minnesota Constitution authorizing the Legislature to delegate its legislative power to agencies in rulemaking, let alone expedited rulemaking. In fact, the Minnesota Supreme Court has applied a "nondelegation doctrine" to conclude that "purely legislative power cannot be delegated." *City of Richfield v. Local No. 1215, Int'l Ass'n of Firefighters,* 276 N.W.2d 42, 45 (Minn. 1979) (citing *Lee v. Delmont,* 228 Minn. 101, 112, 36 N.W.2d 530, 538 (1949)). The delegation of power for agency rulemaking will be constitutional only "where a law embodies a reasonably clear policy or standard to guide and control administrative officers, so that the law takes effect by its own terms when the facts are ascertained by the officers and not according to their whim." *Id.*

Delegation is not an "unconstitutional abdication of legislative power" when an administrative body complies with "well-defined standards" set by the Legislature and "required rulemaking procedures." *State v. King,* 257 N.W.2d 693, 695 (Minn. 1977). But, the

"legislature may not delegate the authority to make a complete law" or provide a "delegation of pure legislative power" though "it may constitutionally authorize an administrative body to determine those facts that will make a statute effective." *Id*. at 697 (quoting *Lee v. Delmont*, 228 Minn. at 113, 36 N.W.2d at 538, which states that the law must furnish "a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the operative facts to which the law applies" so that the "discretionary power delegated to the board or commission is not legislative.").

The Minnesota Legislature furnished no reasonably clear standard or policy to EQB in Minn. Stat. § 93.514(a)(3) or in any other statute to guide EQB's adoption of rules to establish mandatory categories for gas and oil production. Unlike the 2026 Gas Law, which provided MDH with rulemaking standards and policy guidance related to borings, gas wells, and fees, the 2024 authorization for gas and oil production rulemaking unconstitutionally delegated pure legislative power.

The fallout from this delegation to the EQB is evident in direct conflicts between EQB Proposed Gas Rules and the 2026 Gas Law and the awkward and improper reliance by EQB on unpromulgated DNR rules. It is not aberrant for the Legislature to authorize EQB expedited rules, but it is aberrant to authorize expedited rules prior to stating policies that must be implemented in those rules.

WaterLegacy found only two instances other than these Proposed Gas Rules (Revisor No. R-4945) where a truncated process for EQB rulemaking was authorized. Expedited EQB rules R-4944 were authorized by the Energy Infrastructure Permitting Act Conforming Changes, Minn. Laws 2024, Ch. 126, Art. 9, Sec. 19(b), which directed EQB to use expedited rulemaking to "amend Minnesota Rules, chapter 4410, to conform with the changes made in this act" (emphasis added). The EQB's Rule Summary and Justification for these Energy Infrastructure rules explicitly acknowledged that the "the substantive changes were made by the legislature."[5] EQB's role was ministerial: identify the conforming changes and make them.

Exempt EQB rulemaking under Minn. Stat. § 14.388 for the R-4798 EIS Scoping Rulemaking Laws was authorized in Minn. Laws 2025, 1st Special Session, Ch. 1, Art. 6, Sec. 5, which directed the EQB to amend Minn. R. 4410.2100 in two specific ways. The Legislature prescribed the substantive elements of the rule: remove the requirement to prepare an EAW for a mandatory EIS and set a 280-day deadline for EIS scoping. No policy judgment by the EQB was involved. In review of this process, the CAH disapproved numerous sections of R-4798 which did not comply with the Legislature's directive in authorizing the rulemaking.[6]

By contrast, in this EQB Proposed Gas Rule process, R-4945, the Legislature made no substantive environmental review policy choices for gas development and provided no

[5] EQB, Rule Summary and Justification Memo for Environmental Review: Conformance with Energy Infrastructure Permitting Act (R-4944), Sept. 25, 2025, **Attachment E** at 7.

[6] Order, *In re Exempt Permanent Rules Relating to Scoping Documents for Environmental Review*, CAH 21-9008-41465, Revisor RD-4798 (Ct. of Admin. Hr'gs Mar. 24, 2026), **Attachment F**.

direction to EQB as to the categories of gas development projects, sizes, locations, or hazards that should require an EAW or an EIS. This delegation of pure legislative power to the EQB is unconstitutional. Minn. Const. Art. 3, Sec. 1.

This improper delegation of legislative authority to an administrative agency is exacerbated by expedited rulemaking without the protections of a full MAPA process, including hearings, creation of a rulemaking record, a statement of need and reasonableness, an open opportunity for an agency to change the content of rules in response to public input, and greater accountability to this Court, which must disapprove rules that "are not rationally related to the agency's objective" and or for which "the record does not demonstrate the need for or reasonableness of the rule." *See* Minn. Stat. § 14.389; Minn. R. 1400.2410, subp. 3; Minn. R. 1400.2100, item B.

EQB's Proposed Gas Rules rulemaking process without standards or MAPA protections has led EQB to disregard extensive and thoughtful input from Tribal environmental staff and public stakeholders and has given the DNR an inappropriate role in EQB rulemaking. This unconstitutional and undemocratic process has blocked meaningful public discussion of the potential adverse environmental effects of gas development and the mandatory EAW and EIS categories needed to identify, avoid, minimize, and mitigate those harms. In addition to violating constitutional separation of powers, the EQB Proposed Gas Rules process has undermined "public accountability of administrative agencies" and decreased "public participation in the formulation of administrative rules." Minn. Stat. § 14.001 (2) and (5). These Proposed Rules should be disapproved in their entirety.

EQB SHOULD WITHDRAW ITS PROPOSED RULES AND DEVELOP NEW MANDATORY CATEGORIES FOR GAS PRODUCTION

Under Minn. Stat. § 93.514(a)(3), EQB was authorized—not directed—to adopt mandatory category rules before the Legislature had provided policy direction on environmental review of gas resource development. EQB now has the authority, in light of the 2026 Gas Law and the legal concerns raised herein to withdraw its Proposed Gas Rules. In fact, EQB may withdraw its Proposed Gas Rules pursuant to Minn. Stat. § 14.05, subd. 3 ("An agency may withdraw a rule any time before filing it with the secretary of state") and Minn. R. 1400.2410, subp. 4 without the need to provide any explanation. Withdrawing a rule is authorized "unless the withdrawal of the rule or a portion of the rule makes the remaining rules substantially different," a proviso which is not applicable here. *Id*.

There is ample justification for EQB to withdraw its Proposed Gas Rules. The few remaining provisions that do not conflict with applicable statutes are not rationally related to EQB's stated objective to require EAW screening when there may be a potential and EIS analysis when there is a potential for significant cumulative environmental effects from gas resource development. Further, EQB's Proposed Rules unreasonably and arbitrarily reject EQB's own

prior recommendations and proposals of Tribal staff and conservation organizations that serve EQB's stated objective.[7]

Finally, it appears from the EQB's record that EQB received input in "coordination" with Tribal environmental staff, but engaged in no tribal consultation. Rule Summary and Justification Memo at pdf 19-30. EQB was required under the 2026 Gas Law, Sec. 1, to engage in Tribal consultation in compliance with Minn. Stat. § 10.65 "for purposes of the rulemaking." Since EQB's rules have already been noticed for adoption without compliance with this applicable law, they should be disapproved or withdrawn to allow "timely and meaningful" consultation on gas rules that "allows the result to be included in the agency's decision-making process." Minn. Stat. § 10.65, subd. 2(5).

1. **The Remaining Proposed Gas Rules that Do Not Directly Conflict with Applicable Law Are Not Rationally Related to EQB's Objectives in this Rulemaking.**

Many provisions of EQB's Proposed Gas Rules conflict with applicable law and must be disapproved. The remnants of Rules that remain would require an EAW only if a gas development project is "designed to include five or more gas wells" or is "designed to include one or more class II underground injection wells . . .for waste disposal." EQB Proposed Gas Rules, 4410.0200, subp. 32c; 4410.4300, subp. 38, items A and D.

Other than EIS review of "high-volume" fracking which the Legislature has prohibited in the 2026 Gas Law, *supra* at 4, EQB proposed no circumstance where gas development would require an EIS. Thus, there is no gas project for which EQB would require an EIS, no matter its proposed location, how many wells, how large a volume of gas, the extent of cumulative surface destruction and air, water, noise or light pollution resulting from roads, gas lines, compressors, and processing, or the production of flammable, explosive, or radioactive gases.

The deficiency in EQB's meager requirements for EAW screening and wholesale failure to require EIS study of environmental effects and alternatives to avoid, minimize, and mitigate adverse effects from gas resource development (*see* EIS content in Minn. R. 4410.2000–3100) is irrational on its face. Gas resource development is a new industry that will directly affect Minnesota's air, land, and water resources, and EQB's failure to require environmental review for this industry is inconsistent with the types of projects that currently and appropriately require an EIS. *See e.g*. 4410.4400, subp. 7 (underground storage of gas); subp. 9 (gravel mining that will excavate 40 acres in a sensitive area); subp. 24a (carbon dioxide pipelines of any size).

[7] An ALJ is not authorized to disapprove an expedited rule on the basis that is unreasonable and not rationally related to the agency's objective. Minn. R. 1400.2100, item B, Minn. R. 1400.2410, subp. 3. However, the Minnesota Supreme Court has required a "searching and careful" judicial inquiry to ensure that rules are reasonable and have a rational basis, so that arbitrary and capricious rulemaking does not violate substantive due process. *Manufactured Housing Inst. v. Pettersen*, 347 N.W.2d 238, 244, 246 (Minn. 1984).

EQB's inadequate requirements for EAW screening and EIS environmental review analysis are also irrational and inconsistent with EQB's own stated objectives and recommendations. In EQB's original Gas Resources Technical Advisory Committee ("GTAC") Recommendations, EQB stated that the "function of Minnesota's Environmental Review Program is to provide information about future projects to avoid and minimize damage to Minnesota's environmental resources caused by public and private actions."[8]

Consistent with this objective, EQB recommended "a mandatory environmental assessment worksheet (EAW) for any gas resource development project," stating "it is appropriate to require an EAW for all gas development projects, recognizing that any projects of this type may have the potential for significant environmental effects. . .relating to air quality, land use, transportation, noise, and water quality." *Id.* at 31. EQB emphasized the fact that gas production is "new to Minnesota" *id*. at 32, stating: "Completing an environmental review can be extremely beneficial for a new project type; new project types are likely to raise a lot of questions, and the environmental review process informs the public and decision-makers about a project's potential environmental impact prior to permitting." *Id*.[9]

EQB's Rule Justification Memo admits the potential for significant environmental effects on "surface water quality, wildlife habitat, and threatened and endangered species," and from "spills or leaks," and "noise, light, and odor during initial development and ongoing operations" due to "clearing land for construction of drilling pads, facilities to process and ship gas, roads to access extraction sites, and construction of 'flowlines' to transfer gas from multiple wells to a collection or processing area." **Attachment C** at 6. EQB found that well drilling, gas extraction, injections, and spills or leaks also have the "the potential to cause pollution of groundwater and drinking water" and that extracting and processing gas (including helium, hydrogen, methane and carbon dioxide) can lead to air pollution, as can "venting and flaring" of gases and emissions from generators and vehicles. *Id*.

EQB concluded that "gas production projects that have a potential for significant environmental impacts will generally not be covered by the existing categories" so gas production mandatory categories are necessary. *Id.* at 6-7. In addition, EQB found that the "public interest in the impact of gas production – demonstrated by comments on the GTAC

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[8] Minnesota Gas Resources Technical Advisory Committee ("GTAC") Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework, Nov. 15, 2024, **Attachment G** (EQB recommendations) at 30. EQB proposed that the Legislature would adopt standards according to these recommendations.

[9] EQB's analysis in the Final GTAC document, also concluded "it is appropriate to require an EAW for all gas development projects, recognizing that any projects of this type *may* have the potential for significant environmental effects . . .relating to air quality, land use, transportation, noise, and water quality." GTAC, Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework, Jan. 15, 2025, **Attachment H** at 46.

report that raised concerns about drilling noise, lighting, dust, traffic, carbon dioxide emissions, PFAS in drilling mud and materials, and threatened and endangered species – supports the need for environmental review." *Id.* at 13.[10]

However, EQB asserted in its Rule Justification Memo that the threshold of five gas production wells is a sufficient indicator of whether a gas production project has the potential for significant environmental impacts, irrespective of the type of gas or extent of infrastructure. EQB considered other possible metrics, but latched onto the number of wells as a "metric that is easily applied by permitting authorities and regulated parties to assess whether a project requires environmental review." *Id.* at 9.[11]

That is plainly irrational. First, the number of wells does not indicate the level of production. Pulsar Helium flow data has ranged from 21,000 cubic feet/day (unpressurized) to 1.3 million cubic feet/day (pressurized), and a single well can produce 500,000 cubic feet/day of gas. *Id.* at 11. Even a project with two or three wells could be a medium-sized gas producer.

Second, environmental threats vary depending on the distance from established roads, the degree of surface destruction, the length of pipelines, the depth and horizontal extent of drilling, the type of collection and processing used, the sensitivity of natural and cultural resources affected, the proximity to drinking water sources and residences, along with many other factors that are not encompassed by counting five wells. EQB's initial recommendation that all gas production facilities should require an EAW screening document is a far more rational way to address the multiple ways in which gas resource development projects may have the potential for significant environmental effects.

Finally, whether a gas development project has the potential for significant environmental effects depends on whether the gas extracted is inert, like helium, highly flammable and explosive, like methane and hydrogen, or radioactive. EQB flatly rejected input from both Pulsar Helium and environmental groups (WaterLegacy and the Minnesota Center for Environmental Advocacy) suggesting differentiation based on the type of gas extracted, stating that "this would make the rules overly complicated." EQB Rule Justification Memo at 13, n.12 and at pdf 32-33. Again, EQB's rationalization is inconsistent with its own existing mandatory categories rules. EQB rules have different mandatory EAW categories and different mandatory EIS categories for "metallic mineral mining" and "nonmetallic mineral mining." Minn. R. 4410.4300, subps. 11-12; Minn. R. 4410.4400, subps. 8-9.

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[10] EQB's Rule Justification Memo, Attachment C at 13, also mentioned EQB's GTAC recommendation that "all gas production projects go through an EAW, due to the newness of the project type and the unknowns." EQB then noted: "Some comments on the GTAC report felt that this requirement would be too burdensome."

[11] Such a metric may also be easily controlled by project proponents to avoid regulatory or environmental review requirements. *See e.g. In re Determination of Need for an Env'tl Impact Statement for the Nolte Family Irrigation Project*, No. A20-0960, 2021 WL 2067353 (Minn. Ct. App. May 24, 2021).

EQB's unwillingness to acknowledge the differences in potential harm from various types of gas is also inconsistent with policy in the 2026 Gas Law which requires MDH rules pertaining to gas wells to "distinguish between types of gas based on the risks they pose to groundwater quality, health, and safety." 2026 Gas Law, Sec. 13, adopting Minn. Stat.§ 103I.706, subd. 1. Adhering to a metric that is insensitive to environmental risks because it is easily applied does not meet the basic substantive due process requirement that rules must be rationally related to their objectives.

2. EQB's Proposed Gas Rules Unreasonably and Arbitrarily Reject its own Data and Input from Public Stakeholders and Tribes.

EQB's adherence to the five-well threshold for a mandatory EAW because it is "easily applied" by regulated parties is an arbitrary criterion that inadequately reflects the potential for significant environmental effects from gas resource development projects. EQB's rejection of any mandatory EIS for gas production that does not involve "high-volume" fracking unreasonably and arbitrarily rejects EQB's own data as well as detailed input from Tribal environmental staff and public stakeholders.

EQB's Rule Justification Memo explains how potential impacts from a gas development project include many features. The project would require "equipment to produce and beneficiate the gas," "industrial equipment as well as generators to power such equipment," land use conversion for "drilling wells, installing flowlines, and constructing a processing facility, all serviced by appropriate roads." Attachment C at 10. But when Tribal staff requested that environmental review include the "full footprint of a gas development project, including roads, pipelines, well pads, compressor stations, processing plants and other supporting infrastructure," EQB rejected this request. *Id.* at pdf 21. EQB Proposed Rules 4410.0200, subp. 32c defined "gas development project" by the fact the project would require a DNR permit, rather than by any of its features, and responded that the RGU (DNR), would be responsible for identifying the aspects of the project. *Id.*

Gas development projects in sensitive locations would have the potential for significant environmental effects. As summarized in EQB's Rule Justification Memo, Tribal environmental staff proposed a mandatory EAW for any gas development project if part of the project "is located within one mile of a designated trout stream, public water, or public water wetland; or municipal or community public water supply well, wellhead, or delineated wellhead protection area," and a mandatory EIS for a project with two or more gas wells if part of the project "is located within one mile of a designated trout stream, public water, public water wetland, or municipal public water supply wellhead protection area." *Id.* at pdf 27, 29.[12]

[12] The Nature Conservancy ("TNC") also requested that "conservation lands," including areas designated by statute for protection, such as groundwater protection, wetland preservation, conservation lands, and areas within wild and scenic river districts should "trigger environmental review in all cases," if gas development weren't prohibited. TNC letter to DNR Commissioner Strommen and EQB Executive Director Catherine Neuschler, Feb. 17, 2026, **Attachment I** at 1-3.

Tribal environmental staff also proposed EIS review based on locations of tribal lands and resources, including:

> EIS for the projects that cross or impact key resources, including: wild rice waters or wetlands; critical habitat; culturally sensitive areas; for any project that affects treaty-reserved resources (such as wild rice, sugarbush, medicinal plants, hunting/fishing grounds, or traditional subsistence activities) or culturally significant areas (such as traditional cultural properties, ceremonial sites or cultural landscapes).
>
> [EIS for] the construction or expansion of a gas resource development project any portion of which is located within five miles of the boundary of a federally recognized Tribal Nation's reservation or trust lands, or within one mile of a water body identified in the Minnesota DNR's Native American Sacred Sites and Burial Grounds inventory or the Section 106 area of potential effects for an affected Tribal Nation as documented in prior federal consultation, or within an area where a federally recognized Tribal Nation has notified the commissioner in writing that it actively exercises treaty-reserved harvesting, fishing, or gathering rights.

Id. at pdf 25, 29.

EQB unreasonably rejected all these recommendations. EQB proposed no mandatory EIS review no matter how vulnerable the location would be to gas resource development. Without discussing any limits on DNR's jurisdiction or expertise related to drinking water, health, or culture, EQB rejected any independent listing of sensitive locations, stating that "alignment with DNR's siting locations would be more efficient and take advantage of DNR's expertise in understanding the protections required for different areas." *Id.* at 14. Other governmental staff expertise was categorically discounted.

With respect to Tribal staff requests for environmental review to protect tribal lands and resources, EQB represented that an EAW—if it were required on some other grounds—would consider tribal resources in its general screening for water resources, air pollution, or land use changes. *Id.* at pdf 25. EQB also responded that no thresholds related to Tribal reservations and communities would be proposed because "it is a complex programmatic issue" and beyond the scope of the rulemaking to define a boundary that is "relevant to Tribal resources," fits "the program's requirements for significant environmental effects," and is "repeatable and easily implemented." *Id.* at 14, pdf 23, 25 (twice), 29.

But EQB's Proposed Rules would require few, if any, EAWs and EQB's template form for an EAW[13] neither requires consideration of Tribal resources in any general pollution

[13] Environmental Assessment Worksheet, dated Dec. 2022, **Attachment J**, template provided online as the "EAW Form" as of July 1, 2026 at https://www.eqb.state.mn.us/.

categories nor makes any reference to Tribes or tribal resources. No law or policy suggests that ease in implementation should be a higher priority for EQB mandatory categories than protection of natural resources needed for the exercise of treaty-reserved rights. EQB's responses are not reasonable.

Numerous Tribal staff requests for mandatory EIS review based on project features that have the potential for significant environmental effects were also summarily rejected by EQB. These thresholds include: 10 or more gas wells, more than 5 miles of new pipeline, and total projected lateral well length of 20,000 feet or more. EQB Rule Justification Memo at 28-29. EQB provided no EIS threshold no matter the number of wells, cited existing rules requiring an EAW for pipelines, which may not apply to helium or hydrogen gas,[14] and denied that lateral well length and complexity could increase environmental impacts. EQB's unwillingness to adopt any size threshold or any location threshold that would require an EIS for a new gas development industry is unreasonable and arbitrary. EQB should withdraw its Proposed Gas Rules; it can do better.

CONCEPTS FOR GAS DEVELOPMENT MANDATORY CATEGORIES

For a brand new industry likely to be developed in a vulnerable and water-rich environment, WaterLegacy proposes that EAW environmental screening should be mandatory for any gas resource development and that EIS review should be required based on thresholds of gas production volume as well as well numbers, acreage of surface disturbance, length of gas wells, length of flowlines and gathering lines, and distance from sensitive locations. Some of these requirements may be unclear at this point, since locations where gas resource development should be prohibited or restricted are unresolved, along with basic questions about what is included in a gas resource development project. In addition, WaterLegacy lacks the expertise to specify numeric thresholds. With sufficient time and dialogue with Tribes, public stakeholders, and their experts, as well as state regulatory staff, these thresholds could be determined. WaterLegacy would be willing to engage in such a process. A recommended conceptual framework for mandatory EAW and EIS categories is outlined below.

Minn. R. 4410.4300 MANDATORY EAW CATEGORIES
Subp. 38 **Gas resource development**. For new gas resource development and for an increase of gas resource development by [ ] gas wells, total raw gas throughput of [ ] million cubic feet per day (MMcf/d) or total gas throughput production capacity by 25 percent, the DNR is the RGU.

Minn. R. 4410.4400 MANDATORY EIS CATEGORIES
Subp. 39 **Gas resource development**.

A. For gas resource development of any gas that is explosive, flammable, or radioactive, the DNR is the RGU.

[14] *See* Minn. R. 1400.4300, subp. 7 which requires an EAW for pipelines that carry "natural or synthetic gas" at pressures that may or may not apply to gas development projects.

B. For gas resource development within [ ] miles of any area where gas resource development is prohibited or restricted under federal, state, or local law, the DNR is the RGU.

C. For gas resource development within [ ] miles of any Tribal reservation or trust land, the DNR is the RGU.

D. For gas resource development within [ ] feet of lands, public waters, public waters wetlands, peatlands, or ecosystems protected or restored under applicable Minnesota Statutes, including but not limited to sections 84.035, 97A.056, 97A.133, 97C.005, 103F.612-616, 103G.221-223, 103H.101, the DNR is the RGU.

E. For gas resource development with a total of [ ] gas wells or total gas throughput production of [ ] million cubic feet per day (MMcf/d), the DNR is the RGU.

F. For gas resource development where total surface disturbance for all gas resource development facilities—including facilities at gas well locations, gas or waste storage, facilities for separating, compressing, treating, enhancing or processing gas, flowlines, gathering lines, and access roads—exceeds [ ] acres the DNR is the RGU.

G. For gas resource development where the total length of gas production wells exceeds [ ] feet or the total length of flowlines and gathering lines exceeds [ ] feet, the DNR is the RGU.

H. For gas resource development within [ ] miles of drinking water wells, within [ ] miles of wellhead protection areas, or that proposes to inject any substance into a gas well pursuant to Minnesota Statutes chapter 103I or rules adopted thereunder, the MDH is the RGU.

CONCLUSION

Rulemaking prior to development of a statutory framework or legislative guidance is challenging at best. And expedited rulemaking that insulates administrative agencies from members of the public discourages diverse perspectives. EQB's Proposed Gas Rules conflict with applicable law and improperly delegate authority to DNR. WaterLegacy respectfully requests that the following specific provisions of these Proposed Rules be disapproved under Minn. R. 1400.2410, subp. 3 and Minn. R. 1400.2100, items D and F:

4410.0200, subp. 32d
4410.0200, subp. 38a
4410.4300, subp. 38, item B
4410.4300, subp. 38, item C
4410.4300, subp. 38, item E

4410.4400, subp. 29

EQB's Proposed Gas Rules also reflect an unconstitutional delegation of pure legislative power to an administrative agency and fail to provide Tribal consultation required in statute. WaterLegacy, joined by the Minnesota Center for Environmental Advocacy, Northeastern Minnesotans for Wilderness, and CURE, respectfully request that the EQB's Proposed Gas Rules be disapproved in their entirety pursuant to Minn. R. 1400.2410, subp. 3; Minn. R. 1400.2100, item E; and the 2026 Gas Law, Sec. 17.

If any portions of EQB's Proposed Rules were to remain after this Court's legal analysis they would be wholly inadequate to ensure proper EAW screening and EIS environmental review of gas development projects. WaterLegacy and the other undersigned conservation organizations respectfully request that EQB withdraw its Proposed Gas Rules and work collaboratively with public stakeholders and rightsholders to develop mandatory EAW and EIS categories that are rationally related to EQB's mission and objectives and reasonably inform the public and decision-makers about a project's potential environmental impacts and alternatives that would avoid, minimize, or mitigate those impacts prior to permitting.

Sincerely yours,

Paula G. Maccabee
Executive Director and Counsel
WaterLegacy

Aaron Klemz
Chief Strategy Officer
Minnesota Center for Environmental Advocacy

Matt Norton
Policy and Science Director
Northeastern Minnesotans for Wilderness

Sarah Mooradian
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CURE

cc. EQB Executive Director Catherine Neuschler (catherine.neuschler@state.mn)
EQB Environmental Review Manager Jesse Krzenski (jesse.krzenski@state.mn.us)

Enclosures: Attachments A-J.

RECEIVED BY CAH
7/2/2026

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570
Attachments A through J

ATTACHMENT A

EQB, Proposed Amendments to Environmental Review Program for Gas Development Projects ("Proposed Gas Rules")

Environmental Quality Board

Proposed Expedited Permanent Rules for Environmental Review of Gas Resource Development Projects

4410.0200 DEFINITIONS AND ABBREVIATIONS.

[For text of subparts 1 to 32, see Minnesota Rules]

Subp. 32a. **Gas.** "Gas" has the meaning given in Minnesota Statutes, section 93.514.

Subp. 32b. **Gas production.** "Gas production" means production, as defined under Minnesota Statutes, section 93.514, of gas.

Subp. 32c. **Gas resource development project.** "Gas resource development project" means an operation that is designed for gas production from consolidated or unconsolidated formations and that is required to hold a permit from the DNR under Minnesota Statutes, section 93.513, and rules adopted by the DNR under Minnesota Statutes, section 93.514.

Subp. 32d. **Gas well.** "Gas well" means a well that is intended for gas production and that is included as part of a gas resource development project.

[For text of subparts 33 to 38, see Minnesota Rules]

Subp. 38a. **High-volume hydraulic fracturing.** "High-volume hydraulic fracturing" means injecting fluid, with or without proppants, into the subsurface under pressure to create fractures within a geologic formation to improve the deliverability and production of gas for a gas resource development project, using a combined total of 100,000 gallons or more of any fluids.

[For text of subparts 39 to 96, see Minnesota Rules]

4410.4300 MANDATORY EAW CATEGORIES.

[For text of subparts 1 to 37, see Minnesota Rules]

Subp. 38. **Gas resource development projects.** Items A to E designate the RGU for the type of project listed:

A. For construction of a gas resource development project designed to include five or more gas wells or expansion of an existing gas resource development project by the addition of five or more gas wells, the DNR is the RGU.

B. For construction of a gas resource development project that is designed to produce gas using horizontal or directional drilling methods beneath an area subject to only surface disturbance siting prohibitions in rules adopted by the DNR, if the target resource for extraction is less than one-quarter mile below the surface, the DNR is the RGU.

C. For construction of a gas resource development project that is designed to produce gas from beneath an area subject to both surface disturbance and directional drilling siting prohibitions in rules adopted by the DNR, the DNR is the RGU.

D. For construction of a gas resource development project that is designed to include one or more class II underground injection wells, as defined in Code of Federal Regulations, title 40, section 144.6(b), for waste disposal, the DNR is the RGU.

E. For construction of a gas resource development project designed to produce gas created by injecting a substance into the subsurface to create or stimulate a chemical reaction, the DNR is the RGU.

4410.4400 MANDATORY EIS CATEGORIES.

[For text of subparts 1 to 28, see Minnesota Rules]

Subp. 29. **Gas resource development projects.** For construction of a gas resource development project designed to use high-volume hydraulic fracturing techniques, the DNR is the RGU.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT B

2026 Minn. Sess. Laws, chapter 127, article 2 ("2026 Gas Law")

Office of the Revisor of Statutes

Office of the Revisor of Statutes

Minnesota Session Laws - 2026 Regular Session

Authenticate

This document represents the act as presented to the governor. The version passed by the legislature is the final engrossment. It does not represent the official 2026 session law, which will be available here summer 2026.

Key: (1) ~~language to be deleted~~ (2) new language

CHAPTER 127--S.F.No. 4612

An act relating to state government; modifying provisions relating to the Department of Health, gas resource development, hospital stabilization, health licensing boards, health care, federal conformity, medical assistance fraud prevention and conforming changes, children, youth, and families policy, children, youth, and families budget, the Minnesota African American Family Preservation and Child Welfare Disproportionality Act, child care center licensing modernization, and family child care licensing modernization; making forecast adjustments for the Department of Human Services and Department of Children, Youth, and Families; appropriating money for the Department of Children, Youth, and Families, Department of Human Services, and other agencies; requiring reports; authorizing rulemaking; providing criminal penalties; amending Minnesota Statutes 2024, sections 8.16, subdivision 1; 16A.152, subdivisions 2, 4, by adding subdivisions; 62A.01, by adding a subdivision; 62A.011, subdivision 3; 62J.17, subdivision 6a; 62J.2930, subdivision 1; 62K.02, subdivision 2; 62K.03, subdivision 6; 62K.075; 62K.105; 62K.14; 62U.04, subdivisions 4, 13, by adding a subdivision; 62V.05, subdivision 7; 62V.13; 93.514; 103I.001; 103I.005, subdivisions 9, 21, by adding subdivisions; 103I.601, subdivision 1, by adding subdivisions; 116.943, subdivision 2; 116J.035, by adding a subdivision; 124D.19, by adding a subdivision; 142A.43; 142B.10, subdivision 18; 142B.30, by adding a subdivision; 142B.65, subdivision 7; 142B.70, subdivision 6; 142C.12, subdivision 3; 142D.05, subdivision 8; 142D.21, subdivision 6; 142D.25, subdivision 3; 142E.04, subdivision 4; 144.059, subdivision 8; 144.1222, subdivision 4, by adding a subdivision; 144.1501, subdivision 2; 144.1503, subdivision 7; 144.1505, subdivisions 1, 2, 3; 144.1507, subdivisions 1, 2, 4, by adding a subdivision; 144.1911, subdivisions 1, 5, 6; 144.293, subdivision 7; 144.551, subdivision 1, as amended; 145.56, subdivision 5; 145.561, subdivision 2; 145.882, by adding subdivisions; 145A.04, subdivision 15; 145A.14, subdivision 2a; 148.01, subdivisions 1, 4, by adding subdivisions; 148.09; 148.10, by adding a subdivision; 148.102, subdivision 3; 148.105, subdivision 1; 148.517, subdivisions 1, 2; 148.5191, subdivision 4; 149A.91, subdivision 3; 149A.94, subdivision 1; 149A.955, subdivision 14; 151.01, subdivision 35, by adding a subdivision; 151.555, subdivision 7; 151.741, subdivision 4; 214.10, subdivision 2a; 214.41; 245A.211, subdivision 1; 245C.04, subdivision 1; 245C.15, subdivisions 2, 3, 4; 256.01, by adding a subdivision; 256.969, subdivisions 2b, 25; 256B.04, subdivision 27; 256B.05, subdivision 5, by adding a subdivision; 256B.055, subdivision 17; 256B.056, subdivisions 1, 2a, 3d, 7, 7a; 256B.0561, subdivision 2; 256B.06, subdivision 4; 256B.061; 256B.0631, subdivision 1a, by adding subdivisions; 256B.75; 256L.05, subdivision 3; 256L.06, subdivision 3; 259.83, subdivision 1, as amended; 260.63, subdivision 10; 260.64, subdivision 2; 260.67, subdivision 1; 260.68, subdivision 2; 260.69, subdivision 1; 260.693, subdivision 2; 260C.190, subdivision 1; 260C.212, subdivisions 1, 4a, by adding a subdivision; 260C.451, subdivisions 2, 3, 3a; 295.52, subdivision 8; 383B.903, subdivisions 1, 4; 383B.904, subdivision 1; 383B.908, subdivisions 5, 7; 471.6161, by adding a subdivision; 609.52, subdivision 2; Minnesota Statutes 2025 Supplement, sections 3.732, subdivision 1; 62K.10, subdivision 2; 144.125, subdivision 1; 145A.061, subdivision 3; 145C.18, subdivisions 3, 4; 148.108, subdivision 5; 151.741, subdivision 5; 256.043, subdivision 3; 256.9657, subdivision 2b; 256.969, subdivision 2f; 256B.0625, subdivision 8; 256B.12; 256B.1973, subdivision 9; 256B.69, subdivision 6d; 256B.695, subdivision 5; 260.691, subdivision 1; 260.692, subdivisions 1, 2, 3; 260C.451, subdivision 8; 268.19, subdivision 1; 609.531, subdivision 1; 609.902, subdivision 4; 628.26; Laws 2023, chapter 68, article 1, sections 2, subdivision 2, as amended; 3, subdivision 2, as amended; Laws 2024, chapter 117, sections 9; 21; 22; Laws 2024, chapter 127, article 67, section 7; Laws 2025, First Special Session chapter 3, article 8, section 25; article 23, section 2, subdivision 12; Laws 2026, chapter 88, article 1, section 181; proposing coding for new law in Minnesota Statutes, chapters 62Q; 103I; 142D; 144; 148; 256B; 260; 609; proposing coding for new law as Minnesota Statutes, chapters 142H; 142I; repealing Minnesota Statutes 2024, sections 13D.08, subdivision 4; 62J.06; 62J.156; 62J.2930, subdivision 4; 62J.57; 62U.10, subdivision 4; 142B.01, subdivisions 11, 12, 13, 25, 26, 27; 142B.41, subdivisions 4, 6, 7, 8, 10, 11, 12, 13; 142B.54,

(c) A body may not be kept in refrigeration for a period that exceeds ~~six~~ 14 calendar days, or packed in dry ice for a period that exceeds four calendar days, from the time and release of the body from the place of death or from the time of release from the coroner or medical examiner.

Sec. 41. Minnesota Statutes 2024, section 149A.94, subdivision 1, is amended to read:

Subdivision 1. **Generally.** Every dead human body lying within the state, except unclaimed bodies delivered for dissection by the medical examiner, those delivered for anatomical study pursuant to section 149A.81, subdivision 2, or lawfully carried through the state for the purpose of disposition elsewhere; and the remains of any dead human body after dissection or anatomical study, shall be decently buried or entombed in a public or private cemetery, alkaline hydrolyzed, cremated, or~~, effective July 1, 2025,~~ naturally reduced within ~~a reasonable time~~ 14 calendar days after death or release of the body by a competent authority with jurisdiction over the body. Where final disposition of a body will not be accomplished, or~~, effective July 1, 2025,~~ when natural organic reduction will not be initiated, within 72 hours following death or release of the body by a competent authority with jurisdiction over the body, the body must be properly embalmed, refrigerated, or packed with dry ice. A body may not be kept in refrigeration for a period exceeding ~~six~~ 14 calendar days, or packed in dry ice for a period that exceeds four calendar days, from the time of death or release of the body from the coroner or medical examiner.

Sec. 42. Minnesota Statutes 2024, section 149A.955, subdivision 14, is amended to read:

Subd. 14. **Bodies awaiting natural organic reduction.** A dead human body must be placed in the natural organic reduction vessel to initiate the natural reduction process within ~~24 hours~~ 14 calendar days after the natural organic reduction facility accepts legal and physical custody of the body. A natural organic reduction facility must keep the body in refrigeration while awaiting natural reduction. If a natural organic reduction facility does not initiate natural reduction within 14 calendar days after accepting legal and physical custody of the body, the facility must arrange final disposition of the body by burial or cremation. The person or persons with the right to control and duty of disposition of the body must determine whether the body is buried or cremated, and the body must be buried or cremated within five calendar days after the end of the 14-day period.

Sec. 43. **REVISOR INSTRUCTION.**

The revisor of statutes shall renumber Minnesota Statutes, section 62Q.075, as Minnesota Statutes, section 62D.081. The revisor shall also make necessary cross-reference changes consistent with the renumbering.

Sec. 44. **REPEALER.**

Minnesota Statutes 2024, sections 13D.08, subdivision 4; 62J.06; 62J.156; 62J.2930, subdivision 4; 62J.57; and 144.9821, are repealed.

ARTICLE 2

GAS RESOURCE DEVELOPMENT

Section 1. Minnesota Statutes 2024, section 93.514, is amended to read:

93.514 GAS AND OIL PRODUCTION RULEMAKING.

(a) The following agencies may adopt rules governing gas and oil exploration or production, as applicable:

(1) the commissioner of the Pollution Control Agency may adopt or amend rules regulating air emissions; water discharges, including stormwater management; and storage tanks as they pertain to gas and oil production;

~~(2) the commissioner of health may adopt or amend rules on groundwater and surface water protection, exploratory boring construction, drilling registration and licensure, and inspections as they pertain to the exploration and appraisal of gas and oil resources;~~

~~(3)~~ (2) the Environmental Quality Board may adopt or amend rules to establish mandatory categories for environmental review as they pertain to gas and oil production;

~~(4)~~ (3) the commissioner of natural resources must adopt or amend rules pertaining to ~~the conversion of an exploratory boring to a production well,~~ pooling, spacing, unitization, ~~well abandonment,~~ siting, financial assurance, and reclamation for the production of gas and oil; and

~~(5)~~ (4) the commissioner of labor and industry may adopt or amend rules to protect workers from exposure and other potential hazards from gas and oil production.

(b) An agency adopting rules under this section must use the expedited procedure in section 14.389. Rules adopted or amended under this authority are exempt from the 18-month time limit under section 14.125. The agency must publish notice of intent to adopt expedited rules within 24 months of May 22, 2024.

(c) For purposes of this section, "gas" includes both hydrocarbon and nonhydrocarbon gases. "Production" includes extraction and beneficiation of gas or oil from consolidated or unconsolidated formations in the state.

(d) Any grant of rulemaking authority in this section is in addition to existing rulemaking authority and does not replace, impair, or interfere with any existing rulemaking authority.

(e) An entity adopting rules under this section is subject to the Tribal consultation requirements under section 10.65.

Sec. 2. Minnesota Statutes 2024, section 103I.001, is amended to read:

103I.001 LEGISLATIVE INTENT.

This chapter is intended to protect the health and general welfare by providing a means for the ~~development and~~ protection of the natural resource of groundwater in an orderly, healthful, and reasonable manner.

Sec. 3. Minnesota Statutes 2024, section 103I.005, subdivision 9, is amended to read:

Subd. 9. **Exploratory boring.** "Exploratory boring" means a surface drilling done to explore or prospect for ~~oil, natural~~ gas, apatite, diamonds, graphite, gemstones, kaolin clay, and metallic minerals, including iron, copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, uranium, aluminum, platinum, palladium, radium, tantalum, tin, and niobium~~, and a drilling or boring for petroleum~~.

Sec. 4. Minnesota Statutes 2024, section 103I.005, is amended by adding a subdivision to read:

Subd. 10a. **Gas.** "Gas" includes both hydrocarbon and nonhydrocarbon gases.

Sec. 5. Minnesota Statutes 2024, section 103I.005, is amended by adding a subdivision to read:

Subd. 10b. **Gas well.** "Gas well" means an excavation that is constructed to locate, extract, or produce gas.

Sec. 6. Minnesota Statutes 2024, section 103I.005, is amended by adding a subdivision to read:

Subd. 10c. **Gas well contractor.** "Gas well contractor" means a person with a gas well contractor's license issued by the commissioner.

Sec. 7. Minnesota Statutes 2024, section 103I.005, is amended by adding a subdivision to read:

Subd. 11a. **Hydraulic fracturing treatment.** "Hydraulic fracturing treatment" means all stages of the treatment of a gas well by the application of fluid under pressure that is expressly intended to initiate or propagate fractures in a target geologic formation to enhance production of oil and gas.

Sec. 8. Minnesota Statutes 2024, section 103I.005, subdivision 21, is amended to read:

Subd. 21. **Well.** "Well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed if the excavation is intended for the location, diversion, artificial recharge, monitoring, testing, remediation, or acquisition of groundwater. Well includes environmental wells, drive point wells, and dewatering wells. "Well" does not include:

(1) an excavation by backhoe, or otherwise for temporary dewatering of groundwater for nonpotable use during construction, if the depth of the excavation is 25 feet or less;

(2) an excavation made to obtain or prospect for oil, ~~natural~~ gas, minerals, or products of mining or quarrying;

(3) an excavation to insert media to repressure oil or ~~natural~~ gas bearing formations or to store petroleum, ~~natural~~ gas, or other products;

(4) an excavation for nonpotable use for wildfire suppression activities; ~~or~~

(5) borings; or

(6) gas and oil wells.

Sec. 9. Minnesota Statutes 2024, section 103I.601, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following words have the meanings given them.

(b) "Data" includes samples and factual noninterpreted data obtained from exploratory borings and samples including analytical results.

(c) "Parcel" means a government section, fractional section, or government lot.

(d) "Samples" means at least a one-quarter portion of all samples from exploratory borings that are customarily collected by the explorer. When the exploratory borings are being done to explore or prospect for kaolin clay, "samples" means a representative sample of at least two cubic inches of material per foot from exploratory borings of the material that is customarily collected by the explorer.

(e) "Encounter gas" means a sustained presence of gas in an exploratory boring for at least 24 hours and in which gas has not dissipated prior to sealing.

Sec. 10. Minnesota Statutes 2024, section 103I.601, is amended by adding a subdivision to read:

Subd. 10. **Exploratory borings encountering gas.** (a) Requirements in this subdivision apply only for exploratory borings encountering gas.

(b) An explorer must notify the commissioners of health and natural resources:

(1) within 24 hours of drilling an exploratory boring encountering gas; and

(2) prior to beginning a permanent sealing of an exploratory boring encountering gas.

(c) An explorer must submit a permanent sealing notification and fee of $125 to the commissioner prior to permanently sealing an exploratory boring encountering gas.

(d) An explorer must begin permanently sealing an exploratory boring encountering gas within ten days of encountering gas.

(e) An exploratory boring encountering gas is exempt from paragraph (d) if the boring is constructed to prevent movement of gas and water within and from one geological formation to another. The boring must be permanently sealed according to rules adopted by the commissioner.

(f) An exploratory boring encountering gas must be permanently sealed from the bottom of the boring to within two feet of the established ground surface.

(g) A permanent sealing report as required by subdivision 9 must also contain information indicating gas was encountered during construction and at what depth it was encountered.

(h) A person must not use an exploratory boring to extract gas for production.

Sec. 11. Minnesota Statutes 2024, section 103I.601, is amended by adding a subdivision to read:

Subd. 11. **Conversion of a gas well prohibited.** A person must not convert a gas well to any other type of well or boring.

Sec. 12. Minnesota Statutes 2024, section 103I.601, is amended by adding a subdivision to read:

Subd. 12. **Conversion of a well or boring to a gas well.** A person must not convert a well or boring to a gas well, except that an exploratory boring may be converted to a gas well if the exploratory boring was constructed:

(1) with innermost casing meeting API Specification 5CT;

(2) before July 1, 2025; and

(3) in compliance with provisions of this chapter.

Sec. 13. **[103I.706] GAS WELLS.**

Subdivision 1. **Rulemaking authority.** The commissioner of health must adopt rules for gas wells including requirements for exploratory borings for gas, and drilling, construction, sealing, use, reporting, and rig registration; and for licensing and certifying persons constructing, repairing, and sealing gas wells. These rules must include a prohibition against hydraulic fracturing treatment and a prohibition against the injection or disposal of surface water, groundwater, or any other liquid, gas, or chemical except for approved drilling fluids. In adopting rules under this section, the commissioner must use the expedited procedure in section 14.389. These rules must distinguish between types of gas based on the risks they pose to groundwater quality, health, and safety, and must specify the requirements that apply when an exploratory boring or gas well encounters a gas different from that for which exploration, prospecting, location, extraction, or production was proposed. Rules adopted or amended under this authority are exempt from the 18-month time limit under section 14.125. The commissioner must publish notice of intent to adopt expedited rules within 24 months after May 22, 2026. In adopting rules under this subdivision, the commissioner is subject to the Tribal consultation requirements under section 10.65.

Subd. 2. **Fees.** (a) License, certification, and registration renewals are not prorated and expire on December 31 of each year.

(b) An applicant must meet the gas well contractor license requirements and fee requirements to construct, repair, or seal a gas well. The fee for a gas well contractor license is $300. The annual renewal fee for a gas well contractor license is $300.

(c) A gas well contractor must designate a certified representative. The certified representative must meet the application and fee requirements. The application fee for a certified representative is $100. The annual renewal fee for a certified representative is $100.

(d) A gas well contractor must meet the registration and fee requirements for rigs used to construct, repair, service, or seal a gas well. The fee to register gas well rigs is $125. The annual renewal fee for gas well rig registration is $125.

(e) If a gas well contractor or certified representative under paragraphs (b) and (c) fails to submit all information required for renewal or submits the application and information after the required renewal date:

(1) the gas well contractor or certified representative must include a late fee of $75; and

(2) the gas well contractor or certified representative may not conduct activities authorized by the gas well contractor's license or certified representative's certification until the renewal application, renewal application fee, and all other information required is submitted.

(f) A gas well contractor must submit a notification for construction of a proposed gas well on a form prescribed by the commissioner, with a fee of $10,000.

(g) A gas well contractor must submit a notification for sealing a gas well on a form prescribed by the commissioner, with a fee of $7,500.

Subd. 3. **Rig registration.** (a) Rigs used to drill, maintain, repair, or seal a gas well, including drilling rigs and workover rigs, must be registered with the commissioner.

(b) A person must file an application to register a rig on a form provided by the commissioner with the fee under subdivision 2, paragraph (d), with the commissioner.

(c) A registration is valid until the date prescribed by the commissioner in the registration.

(d) A person must file an application with the fee under subdivision 2, paragraph (d), to renew the registration by the date prescribed by the commissioner in the registration.

Subd. 4. **Gas well contractor's license.** (a) A person must not construct, repair, or seal a gas well without a gas well contractor's license issued by the commissioner.

(b) A person must file a complete application for a gas well contractor's license on a form provided by the commissioner with the fee under subdivision 2, paragraph (b), with the commissioner. The person applying must meet the qualifications for a gas well contractor license.

(c) A gas well contractor's license is valid until the date prescribed by the commissioner in the license.

(d) A gas well contractor must file a complete application with the fee under subdivision 2, paragraph (b), to renew the license by the date prescribed by the commissioner in the license. A person must not construct, repair, or seal a gas well until a gas well contractor's license is renewed. The commissioner may not renew a license until the renewal fee is paid.

(e) A gas well contractor must include information at the time of renewal that the applicant has met the continuing education requirements established by the commissioner for gas wells.

(f) A gas well contractor must designate a certified representative to supervise and oversee regulated work on gas wells.

(g) A person must file a complete application on a form provided by the commissioner with the fee under subdivision 2, paragraph (c), to qualify as a certified representative.

(h) A certified representative must file an application with the fee under subdivision 2, paragraph (c), to renew the certification by the expiration date prescribed by the commissioner on the certification. A certified representative may not supervise or oversee regulated work on a gas well until the renewal application and application fee are submitted. The commissioner may not review a certification until the renewal fee is paid.

(i) A certified representative must include information at the time of renewal that the applicant has met the continuing education requirements established by the commissioner for gas wells.

(j) The commissioner of natural resources may require a bond, security, or other assurance from a gas well contractor if the commissioner of natural resources has reasonable doubts about the person's financial ability to comply with the requirements of law relating to reclamation of a gas well and the process to restore the land disturbed by a gas well drilling and production operations back to the condition of original state.

(k) The commissioner may suspend or revoke a licensee's license according to section 144.99.

Subd. 5. **Construction notification.** (a) A gas well contractor must not begin drilling or constructing a gas well unless it is included in a valid gas resource development permit issued by the commissioner of natural resources.

(b) After receiving permit approval from the commissioner of natural resources and prior to drilling or constructing a gas well, the gas well contractor must submit a notification to construct a gas well:

(1) to the commissioner, along with the fee under subdivision 2, paragraph (f); and

(2) to any Tribal Nation for which the gas well will be located within five miles of the Tribal Nation's exterior boundary, or to the nearest Tribal Nation if the gas well will not be located within five miles of any Tribal Nation's exterior boundary.

Subd. 6. **Access to drill sites.** (a) The commissioner of health shall have access to gas well sites to inspect gas wells, including the drilling, construction, and sealing of gas wells.

(b) The commissioner of health has enforcement authority according to section 144.99.

Subd. 7. **Emergency notification.** In the event of an occurrence during construction, repair, or sealing of a gas well that has a potential for significant adverse public health or environmental effects, the person drilling or constructing a gas or well must promptly:

(1) take reasonable action to minimize the adverse effects; and

(2) notify the commissioners of health, natural resources, and the Pollution Control Agency immediately by informing the Minnesota Duty Officer.

Subd. 8. **Sealing notification.** (a) A gas well, including an unsuccessful gas well, that is not in use must be sealed by a gas well contractor.

(b) A gas well contractor must file a notification and fee with the commissioner prior to sealing a gas well.

Subd. 9. **Report of work.** Within 60 days after completion or sealing of a gas well, the gas well contractor must submit a verified report to the commissioner on a form prescribed by the commissioner or in a format approved by the commissioner.

Sec. 14. **[103I.707] MORATORIUM ON GAS WELL CONVERSION AND CONSTRUCTION.**

A person shall not drill, convert under section 103I.601, subdivision 12, or construct a gas well for the primary purpose of extracting or producing gas until:

(1) rules are adopted under section 103I.706;

(2) the legislature enacts a statute specifically authorizing the issuance of gas resource development permits; and

(3) the legislature enacts fees for gas resource development permits.

Sec. 15. **[103I.708] WELLS; RESTRICTIONS.**

(a) Notwithstanding any provision of this chapter or chapter 93, or the rules adopted thereunder, to the contrary, a person shall not explore, prospect, or construct an oil well.

(b) Notwithstanding any provision of this chapter or chapter 93, or the rules adopted thereunder, to the contrary, a person shall not construct a gas well for the primary purpose of extracting or producing a gas other than helium. Gas wells constructed for the primary purpose of extracting or producing helium may only be constructed in Cook County, Lake County, and St. Louis County. Nothing in this paragraph shall be construed to prevent:

(1) the drilling or construction of an exploratory boring; or

(2) the sale of carbon dioxide extracted in the ordinary course of extracting or producing helium.

Sec. 16. **[103I.709] GAS WELLS; PROHIBITIONS.**

Subdivision 1. **Injection prohibited.** A gas well must not be used to inject or dispose surface water, groundwater, or any other liquid, gas, or chemical. This does not prohibit injection:

(1) of approved drilling fluids; or

(2) if a class 2 injection well permit is obtained for a gas well, as authorized by the Environmental Protection Agency.

Subd. 2. **Hydraulic fracturing treatment prohibited.** Hydraulic fracturing treatment is prohibited in a gas well.

Sec. 17. **TRIBAL CONSULTATION; REPORT.**

An entity adopting rules under Minnesota Statutes, section 93.514 or 103I.706, must submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over health and the environment and natural resources, the Native American caucuses of the legislature, and the Minnesota Indian Affairs Council that details the process and results of meeting the requirements of Minnesota Statutes, section 10.65, for purposes of the rulemaking. The report must be submitted within 90 days of adoption of the rules.

Sec. 18. **EFFECTIVE DATE.** This article is effective the day following final enactment.

ARTICLE 3

HOSPITAL STABILIZATION

Section 1. Minnesota Statutes 2024, section 16A.152, is amended by adding a subdivision to read:

Subd. 1c. **Hospital stabilization reserve.** A hospital stabilization reserve account is created in the general fund in the state treasury. Amounts in the hospital stabilization reserve are appropriated to the commissioner of management and budget for the uses authorized in subdivision 1d. Any balance remaining in the account on June 30, 2031, is canceled to the general fund.

EFFECTIVE DATE. This section is effective the day following final enactment.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT C

EQB, Environmental review: Mandatory Category for Gas Resource Development Projects Rule Summary and Justification Memo, April 3, 2026

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Environmental review: Mandatory category for gas resource development projects

Rule summary and justification

Purpose of rulemaking

The purpose of this rulemaking is to establish new mandatory categories requiring the completion of environmental review – either an environmental assessment worksheet (EAW) or environmental impact statement (EIS) – for certain projects that involve the production of gas.

Legislative Directive

In 2024, the Minnesota legislature passed a law that prohibited the production of gas or oil in the state unless a permit for such production was obtained from the Department of Natural Resources. (Minn. Law 2024, Art. 3, Sec. 24, codified as Minn. Stat. § 93.513).

The legislation also recognized the need to develop a regulatory framework for gas and oil exploration and production. It established a Minnesota Gas and Oil Resources Technical Advisory Committee (GTAC), to develop recommendations "to guide the creation of a temporary regulatory framework" for permitting gas and oil production in the state, and directed or allowed multiple state agencies to "adopt rules governing gas and oil exploration or production." (Minn. Stat. § 93.514).

The Environmental Quality Board (EQB) was authorized, but not required, to "adopt or amend rules to establish mandatory categories for environmental review as they pertain to oil and gas production." The legislature provided that any agency adopting rules under this authority was to use the expedited rulemaking procedure in Minn. Stat. § 14.389, and that the agency must publish the notice of intent to adopt expedited rules by May 22, 2026.

Background on mandatory categories in environmental review

The Minnesota Environmental Policy Act (MEPA), Minnesota Statutes, chapter 116D, established Minnesota's environmental review program. MEPA gives EQB the authority to adopt rules; specifically, Minn. Stat. § 116D.04, Subd. 2a., paragraph (b) directs the board to, "by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets must be prepared as well as categories of actions for which no environmental review is required…".

The rules that lay out these "categories of action" are referred to as the mandatory category rules and are found in Minn. R. 4410.4300 for environmental assessment worksheets (EAWs) and Minn. R. 4410.4400 for environmental impact statements (EISs). If a project is of a type listed within the mandatory categories and meets or exceeds the thresholds defined by the rules, then environmental review is required. According to a Statement of Need and Reasonableness (SONAR) for rule amendments adopted in 1982, the establishment of these mandatory categories was "to establish greater predictability to the process, i.e. if parties know at the onset that an EAW or an EIS must be prepared, they can proceed with environmental review immediately."

The mandatory categories require completion of an EAW or EIS depending on the project's potential for significant environmental effects. For projects that the EQB has determined *have* the potential for significant environmental effects, an EIS must be completed. An EAW must be completed for projects that *may* have the potential for significant environmental effects. In addition, the mandatory category rules establish the responsible governmental unit (RGU) that is to prepare and review the environmental documents for each project type.

The environmental documents (whether an EAW or EIS) are meant to be "guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid and minimize adverse environmental effects and to restore and enhance environmental quality" (Minn. R. 4410.0300, subp. 3).

The scope of this rulemaking is, per the legislative direction, *solely* the establishment of mandatory categories for environmental review, and per the Board resolution, *solely* for gas production. All other parts of the environmental review process – including content, form, preparation, publication and distribution, decisions, etc. – are not changing.

Other components of the regulatory framework for gas production

This mandatory category rulemaking is being conducted at the same time as the Department of Natural Resources (DNR) is developing rules to establish a permitting system for gas production, based on the same legislative directive. Because of the interaction between environmental review and permitting actions, the environmental review rules need to effectively coordinate with the regulatory program for gas resource development.

Changes to those proposed regulations could impact the types of projects that should undergo environmental review, or how those are identified in rule, and also potentially who should be the RGU responsible for reviewing those projects. Acknowledging these interactions, EQB staff have been closely collaborating with staff from the DNR.

Rulemaking Process

Minnesota's environmental review program does not currently contain any mandatory categories related to gas production. This is likely because traditional gas production – i.e., extraction of natural gas – has not occurred or been seen as likely to occur within the state. The legislative directive permitted, rather than required, EQB to adopt rules to establish mandatory categories for gas and oil production.

In April 2025, the board passed a resolution "to use the authority granted in Minn. Stat. § 93.514 to adopt or amend rules to establish mandatory categories for environmental review for gas production using the expedited rulemaking process."[1] The board then directed staff to begin the process of developing the rules and to bring forward a notice of intent to adopt expedited rules in order to meet the timelines laid out in Minn. Stat. § 93.514.

Coordination and Engagement

Following the board direction, EQB staff began to gather information to develop mandatory category rules. The staff conducted coordination with Tribal staff, stakeholder engagement, and provided updates to the board throughout the rule drafting process. Details on this coordination and engagement are provided in Attachment 1 (Tribal coordination) and Attachment 2 (engagement).

[1] No oil production is expected or likely in Minnesota, and EQB has and retains the authority to develop categories for oil production in the future as needed.

Proposed Rule Amendments

In documentation for the 1982 rule amendments, the EQB identified that when developing mandatory categories, "four major questions must be considered:

1. Is there a need for a mandatory category relating to that type of project or that impact;
2. What is the proper qualitative measure of that type of project or that impact (for example, should size of industrial facilities be measured in sq. ft. of ground area occupied, sq. ft. of floor space, cost of the facility, type of end product, type of waste products, number of employees, etc.);
3. What is the proper quantitative measure of that type of project or that impact, i.e. how many units of whatever was selected as the basis of measurement…; and,
4. Is the threshold administratively manageable?"

In addition, developing a mandatory category requires establishing an RGU to complete the review.

These questions remain relevant and this memo lays out how EQB staff considered them.

Recent mandatory category revisions and additions

When beginning development of this rule, EQB staff reviewed rule documents for the establishment of existing mandatory categories, to understand the environmental effects that were considered and how any numeric thresholds were developed.

It is relatively rare in recent years for EQB to establish an entirely new mandatory category type *and* develop thresholds.

Amendments to mandatory categories

Most updates to mandatory category thresholds have been revisions that relied on data and information from the application of the existing rules; made modifications based on existing thresholds; or aligned with levels set in other rules or permitting programs. For example:

- In 2019, EQB amended the highway projects mandatory category (Minn. R. 4410.4300, subp. 22, item B), changing the threshold for construction of additional through lanes or passing lanes on an existing road from one mile to two miles, based on a historical data review (conducted by the Minnesota Department of Transportation) of projects that completed an EAW, which found that projects between one mile and two miles did not have the potential for significant environmental effects.
- In 2011, EQB added a threshold to the air pollution mandatory category (Minn. R. 4410.4300, subp. 15) requiring review at 100,000 tons per year of greenhouse gas emissions. The thresholds in the air pollution category have been set based on the U.S. Environmental Protection Agency's Clean Air Act permitting requirements.
- In 2006 and 2007, EQB made amendments including adding mandatory categories for projects in shoreland, varying the thresholds based on existing thresholds applicable to the same project types in non-shoreland. EQB also updated thresholds in the wastewater mandatory category based on the Minnesota Pollution Control Agency's experience implementing that category.

New mandatory category creation

In 2019, EQB added thresholds specific to silica sand projects into some existing mandatory categories, making permanent the thresholds established by the legislature in Minn. Stat. § 116C.991.

In adding the thresholds within the existing mandatory categories for transfer facilities (Minn. R. 4410.4300, subp. 8, item C) and storage facilities (Minn. R. 4410.4300, subp. 10, item H), EQB identified the following potential environmental impacts in the rulemaking SONAR:

- *[P]rocessing, transloading and storage of silica sand have the potential for causing environmental impacts relating to land use, transportation, noise, facility lights, air quality, recreation, economic, and water quality and water quantity…transloading, processing and storage facilities may be very large-scale, which in some cases may increase the potential for environmental impacts including fugitive dust emissions, transportation related issues and water pollution issues.*

In adding thresholds for silica sand within the existing mandatory categories for nonmetallic mineral mining (Minn. R. 4410.4300, subp. 12, item D), EQB identified the following potential environmental impacts:

- *The extraction, mining, and ancillary features associated with extraction and mining of silica sand deposits have the potential for significant environmental effects relating to land use, transportation, noise, air quality, water quality and vibrations. Activities and features associated with the extraction and mining processes and mine area land disturbance directly relate to the need for environmental review due to the potential for significant environmental effects caused by these activities. Specifically, the activities include truck transport…which has the potential to result in increased traffic impacts, road degradation, increased noise, safety concerns and increased dust…Additional activities and features associated with the extraction and mining process that have the potential to change the way-of-life include lights, noise, and hours of operation… Mine activities and features with the potential for significant environmental effects include: clearing the mine site, removal of vegetation, compaction, stripping, grading, grubbing, filling, storing materials, settling ponds, berms, constructed buildings associated with mine activities, haul roads and refuse piles.*

In both categories, EQB identified the specific thresholds as being reasonable because they were established by the legislature and because a 2015 EQB survey of local governments identified general agreement with the specific thresholds.

Mandatory category rulemaking considerations

In developing mandatory category thresholds, EQB has made reasonable choices based on the available information concerning environmental effects. Because gas production does not yet exist in Minnesota, information is limited and there are not any existing thresholds that can be used. EQB's proposed mandatory category thresholds therefore rely on multiple factors, including:

- An understanding of the environmental effects identified as important or significant in past mandatory category rulemakings.
- Available information about gas production projects and their environmental effects, both quantitative and qualitative.
- The likelihood of public interest in gas production projects.
- The program's objectives (as laid out in Minn. R. 4410.0300) to: provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project; provide the public with systematic access to decision makers; delegate authority and responsibility for environmental review to the governmental unit most closely involved; reduce delay and uncertainty in the environmental review process; and eliminate duplication.

Need for a mandatory category for gas production

EQB staff have determined that there is a need for a mandatory category for gas production due to the likelihood of these types of projects; the types of environmental effects that could result; and the need for an approach specific to gas production.

Gas production potential

There is demonstrated potential for production of both helium and hydrogen gases within the state. In February 2024, a helium exploration company (Pulsar Helium) confirmed that the site of a previous accidental discovery of helium gas in the northeastern part of the state appeared to contain commercial quantities of helium gas. Pulsar suggested that it might be able to start commercial production of helium, along with carbon dioxide, within twelve to eighteen months.

At the same time, state agency staff became aware that other exploration companies were identifying drilling targets for geologic hydrogen in Kansas and Nebraska. These targets were located along a geologic formation known as the Midcontinent Rift System. The Midcontinent Rift System extends northwards into Minnesota, from the Iowa border up to Lake Superior. The United States Geological Survey has identified the Midcontinent Rift System as one of the top two prospective regions for geologic hydrogen production in the United States.

Minnesota has not previously been the site of industrial extraction of gas, although it has a long history of other extractive industries, i.e., mining of sand, gravel, and iron ore. Because gas production is new to Minnesota, the need and desire for information about the possible impacts, especially of larger projects, is likely to be high among both the public and permitting authorities at all levels of government. The environmental review process is intended to inform decision makers and the public, and adding a mandatory category threshold for these projects helps ensure this objective is accomplished.

Environmental effects of gas production

The environmental concerns or effects from a gas production project are critical in determining if and when these types of projects should be required to do environmental review. These environmental effects result from the actions undertaken during gas production.

A typical gas production project begins with exploration. During exploration, a project proposer gathers information about a site and its gas deposit. The goal of exploration is to identify a suitable location for drilling a well to extract the desired gas. This step includes research to determine if the geology is likely to result in sufficient extractable gas to warrant development. This research may include drilling exploratory borings to collect samples and make subsurface measurements. From there, the next steps or actions for development of a gas project include drilling, completion, and production. These steps typically involve the processes and time periods described below:

- **Drilling** of a gas well typically takes 30-60 days, but that time can vary. Drilling starts with preparing the site (clearing and leveling) and setting up a drilling rig to drill a well and feed steel pipe into the well bore. Drilling mud may be needed to manage downhole pressures, provide information about the rock layers being drilled through, and keep the drill bit cool. Casing and cementing are performed to stabilize the well bore and to prevent contamination. Safety equipment, such as a blowout preventer, is installed to prevent the gas from being released in rare, unexpected, overpressure situations.
- **Completion** is a one-to-five-week process of bringing a gas well into production after initial drilling has been completed. Completion steps may involve: removal of the drill string; casing, cementing, and perforating the well bore; hydraulically fracturing the reservoir to stimulate production; expelling drilling and fracturing fluids; and installing the production valves. Additional equipment is then installed to allow for extraction of the gas.

- **Production** of gas from a completed well can last from 20 to more than 50 years. During production, the well is monitored, maintained, and managed. When a gas stream is extracted, it is typically made up of a combination of gases.[2] For example, the gas stream in Pulsar's exploratory wells has been identified as being comprised of helium, nitrogen, carbon dioxide, and methane. The target gas resource is typically separated from the rest of the gas stream and sent to an end user.[3] The process of sending gas to an end user varies; it may be transported in a gaseous state or may be liquefied. It can then be shipped via trucks or piped to off-site processing facilities. The unwanted gas components are disposed of according to applicable rules and regulations.
- The **closure and reclamation** phase occurs after the underground gas reservoir has been depleted and the site must be closed. Any equipment is removed, wells are sealed to protect groundwater resources, and the land is returned to a natural state. While removal of equipment and well sealing can be completed within a relatively short period of time (months), restoration of impacted natural resources may take much longer, depending on the setting and scale of the gas production operation.

EQB staff then reviewed the potential for environmental impacts from all stages of a gas production project. Based on available information, there are the following potential environmental impacts:

- **Surface impacts**. Initial development of the project location and ongoing operations may lead to environmental effects from clearing land for construction of drilling pads, facilities to process and ship gas, roads to access extraction sites, and construction of "flowlines" to transfer gas from multiple wells to a collection or processing area. Land clearing can impact surface water quality, wildlife habitat, and threatened and endangered species. There may also be surface impacts due to spills or leaks from material storage. There may be noise, light, and odor from both construction and ongoing operations.
- **Subsurface impacts**. Well drilling, gas extraction, injection of drilling waste (if proposed), and spills or leaks from material storage have the potential to cause pollution of groundwater and drinking water. Additionally, depending on the type of operations, there may be potential for impacts to the geology or groundwater due to fracking or other gas production methods.
- **Air impacts**. Extracting and processing gas can lead to air pollution. Gas reservoirs may contain a variety of components such as helium, hydrogen, methane, carbon dioxide, and nitrogen. Some of these components may need to be disposed of, which could include processes such as venting and flaring. Potential air impacts also come from the operating equipment, which is often powered by generators, as well as from vehicle traffic.

Supporting documentation for the existing mandatory categories (such as the documentation of environmental impacts from silica sand described above) demonstrates that these types of impacts have long been considered reasons to require certain projects to undergo environmental review.

Existing categories or specific approach

Gas production projects could, in some cases, exceed *existing* mandatory category thresholds (particularly impact-based thresholds such as air pollution or land use conversion) and be required to undergo review without a new mandatory category applicable to gas production projects. However, EQB anticipates that gas production projects that have a potential for significant environmental impacts will generally not be covered by

[2] The well can also produce waste waters (called "produced water") that require management due to the presence of contaminants.

[3] Separation or purification can be accomplished through multiple different methods.

the existing categories because the categories most likely to be applicable generally focus on one particular impact source, and not the variety of impacts associated with gas production.[4]

Not establishing project-specific categories under the assumption that a gas production project will fit within the existing rules is likely to result in projects that may or do have the potential for significant environmental effects not being properly reviewed.

The potential for environmental effects from gas production demonstrates the need for mandatory environmental review.

Project type and definition

Having established that there is a need for a mandatory category, the next step is to consider how to define the project type and the actions that require review.

The existing mandatory categories largely require review when there is construction or expansion of a specific project type. EQB is proposing to maintain that structure here, proposing that environmental review be required for construction or expansion of a "gas resource development project."[5]

To implement this, EQB is proposing multiple definitions in the amended rules.

Minn. R. 4410.0200, subp. 32a. Gas. "Gas" has the meaning given in Minnesota Statutes, section 93.514.

> This definition incorporates the identical legislative definitions of "gas" in Minn. Stat. § 93.513, subd. 1 and Minn. Stat. § 93.514(c). These provisions establish the prohibition on production of gas and oil from consolidated or unconsolidated formations (geological sources as opposed to gas generated by other processes such as anaerobic digestion) without a permit from the DNR commissioner and issued pursuant to rules adopted by the DNR, and the authority or requirement for various agencies to adopt rules. The statutes do not define "oil." Because geological sources of "oil" are not known to exist in the state, it is reasonable to limit this rulemaking to "gas."

Minn. R. 4410.0200, subp. 32b. Gas production. "Gas production" means production, as defined under Minnesota Statutes, section 93.514, of gas.

> The legislation establishing the permitting program defines "production" as including the extraction and beneficiation of gas or oil in the state. Minn. Stat. § 93.513, subd. 1; Minn. Stat. § 93.514(c). To clarify that a facility that involves any of these activities is subject to the environmental review requirements described in this rule and to simplify drafting, it is reasonable for the EQB to use this definition, but without reference to oil.

Minn. R. 4410.0200, subp. 32c. "Gas resource development project" means an operation that is designed for gas production from consolidated or unconsolidated formations and that is required to hold a permit from the DNR under Minnesota Statutes, section 93.513, and rules adopted by the DNR under Minnesota Statutes, section 93.514.

> The requirement for a project to be subject to environmental review relies on whether that project involves a major "governmental action…which would cause physical manipulation of the environment…"

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[4] One exception may be a stand-alone or off-site gas processing facility for liquefying gas. These are larger industrial facilities that are more likely to involve pipelines and to process a larger volume of gas and are quite rare. A facility of this type would likely be reviewed under the existing industrial facility or pipeline mandatory categories, and therefore no mandatory category is proposed for these types of projects in this rulemaking.

[5] Gas resource development is the definition of a gas production project that EQB is proposing to utilize as this is the terminology being utilized in DNR's draft regulations.

as defined by Minn. R. 4410.0200, subp. 65 and as required by Minn. Stat. § 116D.04. Here, the main governmental action required will be a permit from the DNR, and the legislature has required DNR to adopt rules before it may grant a permit. (Minn. Stat. § 93.513.) It is reasonable for the EQB to reference the legislative definitions of "gas production" and DNR's permitting authority in establishing a definition that will be used to describe the type of facility that may be subject to environmental review requirements. DNR's rules will further establish the specifics of what types of projects need a permit.

Minn. R. 4410.0200, subp. 32d. Gas well. "Gas well" means a well that is intended for gas production and that is included as part of a gas resource development project.

To access gas for production, it is necessary to drill or bore a shaft into the geological formations containing the gas. In the gas industry, these openings are called "wells." The legislature has not defined "wells" in this context, although other "well" definitions exist in state law, in particular definitions adopted by the Minnesota Department of Health in rules intended to ensure proper construction and sealing of water wells used for water supply and environmental wells used for monitoring and remediation. Because the number of gas wells is related to the environmental impacts from a gas resource development facility, the EQB proposes to use the number of wells involved in a gas resource production facility to determine when environmental review is necessary. As a result, EQB needs to define what is meant by a "gas well." EQB has limited the gas well definition to those wells that are included in the gas resource development project. This is reasonable to ensure that other borings (for example, exploratory borings that are not ultimately used for production) do not trigger environmental review requirements.

Defining the project type as gas resource development is meant to broadly capture the actions that involved in extracting and producing gas.

Thresholds

The next step is to determine the thresholds that should be imposed for environmental review of gas resource development projects. This requires determining a metric that corresponds with the level of effects EQB concludes requires environmental review.

An EAW is required for projects that **may** have the potential for significant environmental effects, while an EIS is required for projects that **do** have the potential for significant environmental effects. Thresholds must align with potential for significant environmental effects and be easy to apply so that project proposers and permitting authorities know early on which projects require environmental review, and of what type (EAW or EIS).

Developing reasonable thresholds for the mandatory categories requires understanding, to the extent possible, the potential for significant environmental effects from projects of this type, while recognizing that there are always going to be limitations in the available data. In the case of gas resource development, because these are new project types to this state, many unknowns are present. This highlights the need to utilize an evidence-based but conservative approach when developing environmental review thresholds.

The goal of mandatory category thresholds is to ensure, to the extent possible, that the right projects are reviewed so that permitting authorities have the environmental information necessary to support their permitting decisions, and the public has an opportunity to participate in the process of developing that information. The environmental review rules recognize that the mandatory categories may not always capture projects that should require environmental review. If the thresholds fail to trigger environmental review for a particular project that poses unique impacts, the environmental review rules provide for discretionary review or review by petition.

Many of the existing project-based mandatory categories require review when a project reaches a certain size, such as the capacity of a storage facility, acres of land excavated for mining, or the square feet of a building.

Therefore, EQB staff began by evaluating at what size the environmental effects from a "basic" gas resource development project may or do become potentially significant. EQB staff then considered whether there were specific instances where the effects from smaller gas resource development projects may or do become potentially significant, due to specifics of their location or operations.

Size-based threshold

The EQB is proposing that an EAW be required for any gas resource development project that is proposing a project consisting of five or more production wells, either as a new project or an expansion of an existing facility. (See proposed rule part **Minn. R. 4410.4300, subp. 38, item A**.)

This size-based threshold, applicable statewide, is intended to capture gas resource development projects that may have the potential for significant environmental effects, based on the total effects to the surface, air, and subsurface.

EQB staff determined that the best metric for the "size" of a gas resource development project is the number of production wells. Each additional well adds to the impacts of the project generally. While EQB staff considered other possible metrics – such as the volume of gas extracted - the number of wells is a metric that is easily applied by permitting authorities and regulated parties to assess whether a project requires environmental review.

As discussed below, a gas resource development project utilizing a **single** production well (assuming it does not incorporate techniques discussed in other sections below), generally would have limited environmental effects that do not reach the threshold for environmental review. However, the potential impacts increase as project size increases – i.e., as more production wells are developed. This is mainly due to the **combined** impact of surface disturbance, noise, light, truck traffic, and air emissions that come with increases in gas production.

This size-based threshold is based on understanding the impacts from a "basic" gas resource development project of the type anticipated in Minnesota, consisting of a development or production area with production wells and a centralized processing facility connected to each individual production well via flow lines.

EQB staff reviewed projects in other states to understand the development of the typical gas production project like those expected to occur in Minnesota. For example, a helium gas production project in Colorado began with two production wells and a single production facility; it has added wells over time and is to be comprised of 11 production wells, all of which will be connected to a centrally-located processing facility. The gas stream is predominantly nitrogen, with smaller percentages of helium and carbon dioxide. The processing facility purifies the gas to around 90% helium by removing the other gas components.

Assuming gas production projects are likely to consist of multiple production wells within a single general area, with all wells connected to a centralized processing area, it is logical to use a project's number of production wells to create an environmental review threshold. Such a threshold can encompass the impacts of a project as a whole. The number of wells will directly influence the level of the likely environmental effects, namely the collective impacts to the surface, subsurface, and the air from the activities at the site.

The section below expands upon the analysis and supports the reasonableness of a mandatory EAW for a gas resource development project consisting of five production wells.

Analysis

EQB staff's analysis began by looking at the potential for environmental effects from a single production well and then extrapolating the potential impacts as a project increases in size in order to determine at what level the environmental effects may have the potential to be significant.

At a minimum, viable commercial gas production must include:

- A way to extract the gas, necessitating drilling at least one well.
- A way to process or beneficiate the gas after extraction.
- A way to deliver or ship the purified gas to an end user.

Subsurface Impacts

A single, basic, gas well that is designed to produce gas without enhanced or specialized techniques is unlikely to have significant subsurface impacts. EQB proposes to classify projects that propose to use enhanced or specialized techniques for production differently with regard to environmental review (as noted in sections below).

Surface Impacts

Gas resource development projects require a proper working space for drilling wells, installing flowlines, and constructing a processing facility, all serviced by appropriate roads. These actions will cause surface impacts from land use change, construction, and ongoing operations. Due to the potential remote locations of these projects, land use conversion and land cover changes are anticipated.

Land use conversion involves environmental impacts related to construction from removal of natural vegetation and cover – including loss of habitat, erosion, and runoff – and is associated with increased light, noise, and traffic impacts. Increased light and noise may lead to impacts on both people and the environment. Existing environmental review categories recognize that changes to land use can cause environmental effects that justify environmental review. Land use conversion (typically acreage) and facility size (building square footage or gross floor space) are common considerations in mandatory category development and existing thresholds.

Noise levels from gas production projects are also important environmental effects.[6] The main sources of noise from oil and gas operations can be grouped into the following two categories: (1) construction and preparation (e.g., road construction, site and well pad preparation, truck traffic) and (2) production and completion (e.g., flaring operations, drilling, hydraulic fracturing, compressor stations). It is difficult to assume all operations will exhibit the same noise impacts; but, for comparison, the State of New York completed a Generic Environmental Impact Statement (GEIS) for the oil and gas sector. This study notes composite noise levels at a distance of 15 to 610 m (50 to 2000 ft) ranged from 57 dBA to 89 dBA for access road construction, 52 dBA to 84 dBA for well pad preparation, 44 dBA to 76 dBA for horizontal drilling, and 52 dBA to 104 dBA for hydraulic fracturing.

Operations at these types of facilities are typically 24 hours a day and therefore require lighting. Development of oil and gas fields has been shown to increase light pollution, especially in rural areas.[7] Impacts from lighting may have the potential to negatively impact people's way of life in areas where gas resources are developed, especially as they grow in size. Impacts from lighting have been shown to have negative impact on animals and insects, disrupting circadian and seasonal behavior.

Gas resource development facilities will require equipment necessary to produce and beneficiate the gas and may incorporate industrial equipment as well as generators to power such equipment. Land use conversion will be necessary for accessing a space to drill a gas well and construct a processing facility. Road access to these sites will be necessary as well as installing flow lines to connect the well(s) to the processing facility.

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[6] State noise standards, industrial facilities such as gas production are likely to be classified as NAC 3.

[7] Boslett, A., Hill, E., Ma, L., & Zhang, L. (2021). Rural Light Pollution from Shale Gas Development and Associated Sleep and Subjective Well-Being. *Resource and energy economics*, *64*, 101220. https://doi.org/10.1016/j.reseneeco.2021.101220

Based on available information, a single-well gas resource development project including these components would potentially result in two to five acres of land conversion although that total is dependent on location and other project circumstances.

As a project grows in size and continues to add production wells, the amount of land disturbance will grow, the amount of road access will increase, and the flowline distances will increase. Additionally, the amount of equipment and potential industrial development that the production space would require to facilitate more production can be expected to increase.[8]

Traffic impacts and air impacts

Traffic impacts and air pollution are also key components of the anticipated environmental impacts from a gas resource development project. The overall impacts of these two components are connected and are dependent upon the volume of gas that is available to extract from each well (flow rates) and the composition of the gas that is being targeted.

Once gas is extracted from the subsurface, that gas must be managed. The amount of gas production per day will be a key factor in the amount of gas shipped, which will vary based on the methods that a project uses to manage and ship the gas (likely via trucks). The composition of the gas and unwanted components will influence how much gas is shipped and any waste gas disposal (which could include venting or flaring) potentially causing air pollution, including climate pollution.

Data from Minnesota[9] and Colorado[10] show that gas wells are capable of producing 500,000 cubic ft/day of gas, made up of multiple components. Pulsar's published test data estimates that the gas deposit it is evaluating for production consists of 10.5% helium (ranging from 5.6% to 13.8%), 13.2% nitrogen, 2.4% methane, and 73.8% carbon dioxide. This information can be used to understand the range of potential environmental effects from shipping the desirable gas and managed unwanted components.

The targeted gas (such as helium or hydrogen) must be transported to end users. Shipment of gas can be done in a variety of ways. Gases are typically shipped via "tube trucks," which come in various sizes and can transport various volumes of gas in liquid or gaseous states. There are numerous factors that impact truck sizing for shipment (production levels, road restrictions, shipping contracts, etc.). The truck selection used in this analysis is an 80,000-pound truck, which would represent the largest load allowed on Minnesota roads. Local jurisdictions and seasonal road restrictions would likely impact the amount of product that can be shipped and may not allow for an 80,000-pound truck; if lighter loads are required to meet the road limitations this would result in increased truck trips.

Existing environmental review categories identify traffic as a significant driver of environmental impacts due to safety concerns from road congestion, but also to the degradation of the roads. Truck traffic also may have air pollution and other impacts.

If *all* of the produced gas were shipped (assuming a flow rate of 500,000 cubic ft/day), EQB estimates that shipping the gas from one well could require 1022 trucks per year (2044 total trips) for non-liquified gas; if the

[8] This is assuming a scenario where new production wells are being added to sites where existing production wells continue to produce. When production wells are no longer producing, DNR's rule will likely require them to be sealed and reclaimed. In some cases, a new production well may replace a sealed well, keeping the total number of wells constant.

[9] Pulsar Helium has published test data showing flow rates as low as 21,000 cubic ft/day (unpressurized) and as high as 1.3 million cubic ft/day (pressurized).

[10] Data from the helium project in Colorado shows flow rates for wells operating in 2025 that range from 140,000 cubic ft/day to 526,000 cubic ft/day, all of which are pressurized flow rates.

facility is shipping liquified gas, many fewer trucks would be needed – about 1/5th of the initial estimate.[11] Although producers are unlikely to ship all produced gas due to gas streams having components that are not marketable, this is a reasonable upper or worst-case estimate for truck traffic, especially considering that under some estimates a single well could produce more than the 500,000 cubic ft/day amount used here.

Non-targeted or undesirable components of the gas stream also have to be managed and/or disposed of. Looking across the country at gas concentrations in projects producing helium, the gases present are similar to those reported by Pulsar, but with a wide variety in the relative percentages. Projects in Colorado have reported gas compositions of 77% nitrogen and 15% CO_2 but companies have reported wells consisting of up to 98% CO_2. There are also wells in Colorado that mostly produce methane with helium making up one to six percent of the overall gas composition. Information on hydrogen gas production is more difficult to find. However, the associated gases are anticipated to be of similar composition (nitrogen, carbon dioxide, helium, methane) but (as with helium) the percentages are expected to vary significantly. Hydrogen exploration projects in Kansas, for example, have reported gas compositions of up to 96% hydrogen.

Existing environmental review categories identify air pollution as a significant source of environmental impacts.

If *all* of the gas extracted were released to the atmosphere, using the amount of CO_2e from Pulsar's gas evaluation at the same 500,000 cubic ft/day, one well could emit 10,461 tons CO_2e/year from the entire gas stream. Again, although not all gas would ever be released, this calculation provides a reasonable upper or worst-case estimate for climate pollution impacts from production at this level (again considering that under some estimates a single well could produce more than the 500,000 cubic feet/day amount used here) and demonstrates the potential for increased emissions for projects where more greenhouse gases require management or disposal.

The calculations of potential truck traffic and air emissions combined with the likely degree of other potential impacts discussed above (surface disturbance, light, and noise) from a gas resource development project suggest that a project consisting of a single well generally should not require mandatory environmental review. However, as wells are added, the aggregate effects increase. The aggregate impacts (surface disturbance, light, noise, traffic, and air) from a project with five or more wells justify a mandatory EAW.

Size threshold conclusion

The existing mandatory categories established in rule, and their supporting documents, provide useful comparisons about the relevant potential for environmental effects. For example, multiple mandatory categories include thresholds based on acres of clearing for land use conversion or the amount of space necessary for operating facilities. These include required EAWs for projects that convert 80 acres of natural land, 20 to 40 acres of land in shoreland, or incorporate structures totaling 100,000 – 600,000 square feet. As discussed above, a gas resource development project with five wells could result in a wide range of total land clearing potentially 10 – 25 acres from road development, flowline installation, and well pad construction,

The air pollution mandatory category requires an EAW for projects generating 100,000 tons per year of greenhouse gas emissions. The estimates provided above, based on estimated flow rates and Pulsar's specific gas composition data, show that a gas resource development with five wells could result in levels of greenhouse gas emissions approaching half this threshold.

The supporting documents for the inclusion of the silica sand mandatory category note a particular concern for truck traffic at transfer facilities, with the threshold of 200,000 tons per year of silica sand resulting in truck traffic of 7,692 loaded trucks per year. From the estimates above based on estimated flow rates, at five wells the

[11] However, this would require more operating equipment to liquify the gas product, which would likely result in increased surface disturbance and potential air emissions.

potential truck traffic from a gas production project may reach 5,110 trucks per year, about 2/3 of the figure considered for silica sand transfer facilities.

Not all of the potential environmental effects can be quantified; the impacts of noise, light, and similar effects must be judged more qualitatively. In addition, none of these effects stand alone; evaluation of potential for environmental effects must incorporate all potential impacts.

At five production wells, the amount of truck traffic, land use conversion, construction requirements, potential air emissions, potential noise levels, and lighting requirements combine together to indicate that a project of this size *may* have the potential for significant environmental effects. Although much of the analysis is based on information from the one known potential project – Pulsar Helium – the potential environmental concerns relating to air pollution, traffic, noise, lighting, land conversion, all remain no matter the type of gas being produced.[12]

A size of five wells also strikes a reasonable regulatory balance. In the GTAC process, which was to recommend a *temporary* framework for regulation of gas production, EQB staff recommended that all gas production projects go through an EAW, due to the newness of the project type and the unknowns. Some comments on the GTAC report felt that this requirement would be too burdensome. The research conducted since that report, described above, shows that the smallest projects are unlikely to require mandatory review based on their potential for significant environmental effects. This is consistent with many project-based mandatory categories which have thresholds that exclude the smallest projects.

Based on EQB's understanding of the gas production project in Colorado noted above, a five well threshold is likely to align with potential projects expected to occur in Minnesota. At a higher size threshold, mandatory environmental review becomes less likely. The public interest in the impact of gas production – demonstrated by comments on the GTAC report that raised concerns about drilling noise, lighting, dust, traffic, carbon dioxide emissions, PFAS in drilling mud and materials, and threatened and endangered species – supports the need for environmental review.

There is insufficient information to set an EIS threshold – i.e., to determine that a basic gas resource development project, particularly of the types of projects expected to be located in Minnesota, *does* have the potential for significant environmental effects – based solely on the size of the project. If the EAW finds the potential for significant environmental effects (applying the decision criteria under Minn. R. 4410.1700), an EIS would be required.

The weight of evidence demonstrates that setting a mandatory category threshold requiring an EAW for a gas resource development project consisting of five wells is appropriate, based on data from potential production levels from comparable helium projects while recognizing the variabilities that may arise from other gas resource development projects. This threshold recognizes the potential for significant environmental effects utilizing project specific data while incorporating the potential variations that may arise on a project-to-project level.

Location-based threshold

The proposed size-based threshold would apply across the state. The next evaluation is whether there is a need for a different (lower) threshold in certain areas. Some existing mandatory category thresholds vary by location. For instance, there are separate mandatory categories for certain kinds of development (residential,

[12] Some interested party input has suggested that EQB develop categories that are differentiated based on the type of gas being extracted. EQB believes that this would make the rules overly complicated, highlighted by the variabilities in flow rates and gas compositions. Setting a threshold for requiring environmental review based on the number of production wells, regardless of targeted gas, is appropriate for all gas extraction projects

campgrounds) in shoreland, and the feedlots EAW mandatory category has a lower threshold for projects located in certain sensitive areas.

Based on known geology, gas resource development projects have the potential to be located across the state. EQB is proposing certain thresholds that would require environmental review for gas resource development projects that are located on or near certain sensitive areas. This mandatory category threshold (see proposed rule **Minn. R. 4410.4300, subp. 38, items B and C)** is meant to align with DNR's rules.

EQB staff understand that the DNR plans to identify locations where gas production would not be allowed (excluded) and those where certain kinds of actions will be prohibited or restricted. While environmental review would not be required in areas where production is completely excluded because no projects would occur in those areas, it is reasonable to require environmental review in those areas where DNR will allow a gas production project to be sited but the DNR will impose limitations on the type of operations to reduce potential impacts to sensitive environmental areas.

In these areas, gas production may have the potential for significant environmental effects and therefore an EAW should be required. Where DNR rules place restrictions on the location of projects, or the actions that can be taken within certain locations, it is reasonable to assume that the projects pose particular risks to the environment, suggesting that environmental review should be conducted to ensure that all risks are understood and addressed through the permitting process.

EQB is proposing that an EAW be required for a gas resource development project if it is to be located within or intended to incorporate directional drilling methods to extract gas from underneath areas of the state that are recognized as needing special protection. Specifically, EQB is proposing a mandatory category threshold that requires an EAW:

- For any gas resource development project proposing to produce gas from beneath a location where the DNR imposes regulations to <u>prohibit both</u> surface disturbance and directional drilling.
- For any gas resource development project proposing to directionally or horizontally drill underneath areas where the DNR imposes siting regulations to <u>prohibit only surface disturbance</u>, if that drilling is within ¼ mile of the surface.

The vertical buffer for directional drilling (less than ¼ mile below the surface) is added based on potential for shallow drilling to impact the subsurface, in particular the potential to impact drinking water aquifers. These aquifers are more likely to be encountered when drilling horizontally at depths less than ¼ mile, and environmental review will ensure that detailed information identifies the potential effects of drilling.

EQB staff considered other ways of incorporating location – such as listing out specific sensitive locations – but ultimately determined that alignment with DNR's siting locations would be more efficient and take advantage of DNR's expertise in understanding the protections required for different areas (such as state and national parks, scientific and natural areas, etc.)

EQB staff also considered whether different thresholds were needed in proximity to Tribal reservations and communities. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited rule to define a boundary that:

1. Is relevant to Tribal resources;
2. Fits with the program's requirements for significant environmental effects; and
3. Is repeatable and easily implemented.

Although EQB is not proposing a mandatory category based on proximity to Tribal lands, EQB understands that DNR's rules will provide Tribes with early notice of projects. This will support consultation and coordination under Minn. Stat. § 10.65. As the RGU, DNR has the authority to order discretionary review, and members of the public can file a petition for an EAW on a project.

Project-specific techniques thresholds

The size and location-based thresholds are meant to capture "basic" gas resource development projects, regardless of the type of gas they are extracting or how they intend to extract it. However, certain kinds of project techniques are likely to influence a project's potential for significant environmental effects. EQB is proposing three specific thresholds where environmental review would be required, based on whether the gas resource development project would include injection of substances in the subsurface for waste disposal, to enhance the recovery of the gas, or in order to create a gas to eventually extract. Projects that involve these techniques pose special concerns due to the potential subsurface impacts, such as to groundwater and drinking water, in addition to the potential effects discussed previously.

Underground injection techniques, or the process of placing fluids underground via a well, are common in parts of the oil and gas sector and may be utilized by a gas resource development project in a few different ways.[13] In general the process of injecting a substance or a fluid in to the subsurface presents environmental concerns including the potential contamination of drinking water and induced seismic activity. Injecting fluids may contain wastes that when injected into the subsurface offer a direct path to then contaminate underground sources of drinking water. Injecting fluids underground may lead to induced seismic events.[14] In Minnesota underground injection is prohibited within water wells and borings, apart from a few exceptions per Minn. R. 4725.2050. Because these prohibitions and regulations are limited to water wells and borings, they are unlikely to apply to gas production. The existing regulations and prohibitions on certain types of underground injection demonstrate a long-standing awareness that these actions have the potential for significant environmental effects; this understanding applies even within this new industry that was not considered at the time existing regulations were developed.

The types of underground injection that EQB staff believe should require environmental review and the potential environmental effects are discussed below.

Class II injection wells for waste disposal

EQB is proposing that an EAW should be required for any gas resource development project proposing to incorporate underground injection for waste disposal. (See proposed rule **Minn. R. 4410.4300, subp. 38, item D).**

Underground injection control (UIC) is a federal program that regulates the construction, operation, and closure of injection wells across the nation. States can apply to be given regulatory authority over this program ("primacy"); to date, Minnesota has not done so. One type of injection well that falls within this federal program

[13] While underground injection is common, projects may be designed not to use or require these techniques. For example, Pulsar Helium has indicated no need to use these techniques in producing helium.

[14] The largest earthquake induced by fluid injection that has been documented in the scientific literature was a magnitude 5.8 earthquake in Oklahoma. Four magnitude 5+ earthquakes have occurred in Oklahoma, three of which occurred in 2016. In 2011, a magnitude 5.3 earthquake was induced by fluid injection in the Raton Basin, Colorado. Earthquakes with magnitudes between 4.5 and 5.0 have also been induced by fluid injection in Arkansas and Kansas. See USGS, How large are the earthquakes induced by fluid injection?

is Class II oil and gas related injection wells. These wells are used for waste disposal from oil and gas projects utilizing underground injection as well as underground injection for enhanced recovery of oil and gas.

Enhanced recovery methods ultimately are meant to achieve the same thing as fracking (increased recovery of gas), just under less intense pressures and volumes. (Fracking is discussed in a section below.) Liquid is pumped underground with pressures low enough that the geology will not be forced into fracturing, but still improve displacement of the target substance underground, allowing for increased extraction rates.

Underground injection waste disposal is utilized in many oil and gas wells to dispose of waste encountered during the drilling process and is often used for produced waters (typically brine waters).

The volumes of water and anticipated impacts from enhanced recovery (without fracking) utilizing a federally-permitted Class II injection well are anticipated to be relatively similar to that of hydrofracturing water wells, which is currently allowed in Minnesota and does not require environmental review (further discussion of hydrofracturing is provided in the section below). However, if project-related waste is incorporated into the enhanced recovery process, there may be potential for significant environmental effects. The prohibition on using water wells or borings for injection of waste disposal provided in Minn. R. 4275.2050 clearly demonstrates the environmental concerns by limiting what is allowed to be injected in order to protect drinking water sources. This argues that regulated injection under the federal Class II program might have the potential for environmental impacts. Waste disposal into the subsurface by injection has the potential to create a direct pathway for pollution of drinking water resources. Additionally, there is the potential for seismic events occurring from prolonged and high-volume disposal from underground injection wells.

For these reasons, EQB staff propose that any project that includes a Class II injection well for project-related waste disposal should require an EAW prior to approval. This threshold would only apply for enhanced recovery Class II injection wells if the injection materials include project-related waste.

Stimulated gas production

EQB is proposing an EAW be required for any gas resource development project that will produce (i.e. extract and beneficiate) gas created in the subsurface as a result of a chemical reaction from underground injection. (See proposed rules **Minn. R. 4410.4300, subp. 38, item E)**

This type of underground injection is the type of process used to create "stimulated hydrogen." Geology in certain areas of Minnesota may allow hydrogen gas to be created in the subsurface by injecting a solution to induce a reaction between that solution and the minerals within a targeted geologic formation.[15]

This type of project is mostly theoretical and there is limited information available on real world implementation. Despite the lack of available data, there is a conceptual understanding of what is included in these projects. This project type and its potential impacts are different from that of a typical gas resource development project; the techniques used along with the necessary fluids combined with potential additives (underground injection to create a gas in the subsurface) present an increased potential for impacts to the subsurface with the potential to significantly impact drinking water and groundwater sources.

Geologically these projects have an opportunity to occur in areas of the state where drinking water aquifers are present. Similar to waste disposal, underground injection leading to the creation of a gas in the subsurface presents environmental concerns due to potential for pollution of drinking water via direct pathways to aquifers

[15] EQB staff note that the regulatory framework for the *creation* of a gas using these techniques is unclear; these types of projects may be federally regulated or may need ongoing development of a state regulatory framework. However, it is not clear that such projects are absolutely prohibited, and it is clear that a permit from DNR would be required for production (extraction and beneficiation) of the resulting gas.

utilized for drinking water as a result of the underground injection. Additionally, there are concerns regarding induced seismic activity associated with injecting potentially large volumes of water in the subsurface.

Therefore, EQB believes that a project of this nature may have the potential for significant environmental effects and should require a mandatory EAW.

Hydraulic fracturing (fracking)

EQB is proposing an EIS should be required for any gas resource development project proposing to utilize high volume fracturing methods to produce gas. (See proposed rule **Minn. R. 4410.4400, subp. 29)**

Hydraulic fracturing (fracking) is a process of gas extraction that involves injecting fluids (a combination of mostly water with proppants (usually sand) and other chemical additives included) underground at high pressures to create new pathways (fractures) for trapped gas within the geologic formations to ultimately be released, allowing for improved extraction of the gas.

Hydrofracturing of a water supply well is allowed in Minnesota and regulated under Minn. R. 4725.5475 as one of the exceptions to the prohibition of underground injection within water wells and borings. Hydrofracturing can be done using potable water only, with a chlorine residual or certain approved additives;[16] it is also only allowed within certain geologic settings (igneous or metamorphic bedrock). Additional restrictions regarding the process and setbacks are listed within the rules. Based on information from the Department of Health, hydrofracturing in Minnesota typically utilizes 2,000 to 4,000 gallons for a single well, potentially reaching volumes of up to 10,000 gallons. Rough estimates from the Department of Health are that 145 to 270 water supply wells in the state are hydrofractured each year. This process does not require environmental review.

Modern (high-volume) fracking techniques associated with gas resource development differ from hydrofracturing. These modern fracturing techniques are typically associated with well drilling that results in deeper/longer wells, leading to increased potential impacts to water quality at the surface and groundwater as well as potential impacts to water quantity. These techniques are typically associated with greater pressures, increased water volumes, and addition of a variety of chemicals needed to facilitate the fracturing of the rocks.

Other states have noted environmental concerns from these activities and have responded with regulations due to concerns from high-volume hydraulic fracturing.[17] Research of these other states with oil and gas regulations provided a definition of “high volume hydraulic fracturing” (HVHF). The definition included in the proposed rules is based on the Michigan definition which says HVHF is hydraulic fracturing using a combined total of 100,000 or more gallons of water during all stages in a well completion,[18] whether the well is vertical or directional, including horizontal, and whether the water is fresh or recycled and regardless of the chemicals or other additives mixed with the water. These definitions are intended to capture projects employing modern fracking techniques utilizing high volumes of water and incorporating chemical additives for which environmental concerns are present. Projects that require high volume fracking can result in millions of gallons of water being used and are known to incorporate a variety of chemicals into the fluids presenting known environmental concerns.

EQB is proposing a definition of HVHF at **Minn. R. 4410.0200, subp. 38a.** “High-volume hydraulic fracturing” means injecting fluid, with or without proppants, into the subsurface under pressure to create fractures within a

[16] Additives must meet the requirements of ANSI/NSF Standard 60, ANSI/NSF Standard 60 is a standard that sets minimum health effects for chemicals added to drinking water.

[17] Michigan and New York have regulations and information regarding high-volume hydraulic fracturing.

[18] Well completion is the process of bringing a gas well into production after initial drilling has been completed. Completion steps may involve removal of the drill string, casing, cementing, perforating, hydraulically fracturing in the reservoir to stimulate production, expelling drilling and fracturing fluids, and installing the production valve.

geologic formation for the purpose of improving the deliverability and production of gas for a gas resource development project, using a combined total of 100,000 gallons or more of any fluids.

To describe gas resource development projects that require a higher level of environmental review as the result of their use hydraulic fracturing under EQB's environmental review rule, a definition is needed. This definition is reasonable because it describes what is meant by "hydraulic fracturing" using terms found in rules successfully adopted and used by other states (New York, Michigan) and specifies the volume that triggers the "high-volume" designation (based on a Michigan definition). EQB staff evaluated if high-pressure (as opposed to the volume of water used) would work as a way to identify projects that require environmental review. However, the available information showed that the pressures required for fracturing are highly variable, and there were no existing definitions based on pressure.

HVHF has the potential for significant environmental effects due to the potential impacts in the subsurface. HVHF has the potential to significantly impact drinking water and groundwater sources as well as potential seismicity concerns.

The process of creating fractures within geologic formations has the potential of creating direct pathways to drinking water aquifers. Not only would the fluids utilized for the fracking process have a direct connection to drinking water aquifers, increasing the potential for contamination, but the gas reservoirs will also have increased potential for connectivity due to the creation of new pathways for the gas to travel. While a project proposer can control the injection (fluid volumes and pressures), the geologic response is a variable that cannot be controlled. The precise location and extent of fractures is unknown and can lead to impacts on drinking water. The injection of water to the subsurface for HVHF also results in increased wastewater because the injected fluid sometimes returns to the surface. In addition to drinking water impacts, high volume underground injections have been linked to induced seismicity events felt at the surface. Because fracking requires large volumes of water, the potential for induced seismic events must also be considered when making determinations for potential for significant environmental effects.

Therefore, EQB staff believe that any gas project proposing to utilize HVHF does have the potential for significant environmental effects and therefore should require an EIS.

Responsible government unit

EQB is proposing that the mandatory categories designate the DNR as the responsible government unit (RGU) for conducting the review. The DNR is the appropriate choice for serving as the RGU as they have the greatest responsibility for supervising or approving a gas resource development project as a whole. This determination is based upon the authority given to the DNR to regulate gas production. This proposal is in keeping the general procedures for RGU selection currently laid out in Minn. R. 4410.0500, subp. 5.

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Environmental review: Mandatory category for gas resource development projects

Attachment 1 to rule summary and justification

Tribal coordination

The Environmental Quality Board (EQB or Board) seeks to foster and facilitate positive government-to government relations between EQB and all federally recognized Tribal Nations that share geography with the state of Minnesota. To help fulfill this goal, EQB adopted a Tribal Coordination and Consultation Policy that aligns with Minn. Stat. § 10.65. This statute encourages and allows all agencies and boards to "engage in consultation and communication with the Minnesota Tribal governments for all matters that have Tribal implications."

This document provides a summary of the Tribal coordination that took place from June 2025 to March 2026, prior to publishing the notice of intent to adopt rules for the environmental review of gas production projects.[1]

Coordination summary

The EQB's Tribal Coordination and Consultation Policy focuses largely on staff-to-staff coordination, defined as "an affirmative process where EQB staff will proactively identify and seek input from Tribal government staff in a timely and meaningful manner as part of its decision-making process on projects, programs, policy developments, and similar items..."

Coordination generally proceeds through multiple steps: identification, notification, information sharing, listening to and considering input, and communicating decisions.

Prior to the rulemaking of developing mandatory categories for gas projects, EQB was part of an interagency team, called the gas resources technical advisory team (GTAC) led by the Department of Natural Resources (DNR). GTAC was tasked with developing recommendations for a temporary regulatory framework for gas production in Minnesota. From the start of this work, it was clear that gas production is a matter with significant Tribal interest. Tribes expressed concerns over potential impacts to cultural resources and treaty-protected hunting, fishing, and gathering rights.

Therefore, once the Board directed staff to begin rulemaking for environmental review mandatory categories for gas production projects, staff conducted coordination with Tribal environmental staff.

[1] This document does not cover the communication with Tribes that happened as part of the development of the GTAC recommendations, though EQB staff participated in that process and were informed by Tribal comments on that document.

EQB staff recognize the matters that are important to Tribes include potential impacts from gas production projects on cultural resources and treaty-protected hunting, fishing, and gathering rights. EQB staff began to reach out to appropriate Tribal staff (coordinated via the Minnesota Tribal Environmental Committee, MNTEC) early in the rule development process and had discussions that are documented below.

EQB staff also sent an annual update and offer of consultation to Tribal leaders on July 1, 2025. It included a summary of this rulemaking requirement and outlook and offered consultation if requested. No formal consultation requests have been received to date.

After the initial notification, EQB staff provided regular updates on the rule process to MNTEC, which meets on a regular basis (approximately monthly). EQB also heard comments from Tribal staff at ERIS and Board meetings. EQB staff had regular communication with any interested Tribal staff (particularly members of MNTEC and the Tribal gas extraction task force) in order to discuss issues and ongoing development of the rule concepts. The following table illustrates the main points of communication between Tribal and EQB staff between June 2025 and May 2026.

Table 1. Dates of coordination

June 2025	EQB staff invited all MNTEC members to a meeting to share information with Tribal environmental staff regarding: the rule process; gas production projects; what EQB needs to consider in developing environmental review mandatory categories.
July 2025	Tribal staff (the Tribal Gas Extraction Task Force) provided draft rule language to EQB staff. EQB held a meeting to discuss that draft rule language. There was general discussion on the language and how mandatory category rules are structured. EQB staff identified portions of the draft language that could be considered in scope for mandatory category rules moving forward and identified portions that would be difficult to implement or out of scope for EQB to implement.
September 2025	EQB staff participated in a meeting organized by Tribal staff, where all state agencies that participated in the GTAC process could provide an update on their rulemaking for gas resource development projects. Prior to this meeting, revised draft rule language written by a group of Tribal staff (the Tribal Gas Extraction Task Force) was shared with all GTAC participating agencies. This Tribal Gas Extraction Task Force document contained suggested rule language pertaining to topics ranging across the entire framework development for gas resource projects, including permitting and environmental review. One goal of this meeting was to communicate how DNR and EQB's rulemakings were distinct, but inter-related.
October 2025	EQB staff met with Tribal staff and talked through EQB's responses to the Tribal draft language document. EQB staff provided draft rule language and a detailed response to each item of the Tribal Gas Extraction Task Force's language in advance and discussed this language at the meeting. The response document included responses to each item of the Tribal draft language pertaining to environmental review, including why any language could not be used as provided. Simultaneously, EQB staff provided draft rule language for review and input and requested input by November 20, in order to help inform the upcoming December board meeting. No additional input was received by that time.
November 2025 through January 2026	EQB staff shared updates on the gas rulemaking at the November MNTEC meeting highlighting the October discussion and that EQB staff were working on terminology clarifications, incorporating underground injection thresholds, and are still evaluating all previously discussed thresholds. EQB staff noted they would update ERIS on December 17. After the ERIS meeting, EQB staff provided brief updates to MNTEC at their early January meeting and shared out a draft discussion document regarding the development of thresholds and a rulemaking summary memo with MNTEC.
February and March 2026	Additional meetings were held between EQB staff and Tribal environmental staff to provide updates on the rulemaking process and discuss the ongoing evaluation of potential environmental review thresholds and resulting rule language. In the February meeting, EQB staff walked through the rulemaking timeline, recent changes based on uncovering new data, and asked Tribes to request consultation if desired. On March 19 a finalized draft rule version was shared with Tribal environmental staff for review. Meetings were held March 26 and April 1 to discuss.

Specific input

The following section summarizes what EQB staff heard from Tribal staff and how EQB staff considered and used the information, or how it may be used in the future. Please refer to the summary and justification document for evaluations of the potential for significant environmental effects from gas resource development projects. The available data supported an EIS threshold for high-volume hydraulic fracturing and an EAW for any other proposed thresholds.

Table 2. Initial input received and EQB response

Area of input	Summary of Tribal input	EQB response
Programmatic definitions	"Culturally significant area" means any mapped or discovered location of ceremonial, spiritual, subsistence, burial, or historic significance to Tribal Nations, including but not limited to historic properties (such as traditional cultural properties) eligible for listing on the federal National Register or as recognized under state historic properties laws.	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
Programmatic definitions	Various proposed definitions of "Cumulative Impacts", related to the combined, incremental effects of multiple projects or activities over time (past, present, reasonably foreseeable) on the same environmental, cultural, or public health resources, including effects on natural resources subject to Treaty-reserved rights in ceded territories	Cumulative impacts and cumulative potential effects are concepts with existing definitions within the environmental review rules that have been subject to past litigation. Changes affect the entirety of the program and are beyond the scope of this rulemaking.
Programmatic definitions	"Treaty-Ceded Territory" means all lands and waters within the State of Minnesota that were ceded to the United States by Indian Tribal Nations under Treaties, within which Tribes retain reserved rights.	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
Programmatic definitions	Tribal Governments and Indian Country. "Tribal Governments" has the meaning given in Minnesota Statutes section 10.65, subdivision 2. "Indian Country" has the meaning given in United States Code, title 18, section 1151, and means all land within the limits of any Indian Reservation, dependent Indian communities, lands held in trust, and Indian allotments	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
Environmental review process	The scope of environmental review must include the full footprint of the project, including roads, pipelines, well pads, compressor stations, processing plants, and any other supporting infrastructure	RGUs are responsible for identifying all aspects of the project and any connected or phased actions, in order to review the project as a whole and determine potential environmental effects. The definition of "project" is inclusive of all parts of a project, but the rules do not list the specific aspects of each project type that must be included; it is up to the RGU to determine. Writing specifics in rule could be limiting, preventing the review from capturing all pertinent information.

Area of input	Summary of Tribal input	EQB response
Environmental review process	Environmental review notices and scoping documents must be sent directly to affected Tribal governments for comment and consultation	The distribution of ER documents affects all projects and is out of scope for this rulemaking. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Environmental review process	Require evaluation of cumulative environmental impacts and potential effects on culturally important species, subsistence resources, and overburdened communities. Require cumulative impact analysis for projects near sensitive or cultural resources.	Cumulative potential effects analysis is required for any environmental review. The EAW form includes a prompt to identify culturally significant properties that may be impacted. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Environmental review process	Co-lead review authority. Upon request, an affected Tribal Nation may serve as a co-lead agency for purposes of scoping, public engagement, or impact analysis under Minn. Stat. § 116D.04.	The environmental review rules do not support multiple RGUs for a single project. However, working collaboratively to complete review is encouraged.
Environmental review process	Each application must include a lifecycle greenhouse gas emissions assessment consistent with best practices under EPA and state climate policy	The EAW form includes greenhouse gas emission analysis and guidance for completing it. EQB also has a climate calculator that can be used.
Environmental review process	Any proposed permit, regulatory action, or amendment affecting lands within 10 miles of a Reservation, Treaty-Ceded Territory, or culturally significant area shall be accompanied by a Tribal Impact Statement (TIS). A TIS must include: assessment of impacts to Treaty rights and subsistence resources; cultural, historical, and health impacts; cumulative effects on Tribal interests; alternatives considered to avoid or mitigate harm	This is beyond the scope of this rulemaking. The EAW form prompts information on traditional cultural properties on or near the project's site. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Project-related definitions	"Gas resource development" means exploration, drilling, extraction, production, transport, development of well pads, pipelines, roadway expansions, compressor stations, or storage of natural gas or associated substances, and all associated infrastructure.	The rules must define the project for environmental review purposes; the proposed rule aligns with the definitions being proposed by the DNR for permitting.
Project-based environmental review thresholds	All gas resource development projects must undergo environmental review consistent with Minn. Stat. § 116D.04.	As described in the justification document, EQB staff do not believe all gas production projects need to undergo review. Any projects triggering any mandatory categories do undergo review consistent with Minn. Stat. § 116D.04.

Area of input	Summary of Tribal input	EQB response
Project-based environmental review thresholds	EIS for projects that construct three wells within a 5-mile radius, if the total projected production exceeds 5 million cubic feet/day	EQB staff considered the concept of "wells within a given radius". However, the threshold for which EQB staff are pursuing would not be bound by a defined distance. As described in the justification document the number of wells threshold would be determined by the design of the project/permitting action. EQB staff have determined a threshold for number of wells constrained by a defined radius would prevent effective consideration of a project as a whole and would create difficulties in implementation for environmental review needs determinations. The number of production wells is a more reliable indicator of environmental impacts due to the size of a project. At the higher flow rates published by Pulsar, 5 wells would be near 5 million cf/day. In combination with other environmental impacts, EQB staff believe this is significant to trigger review.
Project-based environmental review thresholds	EIS for projects that construct three wells within a 5-mile radius, if the project uses hydraulic fracturing, acid stimulation, or any enhanced recovery technique	Discussions with Tribal staff helped inform and support EQB's decision to include thresholds for projects that use certain kinds of production techniques that involve underground injection. The proposed rule includes an EIS for a project using high-volume hydraulic fracturing, as well as EAW thresholds for projects that use other types of underground injection.
Location-based environmental review thresholds	EIS for projects that construct three wells within a 5-mile radius, if the project occurs within the 1854, 1837, or 1855 Treaty Territories	As discussed in the justification document, the only type of gas production projects that EQB staff have determined align with the need for an EIS based on the potential for significant environmental effects is projects that incorporate high-volume hydraulic fracturing. The proposed rule does not include any location-based thresholds for these treaty-ceded territories. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.

Area of input	Summary of Tribal input	EQB response
		Arguably many different project types could impact treaty-reserved resources if located in ceded territory. When environmental review is completed for a project, the review does consider historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Impacts to treaty-reserved resources can also be included when considering other effects – such as water resources, air pollution, land use changes, etc. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
Project-based environmental review thresholds	EIS for the construction and operation of gas processing, storage, or injection facilities that emit more than 25,000 tons of carbon dioxide equivalent (CO2e) per year	The proposed rule does not include separate mandatory categories for gas processing or storage facilities, as these are incorporated into the definitions of what must be permitted as a gas resource development project (and therefore part of the gas production project for which environmental review would be required). If not co-located, these facilities would likely be subject to one of the existing industrial mandatory categories. There is an existing mandatory category for CO_2e emissions requiring a mandatory EAW at 100,000 tons of CO_2e emissions per year.
Project-based environmental review thresholds	EIS for the construction and operation of gas processing, storage, or injection facilities that require a state air permit.	This is not included in the proposed rule; it is not consistent with other categories. Many facilities require a state air permit but not environmental review. The existing air pollution category, which requires an EAW for construction of a stationary source facility that generates 250 tons per year or more of an air pollutant (above the EPA's major source threshold of 100 tons per year) may be applicable.
Location-based environmental review thresholds	EIS for the construction and operation of gas processing, storage, or injection facilities that are located within 50 miles of ceded territories and Indian Lands (including Lake Superior); exterior boundaries of any reservation; or Tribal Government buildings, schools, nursing homes, or residential areas	The proposed rule does not include separate mandatory categories for gas processing or storage facilities, as these are incorporated into the definitions of what must be permitted as a gas resource development project (and therefore part of the gas production project for which environmental review would be required). If not co-located, these facilities would likely be subject to one of the existing industrial mandatory categories. The proposed rule does not include any location-based thresholds for ceded territories or Indian Lands.

Area of input	Summary of Tribal input	EQB response
		Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.
Location-based environmental review thresholds	EIS for the projects that cross or impact key resources, including: wild rice waters or wetlands; critical habitat; culturally sensitive areas; for any project that affects treaty-reserved resources (such as wild rice, sugarbush, medicinal plants, hunting/fishing grounds, or traditional subsistence activities) or culturally significant areas (such as traditional cultural properties, ceremonial sites or cultural landscapes)	When environmental review is completed for a project, that review needs to consider historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site (EAW item 15). Impacts to treaty-reserved resources can also be considered in other items of the form – such as consideration of water resources, air pollution, land use changes, etc. EQB staff's expectation would be that these kinds of impacts would be clearly laid out in the completed EAW form. RGUs also have discretion to order environmental review based on the potential for significant environmental effects to these resources.
Project-based environmental review thresholds	EIS for projects that generate or handle radioactive by-products	This is not included in the proposed rule as it was determined unlikely to ever be encountered as a part of a gas resource development project.
Location-based environmental review thresholds	An EIS for projects located within Treaty-Ceded Territory, or within 10 miles of a culturally significant area	The proposed rule does not include any location-based thresholds for ceded territories or culturally significant areas. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.

Area of input	Summary of Tribal input	EQB response
Project-based environmental review thresholds	An EIS for projects that require a state air emissions permit, water discharge permit, or any other environmental permit under Minn. Stat. § 116.07 or Minn. R. ch. 7007, 7008, or 7050.	This is not included in the proposed rule; EQB staff find it to be too broad, as many facilities require these permits but not environmental review.

Specific rule language input

February and March 2026, EQB staff presented an update on the development of the mandatory category concepts (what projects need review at what size). Also in March 2026, EQB staff shared draft final proposed rule language. Tribal input was received, and that input and EQB's response is documented below.

Table 3. Rule language input received and EQB response

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
Definition of gas resource development project and gas well	Include citations to DNR rule	The proposed rule aligns with DNR's draft rules. Although it would be preferable to cite specific definitions in DNR's rules this is not feasible because those rules are also still in development. EQB will work with DNR to see if citations can be improved as the rules are adopted.
N/A	Include definition of Tribal Governments and Indian Country. "Tribal Governments"	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
N/A	Include suggested definition of cumulative impacts.	There is a definition of cumulative impacts in Minn. R. 4410.0200.
N/A	Add a definition of injected fluid or material.	This is not needed; "substance" is sufficiently specific.
N/A	Include definition of Treaty-Ceded Territory.	Adding this definition was determined to be out of scope for this rulemaking; it would have broad implications for the whole program.
EAW required for construction of a gas resource development project designed to include 5 or more gas wells or expansion of an existing gas resource development project by the addition of 5 or more wells.	The threshold should be three wells	EQB staff had considered a three well threshold based on preliminary information on gas production levels per well in Colorado. However, later updated information changed the EQB staff's understanding of the potential range of production. Production per well was less than previously thought, raising the appropriate threshold to five wells as discussed in the justification document.

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
EAW for construction of a gas resource development project designed to produce gas by injecting a substance into the subsurface to create or stimulate a chemical reaction	Change substance to injected fluid or material	Not needed. Substance is sufficiently specific.
N/A	EAW for construction of a gas resource development project that will result in surface disturbance of 40 or more acres or cumulative total of 40 or more acres	EQB staff believe the five well threshold will ensure that projects with this level of surface disturbance will be reviewed.
N/A	EAW for construction of a project where any part is located within one mile of a designated trout stream, public water, or public water wetland; or within one mile of a municipal or community public water supply well, wellhead, or delineated wellhead protection area.	The draft proposed rule aligns location-based environmental review thresholds with DNR's siting rules. EQB staff understand that water resources and siting within a certain distance of water resources were discussed with DNR as part of siting and were ultimately not included.
N/A	The RGU must not segment a gas resource development project into smaller components; all parts of a single coordinated gas production operation must be considered together in determining whether a mandatory EAW threshold is met.	This concept is part of the overall EAW process, and is articulated in the rules around "connected actions" and "phased actions" defined in Minn. R. 4410.0200. Minn. R. 4410.1000, subp. 4 specifies that "multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EAW, preparing the EAW, and determining the need for an EIS."
N/A	Early Tribal notification. When an EAW or EIS is required, there should be specific requirements for notification of Tribal governments whose reservation, Trust lands, or ceded territory may be affected by the proposed project.	As noted above, the distribution of ER documents affects all projects and is out of scope for this rulemaking process. EQB staff will keep this input in mind as we continue to work with Tribes on the "guidance for considering Tribal resources" project on our workplan.
N/A	Phased development. When a gas resource development project is proposed to be constructed or expanded in phases, all phases must be considered together in determining whether a mandatory EAW or EIS threshold under this subpart is met.	This is not needed in the proposed rules. The first subparts of Minn. R. 4410.4300 pertain to all EAW mandatory categories and reiterate that, "Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400" (part 4410.4400 is the mandatory EIS categories rule).

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
N/A	Cumulative impacts assessment. An EAW or EIS prepared for a gas resource development project under this subpart must assess the cumulative environmental effects of the proposed project	This is not needed in the proposed rules. As noted above, this is a required part of all environmental review.
N/A	Groundwater and Drinking Water Assessment. An EAW or EIS prepared for a gas resource development project under this subpart must include a groundwater and drinking water assessment that addresses certain key components	This is not needed in the proposed rules. The EAW form includes groundwater and drinking water assessment; the RGU determines what specific information to include. Writing specifics in rule could be limiting, preventing the review from capturing all pertinent information.
EIS for construction of a gas resource development project designed to use high volume fracturing	Add “or expansion”; identify that HVHF thresholds apply to the cumulative total volume of fluid injected across all wells within a gas resource development project	The proposed definition of HVHF incorporates this as noted “using a combined total of 100,000 or more gallons of any fluids”. The 100,000 gallons threshold for the definition of HVHF is meant to identify the degree of hydraulic fracturing that is needed for gas production. Based on EQB staff’s research, this volume of fluid is best indicative of the type of hydraulic fracturing for which potential for significant environmental effects are anticipated.
N/A	EIS for a cumulative well count of 10 or more	The proposed rule does not include any cumulative threshold for number of wells. EQB staff considered whether some kind of cumulative threshold was appropriate, but upon review of existing mandatory categories, including one in this rule would be difficult to implement. (For example, if an EIS was done when a gas resource development facility expanded to 11 wells, it would also need to be done if one well was added for an expansion to 12 wells.)
N/A	EIS for a cumulative well count of 5 or more and total new surface disturbance of 5 acres or greater	This is not included. It is difficult to aggregate two thresholds together, and an additional surface disturbance of 5 acres is well below any existing EIS thresholds.
N/A	EIS for construction of a new compressor, processing, dehydration, or produced-water facility (excluding routine wellsite equipment), or any on-site facility that would be a major source of air emissions as defined by the EPA	This is not included. The existing air pollution category, which requires an EAW for construction of a stationary source facility that generates 250 tons per year or more of an air pollutant (above the EPA’s major source threshold of 100 tons per year) may be applicable.

Draft rule language – from EQB staff	Tribal input on draft rule language	EQB response
N/A	EIS for more than 5 miles of new above – or below-ground pipeline associated with the project	This is not included. The existing pipeline categories may be applicable and are more appropriate.
N/A	EIS for total projected combined lateral well length of 20,000 feet or more	The number of production wells threshold analysis did not identify differences in environmental effects based on the length of well.
N/A	EIS for any project element that the commissioner determines is likely to cause significant adverse environmental effects based on location, intensity, or reasonably foreseeable cumulative impacts	This is not included. The RGU (in this case the DNR) can order an EAW under Minn. R. 4410.1000 if they determine that the project may have the potential for significant environmental effects, and an EIS if the EAW demonstrates that the project does have the potential for significant environmental effects.
N/A	EIS for a project with 2 or more gas wells and any portion of the project is located within one mile of a designated trout stream, public water, public water wetland, or municipal public water supply wellhead protection area	The draft proposed rule aligns location-based environmental review thresholds with DNR's siting rules. EQB staff understand that water resources and siting within a certain distance of water resources were discussed with DNR as part of siting and were ultimately not included.
N/A	EIS for a project with projected greenhouse gas emissions of 25,000 tons of carbon dioxide equivalent (CO_2e) or more per year.	This is not included. There is an existing EAW threshold that is applicable to projects with greenhouse gas emissions of 100,000 tons of CO_2e or more per year.
N/A	For the construction or expansion of a gas resource development project any portion of which is located within five miles of the boundary of a federally recognized Tribal Nation's reservation or trust lands, or within one mile of a water body identified in the Minnesota DNR's Native American Sacred Sites and Burial Grounds inventory or the Section 106 area of potential effects for an affected Tribal Nation as documented in prior federal consultation, or within an area where a federally recognized Tribal Nation has notified the commissioner in writing that it actively exercises treaty-reserved harvesting, fishing, or gathering rights, the DNR is the RGU.	The proposed rule does not include any location-based thresholds for ceded territories or culturally significant areas. Considering a specific location-based threshold means understanding whether there is the need to require (through creation of a mandatory category) environmental review of projects in specific areas, because of particular effects of the project type, the nature of that location, and the interaction between the two. Ultimately, it is a complex programmatic issue that is beyond the scope of this expedited role to define a boundary that: 1. Is relevant to Tribal resources; 2. Fits with the program's requirements for significant environmental effects; and 3. Is repeatable and easily implemented.

Conclusion

EQB staff greatly appreciate the time and effort spent by Tribal staff in coordinating and discussing these issues. EQB thoroughly considered Tribal input and appropriate concepts were integrated into the draft rule.

Additionally, many of these discussions supported the need for big-picture consideration of the way Tribes, Tribal sovereignty, and important resources are considered in the Environmental Review Program. Defining such areas and incorporating this concept into the program should be considered more broadly than just gas production. This is likely to include a variety of ideas that will need additional coordination. The EQB and staff may consider such work in future organizational workplans.

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Environmental review: Mandatory category for gas resource development projects

Attachment 2 to rule summary and justification

Pre-publication engagement

The EQB was authorized to "adopt or amend rules to establish mandatory categories for environmental review as they pertain to oil and gas production." Following the board direction to pursue rulemaking for gas production projects, EQB staff began to gather information in order to set appropriate mandatory category thresholds. The staff also conducted coordination with Tribal staff, stakeholder engagement, and provided updates to the board throughout the rule drafting process.

This memo provides a summary of the engagement that took place amongst stakeholders or interested parties prior to publishing the notice of intent to adopt rules. A separate document summarizes the Tribal coordination.

Interested parties

A memo was sent out to interested parties in October 2025 providing an update about the rule development process to date, including the concepts for mandatory category thresholds. EQB staff also offered the opportunity to provide input regarding determinations about what type of gas production projects should require environmental review.

A written response was received from Pulsar Helium, and additional stakeholders (Minnesota Center for Environmental Advocacy, Water Legacy) asked for a short meeting where they could ask questions and provide feedback. In addition, EQB staff held short meetings with The Nature Conservancy, Pulsar Helium, and Koloma Hydrogen in early 2026 to discuss the rule development; comment letters from both The Nature Conservancy and Pulsar Helium were received and incorporated into Board meeting materials in February and March 2026.

The following table summarizes the input from interested parties and considerations from EQB staff.

Table 1. Input received and considerations

Interested party	Input received	EQB staff response
Pulsar Helium	Three-Tier Gas Categories: Clearly distinguish gas projects by type of gas extracted. Create separate categories for hydrocarbon gas; hydrogen (with/without inert gases); and helium (with/without inert gases). Each category can have its own size or production triggers for an EAW or EIS.	EQB staff decided that creating multiple mandatory categories for distinct gases will make the rules overly complicated. Available information, highlighted by the variabilities in flow rates and gas compositions, would make it difficult to determine separate thresholds. In addition, many of the environmental effects identified are associated with the process of drilling, extracting, and producing any gas. Therefore, setting a threshold for review based on the number of production wells, regardless of targeted gas, is appropriate for all gas extraction projects and considers the impacts of extraction that are shared across gas types.
Pulsar Helium	Helium exploratory and appraisal wells should not require mandatory EAW or EIS review when no stimulation or enhanced recovery techniques are used.	Environmental review applies to projects for which there is one or more "governmental action" (defined in Minn. R. 4410.0200, subp. 33 and generally constituting a permit or approval decision). The typical notification process for exploratory drilling is not seen as a governmental action, and so, to date, exploratory borings generally have not been subject to environmental review.
Pulsar Helium	Minnesota should adopt or reference proven, risk-based Federal regulatory standards (e.g., BLM Onshore Orders 1, 2, 3; NEPA thresholds) rather than attempt to independently draft new frameworks for an inert, low-impact gas sector.	The BLM onshore orders provide permitting requirements, and do not identify specific projects or characteristics when the NEPA process must be completed.
Pulsar Helium	No EIS for inert gas projects: Ensure inert, non-emitting gas projects do not automatically trigger an EIS based on thresholds designed for hydrocarbons. A standard helium well should not be treated as if it were a high-impact natural gas well. Such projects might warrant at most an EAW, or no mandatory review at all, at certain scales if their impacts are clearly below significance levels.	EQB staff are not pursuing a rule that differentiates based on gas type, but under the proposed rule there is no mandatory EIS unless specific extraction techniques are used. EQB staff believe that once gas production projects of any type reach a certain size there is an indication that these projects may have the potential for significant environmental effects and an EAW needs to be completed.

Interested party	Input received	EQB staff response
Pulsar Helium	Explicit low-impact exemptions: Codify exemptions or adjusted thresholds for low impact operations. For example, exploratory or appraisal helium wells (small number of wells, no stimulation, no flaring) should be categorically excluded from mandatory EAW/EIS requirements. Projects with no subsurface injections should be explicitly excluded from the EIS threshold. Only projects utilizing high-impact techniques like hydraulic fracturing, chemical injections, or artificial gas generation would trigger an EIS, consistent with the EQB's draft concept memo. Pulsar suggested incorporating conditional rule language that allows regulators to exercise case-by-case discretion for inert gas projects in special situations, without defaulting to burdensome reviews in all cases.	The proposed rule does not include any specific exemptions for gas production projects from environmental review. The proposed rules do largely align with the comment, in that projects will a small number of wells will not be subject to mandatory review, unless specific high impact techniques are used. Discretionary review remains an option for projects where the nature and location of individual projects may indicate a different potential for significant environmental effects.
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Concerns were noted about projects containing methane gas and the potential impacts from these projects needing to be considered based on potential for significant environmental impacts.	EQB staff decided that multiple mandatory categories for distinct gases will make the rules overly complicated. Available information would make it difficult to determine separate thresholds. Methane production is not expected in Minnesota. Setting a threshold for review based on the number of production wells, regardless of targeted gas, is appropriate for all gas extraction projects and considers the impacts of extraction that are shared across gas types. The air pollution mandatory category based on greenhouse gas emissions also needs to be considered, and may apply to projects with higher levels of methane.
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Concerns were noted about the development of thresholds that would allow certain gas production projects to proceed to permitting without first having to do environmental review.	From the available information, EQB staff determined there are certain gas production projects that are likely to not have the level of effects that would indicate the need for mandatory environmental review. Recognizing that the threshold may not always align with each individual project's potential for significant environmental effects based on the nature and location of individual projects, the environmental review program allows for discretionary environmental review.

Interested party	Input received	EQB staff response
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Exploration activities from oil and gas production should be incorporated into environmental review requirements.	Environmental review applies to projects for which there is one or more "governmental action" (defined in Minn. R. 4410.0200, subp. 33 and generally constituting a permit or approval decision). The typical notification process for exploratory drilling is not seen as a governmental action, and so, to date, exploratory borings generally have not been subject to environmental review.
MCEA/Water Legacy (per discussion via a meeting with EQB staff)	Concerns about risks related to underground injection, not just the types of projects that would create a gas underground but for those that intend to dispose of waste or intend to utilize fracking techniques.	The proposed rule includes thresholds that would require an EAW for projects proposing to utilize underground injection for waste disposal, an EAW for projects proposing to utilize underground injection for creating a gas in the subsurface, and an EIS for projects proposing to utilize high-volume hydraulic fracturing techniques.
The Nature Conservancy	Establish inclusive definition of conservation lands and align to Minnesota's conservation objectives.	The proposed rule does not include any specific definitions regarding conservation lands. Recognizing that gas production projects may have varying potential for significant environmental effects depending on location, the proposed rule includes a location-based mandatory EAW threshold. This mandatory category is meant to align with DNR's permitting authority, requiring review for projects locating in areas where DNR's siting rules will place conditions or limitations on their ability to operate due to potential impacts to sensitive environmental areas.

Board discussion

Staff presented to the Board or its environmental review implementation subcommittee (ERIS) on multiple occasions and provided supporting documents. Each meeting also contained opportunity for public comment.

- April 16, 2025 – Board members were informed about the legislation regarding the development of regulations for gas and oil production and the legislative directive that EQB "may" develop mandatory categories. The presentation consisted of a high-level introduction to gas production projects and why environmental review mandatory categories should be developed. The Board approved a resolution to begin the rulemaking process for developing mandatory categories for gas production projects. There were no public comments.
- December 17, 2025 – ERIS was given an update on the rulemaking process, including high-level concepts for those characteristics of gas production projects that staff were considering and evaluating for development of mandatory category thresholds. Information included discussion of engagement and Tribal coordination. Comments were received raising concern about the lack of environmental review for gas exploration.

- February 18, 2026 – Board members were further informed on the rulemaking progress and the development of the mandatory category thresholds, including the overall concepts for the components of the rule. Written comments were received from The Nature Conservancy (see above) and oral comments from Water Legacy that “the EQB seems to be setting up a regulatory scheme that is easy to apply for the producer but not protective of the communities…should consider methane, combustible gases, toxic gases, groundwater pollution, and surface water pollution, etc.”
- March 18, 2026 – ERIS members were provided an additional update, along with the opportunity to make recommendations about the information that the full board would benefit from hearing during the upcoming April board meeting. Written comments were received from Pulsar Helium (see above) and oral comments from Tribal environmental staff about the process and timing of sharing draft language. Additional information on Tribal comments is found in attachment 1.
- April 15, 2026 (future) – Board members were provided with draft rule language to be proposed for comment and accompanying justification documents, in order to approve moving forward with the rulemaking process by publishing a notice of intent to adopt rules.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT D

DNR, Email: Public comment period open now through July 2 on draft rules for permitting gas resource development, May 18, 2026.

Subject: Public comment period open now through July 2 on draft rules for permitting gas resource development
Date: Monday, May 18, 2026 at 11:02:25 AM Central Daylight Time
From: MN Department of Natural Resources
To: paula@waterlegacy.org

DEPARTMENT OF NATURAL RESOURCES

Public input sought on draft rules for regulating gas resource development

The Minnesota Department of Natural Resources has published a notice of intent to adopt rules that would regulate gas resource development projects and is inviting the public to comment on these draft rules through July 2, 2026.

In 2024, Minnesota prohibited gas production in the state without a permit from the DNR. At the same time, DNR and other state agencies were authorized to establish rules to regulate gas resource production in the state. The draft rules on which DNR is currently seeking comment would establish its part of this regulatory framework.

Public input opportunities

The DNR invites anyone interested in the regulation of gas resource development in Minnesota to review the draft rules and provide comments. The 45-day public comment period starts on May 18, 2026, and will end at 4:30 p.m. on July 2, 2026.

Anyone may submit written comments on the proposed rules to GasRulesDNR@state.mn.us. Please visit the DNR website for more in-depth information and additional documentation on the draft rules.

After the closing of the comment period, the DNR will review and consider all comments prior to making a decision on whether to adopt the rules, with or without amendments.

About the gas resources development and the rulemaking process

In February 2024, an exploration company confirmed the discovery of helium gas on private land in Lake County and reported that the drilling results indicated the potential for commercial production. At the same time, interest has grown in natural hydrogen resources along a geologic formation known as the Midcontinent Rift System. In Minnesota, the rift system extends from Lake Superior to the Iowa border. There has been no prior development of gas resources in Minnesota and the state lacks a regulatory framework for commercial gas production.

In 2024, DNR was directed to use the expedited rulemaking process to adopt or amend rules to address several gas production regulatory topics, including permitting, reclamation, financial assurance, siting and setbacks, and pooling and spacing. The DNR was given a May 22, 2026, deadline to publish a notice of intent to adopt those rules in the State Register. For more information about this rulemaking process, visit the DNR website.

DEPARTMENT OF NATURAL RESOURCES

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WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT E

EQB, Rule Summary and Justification Memo for Environmental Review: Conformance with Energy Infrastructure Permitting Act, Sept. 25, 2025.

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Environmental Review: Conformance with Energy Infrastructure Permitting Act and related changes

Rule summary and justification memo

Purpose of rulemaking

In 2024, the Minnesota legislature made changes to the environmental review of certain energy projects.[1] The Legislature also directed the Minnesota Environmental Quality Board ("EQB") to use the expedited rule process to conform its environmental review rules with the changes made.[2] This rulemaking consists of amendments necessary to conform to the 2024 changes.

Minnesota Energy Infrastructure Permitting Act

The Legislature called the changes that it made to energy project environmental review and permitting the Minnesota Energy Infrastructure Permitting Act ("Act"). The Act represented a legislative effort to resolve issues arising from the patchwork of statutes and rules governing energy project permitting, by consolidating most of these authorities into a single statute, Minnesota Statutes Chapter 216I, and repealing redundant statutes and rules. The goal was to streamline and clarify the review and permitting requirements for certain kinds of energy infrastructure projects. Many of the Act's provisions went into effect on July 1, 2025.

The Act establishes a process for site and route permitting and associated environmental review for "large energy infrastructure facilities" [3] and requires that large energy projects will now undergo environmental review as directed by Minn. Stat. ch. 216I. Under Minn. Stat. ch. 216I, the Public Utilities Commission (PUC) will generally do environmental review for large energy infrastructure facilities, although review can be done by local governmental units for certain smaller projects that still qualify as large energy infrastructure facility projects.

In passing the statute and requiring EQB to conform its rule to the new provisions using the expedited process, the Legislature did not authorize EQB to add any additional environmental review categories for energy projects covered by the Act. The Act states that the environmental review documents required by Minn. Stat. ch. 216I are the only state environmental review documents that must be prepared for a proposed energy project within the scope of Minn. Stat. ch. 216I. *See* Minn. Stat. § 216I.06, subd. 1 ("[n]o other state environmental review documents are required"); Minn. Stat. § 216I.07, subd. 3 ("[t]he environmental assessment is the only state environmental review document that must be prepared for the proposed project").

[1] These changes were passed as two identical bills, Minn. Laws 2024, Chapter 127, Art. 43, and Minn. Laws 2024, Chapter 126, Art. 7. This document will cite to Chapter 126.

[2] Minn. Laws 2024, Chapter 126, Art. 9, Sec. 19.

[3] The Act defines large energy infrastructure facility to include certain high-voltage transmission lines, large electric power generating plants, energy storage systems, large wind energy systems, and any associated facilities. It also covers solar energy generating systems.

To conform EQB rules with the new and revised requirements for environmental review of energy projects set out in statute, the EQB proposes to amend Minn. R. ch. 4410 to remove redundant environmental review mandatory categories and to adopt a new provision within Minn. R. ch. 4410 that will direct the public to the alternative environmental review process under the new statute, i.e., a "clearinghouse" provision. The EQB concludes this amendment will best address the legislative goal of the Act, which was to eliminate confusing and redundant review provisions. The EQB proposes to retain certain energy project environmental review provisions currently in EQB's rules that were not affected by the Act.

Other environmental review changes

The same session law (Laws 2024, Chapter 126, article 9, section 17)[4] included one new environmental review requirement that is not addressed in Minn. Stat. ch. 216I or in the EQB's environmental review rules. The legislature mandated, through changes to Minn. Stat. § 216G.025, that carbon dioxide pipeline projects be the subject of an EIS before they are permitted. The EQB also proposes addressing this new requirement.

In addition, the legislature amended Minn. Stat. § 116C.83, subd. 6 to change the RGU for a required EIS for any proposal to construct or expand an independent spent-fuel storage installation at a nuclear power plant from the Department of Commerce to the PUC (Laws 2024, Chapter 126, article 9, section 2).[5] This is consistent with the parts of the law that transferred the responsibility for administering the environmental analysis of certain energy projects from the Department of Commerce to the PUC as of July 1, 2025. The EQB is therefore also proposing to update the RGU designation in Minn. R. 4410.4400.

History of energy permitting and environmental review

Environmental review of energy projects has a long and complicated history. In 1973, the Legislature enacted the Power Plant Siting Act (then codified in Minn. Stat. ch. 116C) and gave EQB the responsibility for siting power plants and transmission lines. Until 2005, the EQB's rules governed siting power plants, wind energy conversion systems, and high voltage transmission lines. The EQB had the responsibility for conducting hearings, completing environmental review (using an environmental assessment document that was specific to large electric generating plants and high voltage transmission lines), and issuing permits. The EQB rules addressing these procedures were codified as Minn. R. ch. 4400 and the EQB occasionally amended the rules as the energy infrastructure permitting process changed.

In 2005, the legislature transferred responsibility for the siting of energy facilities to the PUC. This included transferring the Power Plant Siting Act from Minn. Stat. ch. 116C to Minn. Stat. ch. 216E, and transferring statutes on wind energy systems from Minn. Stat. ch. 116C to Minn. Stat. ch. 216F. The Legislature also transferred EQB's rules into chapters subject to the authority of the PUC, i.e., Minn. R. chs. 7849 and 7850 for power plant siting and Minn. R. ch. 7854 for wind energy conversion systems. The Legislature designated Department of Commerce staff as responsible for environmental review, supporting the PUC as the RGU.

After these actions, EQB adapted its general environmental review rules, Minn. R. ch. 4410, to identify those energy projects that needed environmental review, but noted that the review would take place under the processes laid out in PUC rules (Minn. R. chs. 7849, 7850, and 7854) and in various statutes (Minn. Stat. chs. 216B, 216E, and 216F). These rules and statutes continued to use alternative environmental review processes, such as the use of an environmental assessment ("EA") in lieu of an environmental assessment worksheet ("EAW").

As noted above, by 2023, the statutes and rules governing thresholds and responsibility for environmental review and permitting for energy facilities existed in multiple complex and overlapping spaces.

[4] Also Laws of Minnesota 2024, Chapter 127, Article 45, Section 17.

[5] Also Laws of Minnesota 2024, Chapter 127, Article 45, Section 2.

In 2023, the PUC convened state, industry and environmental stakeholders to discuss and offer solutions to streamline the permitting process for energy infrastructure projects. The stakeholder meetings resulted in a report, titled *Permitting Reform Stakeholder Report to Minnesota Public Utilities Commission*, prepared by Lipschultz Communications & Energy Consulting. This report identified issues within the permitting process and proposed operational reforms. The Act incorporated many of these proposed reforms.

The Act did not address pipelines generally, although carbon dioxide pipelines were addressed in a concurrent legislative enactment. As discussed below in more detail, the EQB is proposing that the present rulemaking address environmental review of carbon dioxide pipelines, but not other pipelines.

Permitting and environmental review under Minn. Stat. ch. 216I

The new Minn. Stat. ch. 216I statutory language divides large energy infrastructure facility project permitting into three tracks: "major review," "standard review," and "local review." Project applications may go through a different type of review (Environmental Impact Statement or Environmental Assessment) depending on the specific project characteristics or based on the request of a project proposer. Depending on the project there can be different requirements for environmental review and permitting for similar project types. Many of these project types are not reflected in EQB's current rules.

1. Major review: Minn. Stat. § 216I.06

- Major review applies to applicants seeking to permit a large energy infrastructure facility. Major review requires the PUC to prepare an Environmental Impact Statement (EIS) and hold a public hearing with an administrative law judge presiding and preparing a report.
- Major review is mandatory for energy generating facilities using nonrenewable fuels with a capacity of 80 MW or greater and high-voltage transmission lines ("HVTLs") over 300 kilovolts (kV) with 30 miles or more of length in Minnesota, or if the proposed HVTL will be sited such that more than 20% will need a new HVTL right of way.

2. Standard review: Minn. Stat. § 216I.07

- Under the standard review process, an applicant for a large energy infrastructure facility site or route permit notifies the PUC that it has elected to follow the "standard process" and submits an Environmental Assessment (EA) to the PUC as part of its site or route permit application. The PUC can ask for additional information during the permitting process. The standard process requires a public hearing. The PUC may request an administrative law judge to preside over the hearing, but an administrative law judge hearing and report is not mandatory.
- The following facilities are eligible for standard review: All solar energy, large wind energy conversion, and energy storage systems; all generating plants fueled by natural gas or with a capacity of less than 80 MW; HVTLs between 100 kV and 300 kV; and HVTLs in excess of 300 kV that (1) have less than 30 miles of length in Minnesota or (2) locate 80% of the proposed line along existing HVTL right of way.

3. Local review: Minn. Stat. § 216I.08

- In lieu of applying to the PUC for a site or route permit, an applicant may seek approval under this section from a local unit of government and use the EA process (either prepared by the local unit or the applicant) for environmental review for qualifying projects. The statute provides that the local unit may ask the PUC to take over within 60 days of receipt of the application. When the EA is complete, the public may comment on the document, and a copy is provided to the PUC.

- The following facilities are eligible for local review: large electric power generating plants and solar energy generating systems with a capacity of less than 80 megawatts (MW); large electric power generating plants of any size that burn natural gas and are intended to be a peaking plant; high-voltage transmission lines with a capacity between 100 and 200 kV; substations with a voltage designed for and capable of operation at a nominal voltage of 100 kV or more; a high-voltage transmission line service extension to a single customer between 200 and 300 kV and less than ten miles in length; a high-voltage transmission line rerouting to serve the demand of a single customer, if at least 80 percent of the rerouted line is located on property owned or controlled by the customer or the owner of the transmission line; energy storage systems; and large wind energy conversion systems with a capacity less than 25 MW.

Rulemaking

Legislative directive

The legislature, in Laws of Minnesota 2024, Chapter 126, Article 9, Sec. 19, mandated that the EQB undertake expedited rulemaking to conform the rule with the statute and other changes made in the session law, saying: "*The Environmental Quality Board must adopt rules, using the expedited process under Minnesota Statutes, section 14.389, that amend Minnesota Rules, chapter 4410, to conform with the changes made in this act.*" Based on this directive, EQB staff began working on the rule changes proposed here.[6]

EQB's current rules do not conform to Minn. Stat. ch. 216I

The environmental review rules in Minn. R. ch. 4410 contain "mandatory categories" that specify the form of the required environmental review document (environmental assessment worksheet ("EAW") or environmental impact statement ("EIS")) and the responsible governmental unit (RGU) for projects that meet or exceed specified thresholds based on project size or other characteristics.

Although EQB's rules cover environmental review for certain types of energy projects, the rules (1) do not address all the projects now covered by Minn. Stat. ch. 216I, (2) use different descriptions and thresholds for environmental review, (3) cite to repealed rules and statutes or to rules that will likely be amended in the future to conform to the new review and permitting process established in Minn. Stat. ch. 216I and (4) don't allow use of the processes authorized by Minn. Stat. ch. 216I such as "standard review" and "local review."

Projects not addressed by current EQB rules

Minn. Stat. ch. 216I defines and includes "energy storage system" projects as "large energy infrastructure facility" projects subject to permitting and review. EQB's current rules do not address "energy storage system" projects. Similarly, Minn. Stat. ch. 216I specifically addresses solar energy generation projects and provides different pathways for review of these projects. EQB's current rules do not address solar energy generation projects, except as an "electric-generating facility" required to be the subject of an EAW.

[6] Because the Legislature adopted the rulemaking authority as a separate article, the EQB believes the word "act" as used in this provision refers broadly to legislative changes made in Minn. Laws 2024, Chapter 126, and not just those in Article 7, including the carbon dioxide pipeline provision and spent-fuel storage provision.

Different descriptions and thresholds and references to repealed rules and statutes

One of the areas where EQB's rules are now most problematic involves the mandatory review categories for electric-generating facilities and transmission lines. The way projects are described is not consistent with the new statutory chapter, the rules refer environmental review to PUC rules and statutes that are repealed or likely to be changed, and generally the rules do not conform to the environmental review process for major, standard, and local project specifics authorized by Minn. Stat. ch. 216I. The enactment of Minn. Stat. ch. 216I also exacerbated an existing problem with the EQB's rules: classifying certain energy projects under the mandatory EAW category (Minn. R. 4410.4300) but requiring, in the individual project descriptions, the use of a non-EAW document as directed by PUC rules.

Minn. R. 4410.4300 and 4410.4400, subp. 3, Electric-generating facilities review

The mandatory EAW category for electric-generating facilities includes:

> A. For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is required, the PCA is the RGU.
>
> B. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is not required, the local governmental unit is the RGU.
>
> C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.
>
> D. For construction of a wind energy conversion system, as defined in Minnesota Statutes, section 216F.01, designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to chapter 7854.

EQB's rules place certain projects now defined in Minn. Stat. ch. 216I as a "large electric power generating plant" projects into the "electric-generating facilities" mandatory EAW category (items C and D above) but the rules indicate that the process for environmental review is defined by Minn. R. ch. 7849 and 7850. Minn. R. ch. 7850 has now been repealed. Moreover, Minn. Stat. ch. 216I provides different documents and pathways for review, as described in more detail above. Some large electric power generating facility projects may be reviewed with an EIS, and some with an "environmental assessment."

EQB's rule treatment of "wind energy conversion system" projects is similarly problematic. EQB's rule (Item D) now references a repealed definition in Minn. Stat. ch. 216F and requires an EAW for a system 25 MW or more but using the process in Minn. R. ch. 7854. However, under the definition in Minn. R. ch. 7854 (which is also repealed), this process applies to wind energy conversion systems greater than 5 MW or more. The Minn. R. ch. 7854 review process involves an "analysis of the potential impacts of the projects, proposed mitigative measures, and any adverse environmental effects that cannot be avoided" with regard to certain categories of potential impacts, which is not a classic EAW. *See* Minn. R. 7854.0500, subp. 7. Under Minn. Stat. ch. 216I, a "large" wind energy project is 5 MW or more (not 25 MW or more), but large wind energy conversion system projects are eligible to be managed as "standard" projects using an "environmental assessment" as described above.

Finally, EQB rules require an EIS for a "large electric power generating plant." Minn. R. 4410.4400, subp. 3. The definition of "large electric power generating plant" in Minn. R. 4410.0200, subp. 41 refers to the definition in Minn. R. 7849.1100, a rule that will likely be amended. But the mandatory category rule for a "large electric power generating plant" refers to a definition in Minnesota Statutes, section 216E.01, subdivision 5. Minn. Stat. ch. 216E is repealed. The Minn. R. 7849.1100 definition specifically includes transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system, while Minn. Stat. ch. 216I includes transmission lines in projects as "associated facilities," but limits those lines as those "designed for and capable of operating at 100 kilovolts or less." These different definitions create the potential for confusion regarding what is part of the review. Further, the EIS mandatory category rule refers to the process for environmental review described in PUC rules which have either been repealed (Minn. R. ch. 7850) or will likely be amended (Minn. R. ch. 7849). The EQB rules do not authorize the environmental review processes now allowed under Minn. Stat. ch. 216I (major, standard and local review).

Minn. R. 4410.4300 and 4410.4400, subp. 6, transmission line review

EQB rules define "high voltage transmission line" by referencing Minn. R. 7849.1100 (200 kV or more), which is not consistent with how high voltage transmission lines are now defined under Minn. Stat. ch. 216I (100 kV or more). The mandatory EAW category references a different definition—Minn. R. 7050.1000—which is now repealed. The mandatory EIS category also references the repealed definition and directs environmental review to PUC rules that are repealed or likely to be changed because they are not consistent with Minn. Stat. ch. 216I.

In short, while some projects requiring review under the EQB's current rules appear consistent in size with projects requiring review under Minn. Stat. ch. 216I, neither the existing EQB rules nor the rules referenced in EQB's rules reflect the new permitting and review process in Minn. Stat. ch. 216I and therefore conforming changes are needed.

Proposed environmental review rule changes

The goal of the Act, as stated above, was to streamline and clarify review and permitting requirements for certain kinds of energy infrastructure facilities. Many of the law's provisions—including sections repealing certain statutes and rules—went into effect on July 1, 2025. Outside of specific energy infrastructure permitting, the legislature made two additional changes to environmental review requirements to which EQB's rules should be conformed: requiring carbon dioxide pipelines permitting to include an EIS and changing the RGU for spent-fuel storage projects.

In total, EQB's environmental review rules require changes to address:

- References to repealed authorities: Minn. R. ch. 4410 contains references to repealed rules and statutes.
- References to permitting processes now found in Minn. Stat. ch. 216I: Minn. Stat. ch. 216I defines the types and sizes of projects which require review using an EIS or a EA. Current EQB rules require environmental review of projects that are defined differently than under Minn. Stat. ch. 216I and do not specifically address the differences in processes.
- References to RGUs: Minn. Stat. ch. 216I has made the PUC the RGU for most projects but allows local review in some cases. Current EQB rules do not address this change in RGU designation. The 2024 legislation also changed the RGU for the spent-fuel storage category in Minn. R. 4410.4400.
- Reference to carbon dioxide pipeline environmental review: In Minn. Laws 2024, ch. 126, article 9, section 17, the Legislature added the requirement for an EIS to be conducted for carbon dioxide pipelines before the PUC issues a routing permit as an amendment to Minn. Stat. ch. 216G.

Coordination and information sharing

EQB staff began the rule development process by reviewing the new statute and session law in coordination with other affected agencies, primarily Commerce and PUC but also the Minnesota Pollution Control Agency. The EQB staff also discussed the need for rulemaking at the following meetings with environmental review program and state government partners:

- EQB Technical Representatives meeting June 2, 2025.[7]
- EQB Technical Representatives meeting June 30, 2025.
    - At this meeting, the EQB staff discussed the option for amending the EQB rules under consideration.
- EQB Technical Representatives meeting Aug. 4, 2025.

Under EQB's tribal coordination and consultation policy, EQB staff regularly share information with staff of Tribal governments and entities about the EQB's project, program, and policy development work, and identify those areas of work likely to be matters that have Tribal implications. EQB staff did not identify this rulemaking as a matter that has tribal implications, because the substantive changes were made by the legislature. However, EQB did share updates on the rulemaking process with Tribal representatives.

- Minnesota Tribal Environmental Council (MNTEC) regular meeting on December 13, 2024.
- Minnesota Tribal Environmental Council (MNTEC) regular meeting on February 13, 2025.
- A meeting with MNTEC and other Tribal representatives on June 26, 2025.
    - At this meeting staff explained the possible conforming changes to Minn. R. ch. 4410.
- On July 1, 2025, the Executive Director sent a letter to all Tribes in Minnesota providing updates and offering the opportunity for consultation on several EQB projects, including this rulemaking.

Throughout the process, EQB staff made efforts to provide information to the public, including placing the following language on its website (March 5, 2025):

> *Energy infrastructure permitting (expedited)*
>
> *In 2024, the Minnesota Legislature passed the Minnesota Energy Infrastructure Permitting Act. This legislation aims to streamline and clarify the process for environmental review, siting, routing jurisdiction, and permitting for certain energy facilities and projects. (These facility types include: energy storage or battery systems, high voltage transmission lines, large electric power generating plants, wind energy systems, and solar energy generating systems.)*
>
> *These energy projects have been governed by a patchwork of statutes and rules. The new act consolidates most of these into a single statute and repeals other statutes and rules. It also directs EQB to update our rules to conform with the changes, and requires the use of expedited rulemaking procedures.*

EQB staff presented information and updates about the rulemaking to multiple regular meetings of the board and its subcommittees. Each meeting included an opportunity for the public to give input.

- EQB meeting February 19, 2025.
- Environmental Review Implementation Subcommittee (ERIS) meeting June 18, 2025.
    - At this meeting, the EQB staff discussed the options under consideration for amending the rules.
- EQB meeting, August 20, 2025.
- EQB meeting, September 17, 2025.
    - At this meeting, the Board was asked to formally approve these proposed rule revisions.

The proposed amendments and the rationale for the amendments appear below.

[7] The "technical representatives" are staff of EQB member agencies; many have expertise in environmental review.

Proposed rule amendments

Overview

The EQB proposes amendments that would create a new provision within Minn. R. ch. 4410 specifically for large energy infrastructure facility projects addressed under Minn. Stat. ch. 216I. This new provision would direct all environmental review of these projects to the procedures laid out in Minn. Stat. ch. 216I. The reference in Minn. R. ch. 4410 would function as a "clearinghouse" provision and Minn. R. ch. 4410 would not attempt to include parallel provisions for all energy projects captured in Minn. Stat. ch. 216I. In addition, the amendments would include pointing language in introductory sections of the mandatory categories portion of the rule (Minn. R. 4410.4300 and Minn. R. 4410.4400) to ensure that readers do not miss the applicable substitute review provision for these energy projects. The mandatory category references to projects covered by Minn. Stat. ch. 216I will be repealed.

The EQB concludes this is the most efficient way of effectuating the legislature's intent in adopting the Act. It effectively gives notice to those reviewing Minn. R. ch. 4410 that environmental review is required, while pointing them to the statutes that define the requirements and environmental review options created by the Act. This provision more effectively recognizes the distinct nature of the review process that is applicable to large energy infrastructure facility projects.

This proposal is different than how EQB has updated these rules in the past. Typically, EQB has added energy projects subject to environmental review into the Minn. R. ch. 4410 mandatory categories and, if necessary, referenced the separate rule or statutory authority controlling the review process.

However, because of the way Minn. Stat. ch. 216I was written, it is not easy to conform the rule and statute in this traditional manner. Mandatory categories within Minn. R. ch. 4410 identify the type of project, with a threshold, and then assign an RGU to conduct environmental review for projects larger than the specified threshold. Minn. Stat. ch. 216I uses its definitions to set out a project size and initially assigns large energy infrastructure facilities to prepare an EIS. Minn. Stat. ch. 216I then identifies (mostly smaller or non-fossil fuel related) specific large energy infrastructure facility projects that can be reviewed under standard or local environmental review procedures, which are environmental assessments. In some cases, project proposers can choose the level of review, which can affect the RGU (i.e., PUC or local unit) completing the review or the environmental review document required. Since the types of projects that are identified in Minn. Stat. ch. 216I may have different RGUs and environmental review based on the specifics of the facility or proposer choice, it is difficult to conform those provisions with the system for project classification and RGU selection found in Minn. R. ch. 4410.

The proposed amendments will not change certain existing EQB rules addressing energy projects that are not covered under Minn. Stat. ch. 216I. Minn. Stat. ch. 216I covers mostly larger projects that are required to get site or route permits from the PUC. Two types of smaller energy projects – smaller electric generating facilities and lower voltage transmission lines – currently require environmental review under the mandatory categories in Minn. R. ch. 4410. EQB is proposing that these electric generating facility projects continue to be reviewed under EQB rules, but that the mandatory categories for large electric power generating plants, lower-voltage transmission lines, and high-voltage transmission line projects be removed.

Retained project category: smaller electric-generating facilities

The existing mandatory categories in Minn. R. 4410.4300, subp. 3 (A) and (B) require an EAW for electric generating facilities with a capacity greater than 25 MW but less than 50 MW, with one mandatory category applicable to a project requiring an air permit from the MPCA (with MPCA as the RGU) and the other for projects that do not require an air permit (with the local unit as the RGU). Minn. Stat. ch. 216I does not cover projects of this size. The proposed amendments keep these EAW requirements in place.

The EAW mandatory category for electric generating facilities was added in 1982 and has been evaluated multiple times. When the category was updated in 2003, EQB determined that it remained necessary for smaller facilities to undergo an EAW. During the last update to the mandatory categories, completed in 2019, EQB again evaluated this category and decided to keep the EAW requirement for these projects. EQB records show that there were 13 projects that fell into this mandatory category from 2011 until the 2019 rulemaking documents were drafted. In the last four years, four projects have triggered this category (all projects that did not need an air permit). Although these projects are smaller, EQB concludes that there is still a need for this category. The public tends to be interested in obtaining information about these projects and commenting on them. For example, one of the projects evaluated in 2021 had 40 comments. EQB reasons that environmental review supports public awareness of these projects, the ability to comment, and ultimately informs the permitting process for these projects. EQB staff also had a conversation with MPCA staff about whether the Minn. R. 4410.4300, subp. 3 (A) mandatory category should be removed. MPCA staff were in favor of keeping the category and EQB staff agreed with this proposal.

Repealed project category: lower voltage transmission lines

Minn. R. 4410.4300, subp. 6 requires an EAW for certain transmission lines, including lower voltage lines between 70 and 100 kV, with the EQB as the RGU. The proposed amendments remove this category from Minn. R. ch. 4410.

Minn. Stat. ch. 216I revised the definition of high voltage transmission lines and added a definition for "associated facility" that covers smaller transmission lines. This definition states (emphasis added):

> *Minn. Stat. § 216I.02 subd. 2. Associated facility. "Associated facility" means a building, equipment, communication instrumentation, or other physical structure that is necessary to operate a large energy infrastructure facility.* ***Associated facility includes transmission lines designed for and capable of operating at 100 kilovolts or less that interconnect the large energy infrastructure facility with the existing high-voltage transmission system.***

As a result, lower voltage transmission lines will now be reviewed along with the core electric generating facility project, making a separate project category obsolete. In addition, there is strong evidence that transmission lines between 70 kV and 100 kV are not built in Minnesota and therefore this category can be removed. No projects have triggered this category in the last four years, and likely for several years before that. From EQB staff's research, the existing 70 kV threshold is not a relevant size threshold in Minnesota. According to Minnesota Electric Transmission Planning, (Electric Transmission Planning in the State of Minnesota), transmission lines used in Minnesota are 500 kV, 400 kV, 345 kV, 230 kV, 161 kV and 115 kV, and then 69 kV through 23 kV. Minnesota does not use any transmission lines between 70 kV and 100 kV, and none are likely to be built because they would not fit into the existing system.

Standalone transmission lines with voltage greater than 100 kV are now addressed by the requirements under Minn. Stat. ch. 216I, and the new definition of "associated facility" ensures that there will be evaluation of transmission lines of 100 kV or less (mostly 70 kV or less), when associated with a large energy infrastructure facility.[8] Therefore, this mandatory category is unneeded.

Other environmental review changes

In addition to establishing Minn. Stat. ch. 216I, the legislature made other changes that the EQB should reflect in its rules.

In the 2024 legislation, the Legislature created the requirement for an EIS for carbon dioxide pipelines before a routing permit is granted. As this requirement is presently in law, EQB rules must be amended to conform to it.[9]

Finally, Minn. R. 4410.4400 must be amended to change the RGU to PUC for an EIS for spent-fuel storage installation to conform to legislative changes to Minn. Stat. § 116C.83, subd. 6.

Proposed rule language changes

Proposed clearinghouse provision language

New rule part

To effectuate the plan to sweep environmental review projects that are covered by Minn. Stat. ch. 216I into the RGU selection and environmental review requirements in Minn. Stat. ch. 216I rather than address them under the EQB environmental review rule, a new rule provision is necessary.

The EQB will add a new part, Minn. R. 4410.4100, into the section of EQB's rules that addresses alternative review processes. The new part reads:

> 4410.4100 REVIEW OF ENERGY PROJECTS UNDER MINNESOTA STATUTES CHAPTER 216I
>
> Any large energy infrastructure facility project or solar energy generating system project must follow the RGU selection and review requirements in Minnesota Statutes, chapter 216I and rules adopted thereunder. As described in Minnesota Statutes, chapter 216I, a large energy infrastructure facility project includes a high-voltage transmission line, a large electric power generating plant, an energy storage system, a large wind energy conversion system, and any associated facilities.

Adopting this "clearinghouse" provision requires amending Minn. R. 4410.0200 by adding a definition of "large energy infrastructure facility" that references the definition in Minn. Stat. ch. 216I, and by adding a definition of solar energy generating system also as defined in Minn. Stat. ch. 216I. The separate reference to "solar energy generating system" is necessary because, although these projects are not included in the definition of "large energy infrastructure project," they are included as projects under Minn. Stat. ch. 216I. These proposed new definitions are described below.

[8] This is the most common use of lower voltage transmission lines – to connect a project to a larger line. Those projects are usually 69kV or less, and so already fall outside of the environmental review requirements.

[9] Although the Legislature made changes to Minn. Stat. ch. 216B governing pipelines that could be interpreted to include certain pipelines under Minn. Stat. ch. 216I (see Minn. Stat. §§ 216B.243, subd. 4 and 216B.2421, subd. 2(5)), the EQB will not change the current EQB rules governing environmental review of pipelines, primarily because Minn. Stat. ch. 216I itself does not address pipelines and they were not addressed during the 2023 stakeholder process that resulted in the Act.

To further ensure that the public is aware that projects covered under Minn. Stat. ch. 216I will be addressed under that chapter, the "mandatory category" parts of EQB rule will be amended to contain introductory language referencing the EQB's decision to redirect review. The proposed amendment to Minn. R. 4410.4300, subp. 1 adds an item that reads:

> C. For projects under part 4410.4100, environmental review is governed by Minnesota Statutes, chapter 216I.

Similar language will be inserted in Minn. R. 4410.4400, subp. 1. The new item reads:

> B. For projects under part 4410.4100, environmental review is governed by Minnesota Statutes, chapter 216I.

Changes proposed to definitions and mandatory categories

Energy storage system definition

The EQB will add a definition of "energy storage system" so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

> Subp. 22b. Energy storage system. "Energy storage system" has the meaning in Minnesota statutes, section 216I.02, subd. 6.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule, making it easy for users to find the definitions without creating a need to update EQB's rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I.

Large energy infrastructure facility definition

The EQB will add a definition of "large energy infrastructure facility" so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

> Subp. 41a. Large energy infrastructure facility. "Large energy infrastructure facility" has the meaning in Minnesota statutes, section 216I.02, subd. 10.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule, but including the projects within the new provision will make it easy for the reader to understand the types of projects included. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410.

Large wind energy conversion system definition

The EQB will add a definition of "Large wind energy conversion system" so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

> Subp. 41b. Large wind energy conversion system. "Large wind energy conversion system" has the meaning in Minnesota statutes, section 216I.02, subd. 11.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule making it easy for users to find the definitions without creating a need to update EQB's rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I.

Solar energy generating system definition

The EQB will add a definition of "Solar energy generating system" so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

> Subp. 83a. Solar energy generating system. "Solar energy generating system" has the meaning in Minnesota statutes, section 216I.02, subd. 18.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule making it easy for users to find the definitions without creating a need to update EQB's rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I.

Carbon dioxide pipeline definition

The EQB rules will add a definition and mandatory category for carbon dioxide pipelines, which is a classification of project added by the legislature. The definition reads:

> Subp. 6b. Carbon dioxide pipeline. "Carbon dioxide pipeline" has the meaning given in Minnesota Statutes section 216G.025 subd.1.

The EQB proposes that the definition reference the statutory definition, rather than repeating the statutory language defining "carbon dioxide pipeline" so that if the legislature makes changes to that definition, the EQB rule does not require amendment. The statutory definition will be a hyperlink in the rule, so this proposal should not be burdensome to the public.

Carbon dioxide pipeline project mandatory EIS category amendment:

The EQB will add "carbon dioxide pipeline" to the mandatory EIS projects listed in Minn. R. 4410.4400, because the legislature has required an EIS for carbon dioxide pipelines that meet the definition. The EQB will add a new subpart in Minn. R. 4410.4400, that reads:

> Subp. 24a. Carbon dioxide pipelines. For permitting the route of a carbon dioxide pipeline, the PUC is the RGU.

The statute creating this category specifies that an EIS is required prior to the issuance of a route permit under Minn. Stat. ch. 216G, and that the PUC is the RGU. Although arguably it would not be necessary to include this as a mandatory category in rule given the legislation, the EQB typically attempts to ensure that all projects requiring environmental review are included in the Minn. Stat. ch. 4410 rules, unless that would cause undue complexity, as is the case with the large energy infrastructure projects. EQB has concluded that this environmental review requirement should be included in Minn. R. 4410 so that it remains complete.

Electric power generating facilities definition

Minn. Stat. ch. 216I addresses only "large" electric power generating plants. Current EQB rules contain a redundant mandatory EIS category and a redundant EAW category that can be eliminated if the clearinghouse proposal is adopted.

The existing EQB rules require review of certain smaller electric power generating facilities (called "plants") that are not included in Minn. Stat. ch. 216I's "large" classification. However, while EQB's current rules define "large electric power generating plant", the rules do not contain a general definition for an electric power generating plant or facility.

Because the EQB is proposing that these projects continue to be included in Minn. R. ch. 4410, it is necessary to define "electric power generating facility." Because the power-generation levels necessary for review are specified in the mandatory category, it is appropriate that the definition define the activity, not the power generation levels involved. To ensure that associated transmission lines are subject to review, these are described (as they are in Minn. Stat. ch. 216I and Minn. R. 7849.1100) in the definition to ensure review is included. The proposed definition also signals to the public that large power generation facilities are covered elsewhere, i.e., Minn. Stat. ch. 216I.

EQB will add a new definition for "electric power generating facility" that reads:

> Subp. 20a. Electric power generating facility. "Electric power generating facility" means any electric power generating equipment, plant or combination of plants at a single site designed to generate electricity, and any associated transmission lines. Electric power generating facility does not include a large electric generating plant.

The EQB finds this definition to be a needed and useful clarification. It does not change the way the existing and remaining mandatory categories are applied.

Electric power generating facility project mandatory EAW category amendments:

Under EQB's current rules, there are four EAW mandatory categories for "Electric-generating facilities" projects – Minn. R. 4410.4300, subp. 3. EQB is proposing to remove two of these project types from the EAW mandatory category of Minn. R. 4410.4300 because the projects described in these categories would now undergo environmental review using Minn. Stat. ch 216I.

> ~~C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.~~
>
> ~~D. For construction of a wind energy conversion system, as defined in Minnesota Statutes, section 216F.01, designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to chapter 7854.~~

Minn. Stat. § 216I.02 Subd. 9 defines a "large electric power generating plant" as "electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more." Large electric power generating plants are subject to environmental review in Minn. Stat. ch. 216I and therefore would not use Minn. R. ch. 4410. A wind energy conversion system capable of operating at a capacity of 25 MW or more would also be required to follow Minn. Stat. ch. 216I for environmental review. Both of the mandatory category project areas as written in Minn. R. 4410 also have references to repealed rules or statutes. Minn. R. 4410.4300, subp.3(C) references chapter 7850 which was repealed. Minn. R. 4410.4300, subp.3(D) references a repealed statute, Minnesota Statutes, section 216F.01 and a repealed rule, chapter 7854. For these reasons EQB proposes to remove both Minn. R. 4410.4300, subp. 3(C) and (D) from the electric-generating facilities EAW mandatory category.

Large electric power generating plant definition

The EQB will revise the definition of "Large electric power generating plant" so that the public knows which projects are subject to the clearinghouse provision. The revised definition reads:

> Subp. 41. Large electric power generating plant; LEPGP.[10] "Large electric power generating plant" or "LEPGP" has the meaning given in ~~part 7849.1100~~ Minnesota Statutes, section 216I.02, subd. 9.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule making it easy for users to find the definitions without creating a need to update EQB's rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I. This was an existing definition within Minn. R. ch. 4410 and EQB proposes it be updated to reflect Minn. Stat. ch. 216I.

Large electric power generating facility project mandatory EIS amendments:

Under EQB's current rules, there is a mandatory EIS category for "Electric-generating facilities" – Minn. R. 4410.4400, subp. 3. EQB is proposing to remove this EIS mandatory category because the project described in this category would now undergo environmental review using Minn. Stat. ch 216I.

> ~~Subp. 3. Electric-generating facilities. For construction of a large electric power generating plant, as defined in Minnesota Statutes, section 216E.01, subdivision 5, the PUC is the RGU. Environmental review must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.~~

Minn. Stat. § 216I.02 Subd. 9 defines a "large electric power generating plant" as "electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more." Large electric power generating plants are subject to environmental review in Minn. Stat. ch. 216I. Minn. R. 4410.4400, subp. 3 also references Minn. Stat. 216E.01, Subd 5 and Minn. R. 7850.1000 to 7850.5600 both of which are repealed. Minn. Stat. ch. 216I is the new authority that governs the environmental review process for large electric power generating plants. For these additional reasons, the EQB proposes to remove 4410.4400, subp. 3 from the EIS mandatory category.

High-voltage transmission lines definition

The EQB will amend the definition of high-voltage transmission line to reference the definition in Minn. Stat. ch. 216I. The definition reads

> Subp. 38. High-voltage transmission line or HVTL.[11] "High-voltage transmission line" or "HVTL" has the meaning given in ~~part 7849.1100~~ Minnesota Statutes section 216I.02, subd 8.

A definition of HVTLs needs to be maintained because the term is used in Minn. R. 4410 in reference to early notice publication requirements.

Referencing the statute instead of the rule will ensure consistency as it is less likely to be changed and reflects legislative preference to require review of projects greater than 100 kV that are greater than 1,500 feet in length.

[10] The current EQB rules contain an unnecessary separate definition of this acronym in subp. 42. The EQB proposess deleting this separate definition.

[11] The current EQB rules contain an unnecessary separate definition of this acronym in subp. 40. The EQB proposes deleting this separate definition.

High-voltage transmission line mandatory project category amendment

Under EQB's current rules, there is a mandatory EAW category for "transmission line" projects—Minn. R. 4410.4300, subp. 6. It addresses both "transmission lines" and "high-voltage transmission lines and associated facilities, as defined in part 7850.1000." Transmission lines include a line at "new location," with "20 or more miles of length in Minnesota," and carrying "between 70 kilovolts and 100 kilovolts." The EQB proposes to delete this category in its entirety. The "clearinghouse" provision will address *high-voltage transmission line projects* subject to Minn. Stat. ch. 216I, which will override any inconsistent or repealed rules. For "transmission lines," the EQB expects that these projects will now be addressed with larger energy projects under Minn. Stat. ch. 216I as "associated facilities." As defined in Minn. Stat. § 216I.02, subd. 2, an "associated facility" includes "transmission lines designed for and capable of operating at 100 kilovolts or less that interconnect the large energy infrastructure facility with the existing high-voltage transmission system."

Based on EQB's experience and according to PUC staff experts, "stand alone" transmission lines of between 70 and 100 kV or less are not constructed except in conjunction with larger projects.[12]

There is also an EIS mandatory category—Minn. R. 4410.4400, subp. 6—for transmission lines. This mandatory category also addresses "high-voltage transmission lines and associated facilities, as defined in part 7850.1000." which is a repealed reference, and these projects will be covered in Minn. Stat. ch. 216I. For this reason, EQB proposes deleting the mandatory category for transmission lines from Minn. R. 4410.4400, subp. 6.

Spent-fuel storage

In the 2024 legislation, the legislature determined that the RGU for spent-fuel storage projects should be the PUC, not the Department of Commerce. As a result, Minn. R. 4410.4400, subp. 2, item C requires amendment to the designated RGU. The new language reads:

> C. For construction or expansion of an independent spent-fuel storage installation, the ~~Department of Commerce~~ PUC is the RGU.

Changes to other provisions.

Early notice rules

The EQB rules address when project proposers must publish an EQB Monitor notice for certain significant projects that are entering the environmental review process. *See* Minn. R. 4410.5200. Because the early notice rule contains references to statutory chapters (i.e., Minn. Stat. ch. 216E) repealed and replaced by Minn. Stat. ch. 216I, the amendment is necessary to amend Minn. R. 4410.5200, Subp. 3, Item F, which addresses a large electric power generating plant or a route permit for a high- voltage transmission line, to reference Minn. Stat. ch. 216I. The new language reads:

> F. notice of application for a site permit for a large electric power generating plant or a route permit for a high voltage transmission line pursuant to Minnesota Statutes, chapter ~~216E~~ 216I;

[12] In 2019, EQB proposed to delete this mandatory EAW category on the ground that these projects are not constructed, but this proposal met public resistance and was not moved forward. With the adoption of Minn. Stat. ch. 216I, it is clearer that these lines will be subject to mandatory review along with the larger energy project that they are associated with. As a result, the EQB believes that the current provision is redundant and will not be used as a basis for environmental review of transmission lines in the future.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT F

In re Exempt Permanent Rules Relating to Scoping Documents for Environmental Review, CAH 21-9008-41465, RD-4798 (Ct. of Admin. Hr'gs Mar. 24, 2026).

MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

Court of Administrative Hearings
PO Box 64620
Saint Paul, MN 55164-0620
651-361-7900
mn.gov/cah/

March 24, 2026

VIA EFILING ONLY
Anne Kealing
Assistant Attorney General
Attorney General's Office
445 Minnesota St Ste 600
Saint Paul, MN 55101
anne.kealing@ag.state.mn.us

Re: ***In the Matter of the Exempt Permanent Rules Relating to Scoping Documents for Environmental Review***
CAH 21-9008-41465; Revisor RD-4798

Dear Anne Kealing:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 AND MINN. R. 1400.2400**.

Pursuant to Minn. R. 1400.2400. subp. 4a, the Minnesota Environmental Quality Board may resubmit the rule and accompanying materials to the Administrative Law Judge for review. The Minnesota Environmental Quality Board may also request, pursuant to Minn. R. 1400.2400, subp. 5, that the Chief Administrative Law Judge reconsider the disapproval of the rules **within five working days of receiving the Judges' decision**.

If you have any questions, please contact William Moore at (651) 361-7893, at william.t.moore@state.mn.us or via fax at (651) 539-0310.

Sincerely,

CARA HUNTER
Legal Assistant

Enclosures

cc: Ryan Inman
Legislative Coordinating Commission
Representative Jim Nash
Representative Ginny Klevorn
Senator Tou Xiong

CAH 21-9008-41465
Revisor RD-4798

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

In the Matter of the Exempt Permanent Rules Relating to Scoping Documents for Environmental Review	**ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Kimberly Middendorf upon the application of the Minnesota Environmental Quality Board (EQB) for a legal review under Minn. Stat. § 14.388 (2024).

On March 10, 2026, the EQB filed documents with the Court of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.388 and Minn. R. 1400.2400 (2025). The EQB filed its reply to public comments on March 20, 2026, and the record closed on that date.

Based upon a review of the EQB's written submissions and the public comments, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY DETERMINED:

1. Pursuant to 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5, the Minnesota Legislature mandated certain specific changes in Minnesota Rules and authorized the Board to implement those changes by invoking the good cause exemption to the rulemaking procedures as provided by Minn. Stat. § 14.388, subd. 1(3). The following proposed rules were adopted in compliance with the legislature's directive and with the procedural requirements of Minn. Stat. ch. 14 (2024), and Minn. R. ch. 1400 (2025):

Minn. R. 4410.0200, subp. 24
Minn. R. 4410.0200, subp. 77a
Minn. R. 4410.1000, subp. 1
Minn. R. 4410.1000, subp. 2
Minn. R. 4410.2100, subp. 2(A)
Minn. R. 4410.2100, subp. 3(C)
Minn. R. 4410.2100, subp. 5
Minn. R. 4410.2800, subp. 1a(A)
Minn. R. 4410.6200, subp. 1(e)
Minn. R. 4410.6500, subp. 1(A)

2. The following proposed rules exceed the 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5 good cause exemption and are not exempt from rulemaking

procedures. These rules were not adopted in compliance with the legislature's directive or with the procedural requirements of Minn. Stat. ch. 14, and Minn. R. ch. 1400:

Minn. R. 4410.2100, subp. 2(B), (C)
Minn. R. 4410.2100, subp. 3(A), (B)
Minn. R. 4410.3100, subp. 4
Minn. R. 4410.3610, subp. 5a(B)

IT IS HEREBY ORDERED:

1. The proposed rules Minn. R. 4410.0200, subp. 24; Minn. R. 4410.0200, subp. 77a; Minn. R. 4410.1000, subp. 1; Minn. R. 4410.1000, subp. 2; Minn. R. 4410.2100, subp. 2(A); Minn. R. 4410.2100, subp. 3(C); Minn. R. 4410.2100, subp. 5; Minn. R. 4410.2800, subp. 1a(A); Minn. R. 4410.6200, subp. 1(e); and, Minn. R. 4410.6500, subp. 1(A), are **APPROVED**.

2. The proposed rules Minn. R. 4410.2100, subp. 2(B), (C); Minn. R. 4410.2100, subp. 3(A), (B); Minn. R. 4410.3100, subp. 4; Minn. R. 4410.3610, subp. 5a(B) are **DISAPPROVED.**

Dated: March 24, 2026

KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

Minn. R. 1400.2400, subp. 4a, provides that when a rule is disapproved, the agency must resubmit the rule to the Administrative Law Judge for review after it has revised the proposed rules. The Administrative Law Judge then has five workings days to review and approve or disapprove the rule. Minn. R. 1400.2400, subp. 5, provides that an agency may ask the Chief Administrative Law Judge to review a rule that has been disapproved by a Judge. The request must be made within five working days of receiving the Judge's decision. The Chief Administrative Law Judge must then review the agency's filing and approve or disapprove the rule within 14 days of receiving it.

MEMORANDUM

On March 10, 2026, the EQB filed with the Court of Administrative Hearings the following documents, requesting the approval of rule changes under the good cause exemption to rulemaking procedures under Minn. Stat. § 14.388:

(1) A copy of the proposed Rules with Revisor's approval;

(2) A proposed Order Adopting Rules;

(3) A copy of the Notice required under Minnesota Statutes, section 14.388, subdivision 2; and

(4) A Certificate of Mailing, a Certificate of Accuracy of the Mailing List, and a Certificate of Additional Notice.

According to the EQB's Notice, the EQB requests approval of various rule amendments under Minn. Stat. § 14.388, subd. 1(3), which permits an exemption from ordinary rulemaking when warranted to "incorporate specific changes set forth in applicable statutes when no interpretation of law is required."

The EQB stated:[1]

> By Laws of Minnesota 2025, 1st Spec. Sess., Chapter 1, Article 6, Section 5, the Minnesota Legislature requires the Environmental Quality Board to amend rules relating to the required scoping process for mandatory environmental impact statements. The Board is using the good cause exemption process under Minnesota Statutes, section 14.388, subd. 1, clause (3), to make the specific change stated in the laws cited above without additional interpretation.

Consequently, the Judge has reviewed the submissions under Minn. Stat. § 14.388, subd. 1(3).

NOTICE TO INTERESTED PERSONS

Minn. Stat. § 14.388, subd. 1, directs the Court of Administrative Hearings to review the proposed rule changes for legality and to determine whether adequate justification has been provided for use of the good cause exemption. Minn. Stat. § 14.388, subd. 2, requires that an agency proposing to adopt, amend, or repeal a rule under Minn. Stat. § 14.388 must give electronic notice of its intent (in accordance with Minn. Stat. § 16E.07, subd. 3 (2024)); and notice by United States mail or electronic mail to persons who have registered their names with the agency under Minn. Stat. § 14.14, subd. 1a (2024). The notice must be given no later than the date the agency submits the proposed rule to the Court of Administrative Hearings for review of its legality. The notice must include:

[1] Notice of Submission of Exempt Rules Proposed for Adoption without a Public Hearing to the Court of Administrative Hearings (Notice) (Mar. 6, 2026).

(1) The proposed rule, amendment or repeal;

(2) An explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and

(1) A statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

According to the documents filed by the EQB, on March 6, 2026, the EQB mailed or emailed notice to the persons and associations who requested that their names be placed on the EQB's rulemaking mailing list, according to their stated preference for receipt of notice.[2] The mailing was also sent to members of the legislature as stated in the EQB's additional notice plan.[3] The Notice explained the use of the good cause exempt process and included the statement that the proposed rules would be submitted to the Court on March 10, 2026, and that parties had five business days thereafter to submit comments. The mailing included the Notice, the proposed rules, and the EQB's memorandum explaining the proposed amendments to the rules. Accordingly, the EQB has established compliance with notice requirements.

COMMENTS FROM THE PUBLIC

The Minnesota Chamber of Commerce (the Chamber) submitted comments, generally in favor of the amendments.[4] WaterLegacy, the Minnesota Center for Environmental Advocacy, the Minnesota Division Izaak Walton League of America, the Minnesota Environmental Partnership, and Northeastern Minnesotans for Wilderness (collectively, the Environmental Organizations) submitted joint comments strongly opposing the amendments.[5] These comments are addressed in detail below.

Two members of the public submitted proposals for strengthening public participation and environmental protection in environmental review processes.[6] Owatonna East Side Corridor Residents shared their experience with the environmental review process related to the proposed Owatonna East Side Corridor (ESC) project in Steele County and a range of well-reasoned suggestions for improving the process.[7] The Judge appreciates the thought and time these commenters clearly put into their comments. The EQB should carefully review these comments and consider them in any future rulemakings.

[2] Certificate of Mailing (Mar. 6, 2026).
[3] Certificate of Additional Notice (Mar. 6, 2026).
[4] Comment of the Minnesota Chamber of Commerce (Mar. 16, 2026) (Chamber Comment).
[5] Comment of WaterLegacy, the Minnesota Center for Environmental Advocacy, the Minnesota Division Izaak Walton League of America, the Minnesota Environmental Partnership, and Northeastern Minnesotans for Wilderness (Mar. 17, 2026) (EO Comment).
[6] Comment of Melissa Zimmermann (Mar. 17, 2026); Comment of Matthew Sennott (Mar. 17, 2026).
[7] Comment of Owatonna East Side Corridor Residents (Mar. 17, 2026).

USE OF THE GOOD CAUSE EXEMPTION

The Minnesota Environmental Policy Act, Minn. Stat. § 116D.04, authorizes the EQB to adopt rules governing the Environmental Review Program, including establishment of a process to scope mandatory, discretionary, and voluntary Environmental Impact Statements (EISes). In its present form, Minn. R. 4410.2100 establishes that an environmental assessment worksheet (EAW) serves as the scoping document for each EIS.

In 2025, the Legislature adopted a law titled *Scoping Environmental Assessment Worksheet Not Required for Projects that Require a Mandatory Environmental Impact Statement* (2025 Session Law).[8] The 2025 Session Law reads, in pertinent part, as follows:[9]

> (a) The Environmental Quality Board must amend Minnesota Rules, part 4410.2100, as follows:
>
> > (1) to provide that an environmental assessment worksheet does not need to be prepared for a project that falls within a mandatory environmental impact statement category under Minnesota Rules, part 4410.4400, or other applicable law; and
> >
> > (2) to provide that a scoping process undertaken under Minnesota Rules, part 4410.2100, for a project that falls within a mandatory environmental impact statement category must be completed no later than 280 days after publication of the notice of availability of a scoping document in the EQB Monitor.
>
> (b) The board may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Exempt rulemaking is an exceptional procedure and is generally reserved to address emergencies; to adopt court-prescribed or legislative changes; or to make non-substantive changes or clarifications to the existing rules.[10] As the Minnesota Court of Appeals has noted, the abbreviated exempt rulemaking process obviates the public's opportunity to bring to the agency's attention all relevant aspects of the proposed rules, which was intended to enhance the quality of the agency decision.[11] The exempt process has a negative impact on the statutory goal of "increase[ing] public accountability of administrative agencies."[12] Consequently, it should be used sparingly and must be viewed with scrutiny. Rules that are promulgated under Minn. Stat.

[8] 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5.
[9] 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5.
[10] *See Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604, 610 (Minn. Ct. App. 2003); Minn. Stat. § 14.388, subd. 1 (1) – (4).
[11] *Jewish Community Action*, 657 N.W.2d at 610.
[12] *Id., citing* Minn. Stat. § 14.001(2).

§ 14.388, subd. 1(3) (Clause (3)) may stand as permanent rules. Clause (3) contemplates that administrative rules issued under this exemption must implement the substantive policy the Legislature has announced rather than reflect the agency's choice among policy alternatives. In reviewing the proposed rule amendments, the Judge must determine that the rule amendments strictly implement the Legislature's directive and do not go beyond it.

The Judge reviews proposed exempt rules under Minn. R. 1400.2400. This rule requires that in reviewing a filing, the Judge must decide whether the proposed rule meets the standards of Minn. R. 1400.2100, Items A and D to G, and "whether the agency has established its exemption from rulemaking under Minnesota Statutes, section 14.386 or 14.388."[13] The standards of review Items A and D to G are:

> A rule must be disapproved by the judge or chief judge if the rule:
>
> A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);
> . . .
> D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;
> E. is unconstitutional or illegal;
> F. improperly delegates the agency's powers to another agency, person or group;
> G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law. . . .[14]

The EQB proposes a number of amendments to its rules. The Board relies exclusively on the 2025 Session Law and its grant of permission to use Clause (3) as its authority for amending certain parts of its rules. The Legislature's grant of rulemaking authority through the good cause exemption process is expressly limited to Minn. R. 4410.2100. The 2025 Session Law, however, does not authorize the Board to amend Minn. R. 4410.2100 in ways that exceed the Legislature's directive. Moreover, to the extent the EQB proposes to amend rules other than Minn. R. 4410.2100, it must establish that the amendment qualifies for the Clause (3) exemption.

As guided by the Legislature, the EQB requests approval of its proposed amendments to its rules under the "good cause exemption" of Minn. Stat. § 14.388, subd. 1(3) (Clause (3)). Minnesota Statutes section 14.388 provides that an abbreviated and streamlined set of procedures for promulgating new rules may be used when "good cause" is present. The Environmental Organizations argue that the EQB has not

[13] Minn. R. 1400.2400, subp. 3.
[14] Minn. R. 1400.2100.

established good cause to use the exempt process and all proposed rules must be denied as a result.[15]

In this instance, the Legislature has determined that good cause to amend Minn. R. 4410.2100 is present through its declaration that the "board may use the good cause exemption under Minnesota Statutes section 14.388, subdivision 1, clause (3)", which in turn states that an agency may avoid the ordinary requirements for rulemaking in order to "incorporate specific changes set forth in applicable statutes when no interpretation of law is required." To determine otherwise, as the Environmental Organizations argue, would render meaningless the Legislature's finding of good cause in paragraph b of the 2025 Session Law.[16] However, the Legislature's finding of good cause is expressly limited to amending Minn. R. 4410.2100. To the extent that the EQB proposes to amend other rules in this rulemaking, good cause must be established independently of the 2025 Session Law.

RULE-BY-RULE ANALYSIS

The 2025 Session Law directed EQB to amend Minn. R. 4410.2100 to make two narrow changes: specifically, that an EAW is not required for a project for which an EIS is mandatory, and to set a deadline of 280 days to complete the scoping process for those projects. In addition, the EQB submits a variety of "additional necessary revisions to effectively implement the changes by correcting and conforming references to scoping EAWs that appear throughout the chapter and to make other similar small changes necessary to conform to part 4410.2100 as amended."[17] The EQB states "[t]hese changes fall within the scope of the exempt rulemaking and do not constitute an interpretation of law."[18]

Each rule, and comments pertinent to it, are discussed below.

4410.0200, Subp. 24 – Definition of EAW

The EQB is proposing a change to the definition of an EAW. The proposed definition reads:

> *Subp. 24. Environmental assessment worksheet. "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed project ~~or to~~ and may initiate the scoping process for an EIS.*

[15] EO Comment at 2-3.
[16] *See, e.g., In re the Adopted Exempt Permanent Rule of the Minn. Pollution Control Agency Governing Municipal Effluent Limitations* (CAH 19-9003-34654); *In re the Adopted Exempt Permanent Rule: Terminating Postclosure Care of Solid Waste Disposal Facilities* (CAH 25-9003-40430).
[17] Environmental Review: EIS Scoping Changes**,** Rule Summary and Justification Memo (Summary) at 4.
[18] Summary at 4.

EQB is proposing this change to clarify that an EAW is not always required to initiate the scoping process for an EIS.[19]

This Subpart is a minor technical change consistent with the directive to amend Minn. R. 4410.2100 and is approved.

4410.0200, Subp. 77a – Definition of Scoping Document

EQB is proposing to add a definition of a scoping document.

> *Subp. 77a. Scoping Document. "Scoping document" means a brief document containing information about the proposed project necessary for the EIS scoping decision under part 4410.2100. A scoping document can be an EAW or a different document containing the information necessary for the scoping process.*

EQB explains "EQB is proposing to add this definition to simplify incorporation of the legislative directive that an EAW or a different document may be used for a scoping process."[20]

This definition amends Minn. R. 4410.0200 to make an EAW one type of document under the new definition of "scoping document." Because the Legislature directed the EQB to amend Minn. R. 4410.2100 to allow the use of a "scoping document" to initiate the mandatory EIS process, but did not define the term, it is within the scope of the rulemaking authority under the 2025 Session Law. This Subpart is approved.

4410.1000, Subp. 1 – Purpose of EAW

The EQB is proposing a change to language in the rules describing the purpose of an EAW.

> *Subpart 1. Purpose of EAW. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project. The EAW ~~serves primarily to~~:*
>
> *A. ~~aid~~ aids in the determination of whether an EIS is needed for a proposed project; and*
> *B. may serve as a basis to begin the scoping process for an EIS*

The EQB explains, "[t]his change reflects the statutory change making an EAW optional for scoping mandatory EISs [sic]. The revised language makes clear that an EAW may, but does not always, serve as the basis for the scoping process."[21]

[19] Summary at 4.
[20] Summary at 5.
[21] Summary at 5.

This amendment is necessary to harmonize this subpart with the Legislature's directive to make an EAW permissive rather than mandatory to initiate the mandatory EIS process. It is within the scope of the rulemaking authority under the 2025 Session Law and is approved.

4410.1000, Subp. 2 – Mandatory EAW categories

The EQB is proposing a change to language in the rule requiring an EAW be prepared for any of the EIS categories listed in 4410.4400.

> *Subp. 2.* ***Mandatory EAW categories.*** *An EAW shall be prepared for any project that meets or exceeds the thresholds of any of the EAW categories listed in part 4410.4300 ~~or any of the EIS categories listed in part 4410.4400~~*.

The EQB explains this amendment is intended to reflect the statutory change making an EAW optional for mandatory EISes. This is a technical change necessary for consistency with the 2025 Session Law and the amendment of Minn. R. 4410.2100. This Subpart is approved.

Minn. R. 4410.2100, Subp. 2 – Scoping document

The EQB proposes to change this Subpart to reflect that an EAW is not mandatory for scoping, and that a "scoping document" is sufficient. The proposed amendments to Subpart 2 would break the existing rule into three separate items (A-C).

> *Subp. 2.* ***~~EAW as s~~Scoping document.***
>
> *A. All projects requiring an EIS must have ~~an EAW~~ a scoping document filed with the RGU. ~~The~~ An EAW may serve as a ~~shall be the basis for the~~ scoping ~~process~~ document.*
>
> *B. For projects ~~which fall within a mandatory EIS category~~ for which an EIS is mandatory under part 4410.2000, subpart 2 or other applicable law or if a voluntary EIS is planned, ~~the EAW will be used solely as a scoping document. For such projects,~~ under part 4410.2000, subp. 3, item B, the RGU shall prepare and circulate ~~with the EAW~~ a scoping document. The scoping document must include or be accompanied by a draft scoping decision document that addresses the contents specified by subpart 6 to the extent that information is already available. The purpose of the draft scoping decision document is to facilitate the delineation of issues and analyses to be contained in the EIS. The information in a draft scoping decision document shall be considered as preliminary and subject to revision based on the entire record of the scoping process.*

> *C. If the need for an EIS has ~~not~~ been determined under part 4410.2000, subpart 3, item A, the EAW ~~will have two functions:~~ is the basis for the scoping process and is used ~~A. to identify the need for preparing an EIS pursuant to part 4410.1700; and B.~~ to initiate discussion concerning the scope of the EIS ~~if an EIS is ordered pursuant to part 4410.1700~~.*

The EQB explains Proposed Item A is intended to allow a mandatory EIS project to be initiated by a scoping document as an alternative to an EAW, as directed by the 2025 Session Law.[22]

The Chamber suggests updating the proposed rule language in Minn R. 4410.2100, Subp. 2, item A to simply read: "All projects requiring an EIS must have a scoping document filed with the RGU," without including the additional sentence proposed by EQB that reads: "An EAW may serve as a scoping document."[23]

The EQB believes it is useful to retain the sentence the Chamber views as unnecessary because the "existing rule is longstanding; the proposed change represents a departure from procedures in place for more than forty years."[24] Although the language could be considered duplicative, because of the new definition of a scoping document, EQB believes it bears repeating within the rule parts that contain the scoping procedures. Most project proposers and responsible governmental units (RGUs) are likely to refer to those procedural rules first, rather than the definitions.[25]

EQB's proposed amendments to Subpart 2 contained in Proposed Item A are consistent with the Legislature's directive, are within the legislative finding of good cause under Minn. Stat. § 14.388, and are approved.

The EQB describes proposed Item B as intended to "refer to mandatory or voluntary EISs [sic] (which did not originate from a decision following the completion of an EAW) and note the need to prepare a scoping document which does not need to be an EAW for mandatory or "by law" EISs [sic] as allowed by the new legislation."[26] Because the existing subpart included voluntary EISes, EQB includes the option for a scoping document for both categories in its amendment.

The Environmental Organizations oppose the proposed amendments to Subpart 2 contained in Item B. The EQB's proposed exempt rules would amend Minn. R. 4410.2100, subp. 2, item B to remove the requirement for an EAW "if a voluntary EIS is planned."[27] This proposed amendment clearly and explicitly exceeds the scope of the applicable legislation. The Legislature authorized no changes to scoping if a voluntary EIS is planned.

[22] Summary at 6.
[23] Comment of the Minnesota Chamber of Commerce (Mar. 16, 2026).
[24] EQB Response to Comments (Response) (Mar. 20, 2026).
[25] *Id.*
[26] Summary at 6.
[27] EO Comment at 4.

The EQB believes that all of its rule amendments respect the existing (and long-standing) rules, which provide that the process for a mandatory EIS and a voluntary EIS are the same.[28] However, by limiting the directive to allow scoping documents to replace EAWs in mandatory EIS matters, the Legislature has required different processes depending on whether the EIS in question is mandatory or not. Allowing use of a scoping document other than an EAW to initiate a voluntary EIS is a substantive change not authorized by the 2025 Session Law. Because the amendments in Item B exceed the scope of the 2025 Session Law, the amendments in Item B are disapproved.

Proposed Item C is intended to "include direction for those projects that are not affected by the new legislation, i.e., those projects for which an EAW will already exist, which are referred to as "discretionary" EISs [sic]."[29] The Amendments in Proposed Item C are similarly objectionable to the Environmental Organizations. They contend that EQB's proposed amendments in Item C "remove functions of the EAW when the need for an EIS has ***not*** been determined."[30] This attempt to alter the discretionary EIS process, the Environmental Organizations argue, clearly and explicitly exceeds the scope of the applicable legislation.[31]

The Legislature authorized no changes to the functions of an EAW except for projects falling within a mandatory EIS category. Because Proposed Item C exceeds the Legislature's authorization by altering the discretionary EIS process, it is not exempt from rulemaking procedures and is disapproved.

Minn. R. 4410.2100, Subp. 3 – Scoping period

Minn. R. 4410.2100, subp. 3, establishes the scoping period applicable to projects that are subject to the EIS process because the project meets or exceeds a mandatory category EIS threshold in Minn. R. 4410.4400 or when the project proposer and RGU agree that an EIS is needed. The changes EQB proposes to Subpart 3 are intended to "reflect that an EAW is no longer required for scoping and that a 'scoping document' may instead be used to provide information about the proposed project. The changes also reflect the inclusion of the deadline directed by the legislature."[32]

The proposed Subpart 3 reads:

Subp. 3. Scoping period. If the EIS is being prepared pursuant to part 4410.2000, subpart 2 or 3, item B, the following schedule applies:

A. The 30-day scoping period will begin when the notice of the availability of the ~~EAW~~ scoping document is published ~~in accord with~~ in the same manner as for an EAW under part 4410.1500, items A ~~and B~~ to C. This

[28] Response at 2.
[29] Summary at 6-7.
[30] EO Comment at 4.
[31] EO Comment at 4.
[32] Summary at 7.

notice and press release shall include the time, place, and date of the scoping meeting.

B. The RGU shall provide the opportunity for at least one scoping meeting during the scoping period. This meeting shall be held not less than 15 days after publication of the notice of availability of the ~~EAW~~ scoping document. All meetings shall be open to the public.

C. A final scoping decision shall be issued within 15 days after the close of the 30-day scoping period and, for an EIS being prepared pursuant to part 4410.2000, subpart 2, no later than 280 days after publication of the notice of availability of a scoping document in the EQB Monitor.

The EQB explains "The proposed changes to item A add a scoping document as an option and clarify that the scoping document must be made available in the *same manner* as an EAW because scoping documents are no longer required to be EAWs."[33]

Minn. R. 4410.2000, subpart 3, Item B pertains to a voluntary EIS. The EQB's claim that "scoping documents are no longer required to be EAWs" is overly broad, as the Legislature authorized use of an alternative scoping document only where an EIS is mandatory. Proposed Subpart 3, Item A, is disapproved. For the same reasons, Proposed Subpart 3, Item B, is disapproved.

The proposed changes to Item C reflect the legislative direction that, for mandatory EISes, the deadline to complete scoping is 280 days after the publication of the notice of availability of the scoping document. Proposed Item C is limited to Minn. R. 4410.2000, subpart 2, and thus implicates only mandatory EISes. This is consistent with the 2025 Session Law and is approved.

Minn. R. 4410.2100, Subp. 5 – Procedure for scoping

In this subpart of the rules, EQB is proposing changes to identify that scoping may be done using a scoping document or scoping EAW, reflecting the fact that a scoping EAW is not mandatory.

Subp. 5. Procedure for scoping. Written comments suggesting issues for scoping or commenting on the ~~EAW~~ scoping document must be filed with the RGU during the scoping period. Interested persons may attend the scoping meeting to exercise their right to comment.

The proposed amendment to Subpart 5 is within the scope of the Legislature's directive to amend Minn. R. 4410.2100 to allow documents other than an EAW to initiate the mandatory EIS review process. It is, therefore, approved.

[33] Summary at 7.

Minn. R. 4410.2800, .3100, .3610, .6200, and .6500

The EQB proposes to amend these rules to strike "EAW" from them and replace the term with "scoping document." According to the EQB, these are "other portions of the rule where EQB needs to make minor conforming changes to address the fact that the scoping process will not always require an EAW to be used as a scoping document. The changes in these rule parts are to add language that ensure the rules refer to a 'scoping document.'"[34]

Use of the term "scoping document" throughout the scoping rules, exceeds the EQB's grant of rulemaking authority and requires interpretation of law as well. The legislative authorization is limited to scoping documents for mandatory EIS projects. The EQB then proposes to remove the term "EAW" and replace it with "scoping document" in parts 4410.2800, 4410.3100, 4410.3610, 4410.6200, and 4410.6500.

This substitution of terms does not impact EAW or EIS requirements in Minn. R. 4410.2800, .6200, and .6500. These are conforming amendments that do not change the meaning of these provisions beyond the authorization of the 2025 Session Law. Accordingly, the amendments to Minn. R. 4410.2800, .6200, and .6500 are approved.

Minn. R. 4410.3100, subp. 4, establishes the variance process for scoping decisions. This subpart broadly applies to any project subject to environmental review. The Legislature's grant of authority is limited to amending rules to allow the use of a scoping document to initiate a mandatory EIS. The EQB's decision to amend this rule does not implement the substantive policy the Legislature has announced. The EQB has not established good cause to amend this rule under the exempt process. The amendment to Minn. R. 4410.3100, subp. 4, is disapproved.

Minn. R. 4410.3610 pertains to the alternative urban areawide review (AUAR) process. The AUAR process explicitly exempts mandatory EISes in part 4410.4400, subpart 2. The proposed amendment replaces "scoping EAW" with "scoping document." This proposed amendment clearly and explicitly exceeds the scope of the applicable legislation. The Legislature provided no authority to amend part 4410.3610, and the AUAR process cannot be used to review any project meeting the requirements for a mandatory EIS,[35] which was the sole subject of the 2025 Session Law. The EQB has not established good cause to amend this rule under the exempt process. This amendment requires interpretation and exceeds the boundaries of the good cause exemption of Minn. Stat. § 14.388. Proposed Minn. R. 4410.3610 is disapproved.

K. J. M.

[34] Summary at 7-8.
[35] Minn. R. 4410.3610, subp. 1.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT G

GTAC, Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework (EQB Recommendations), Nov. 15, 2024.

MINNESOTA

Gas Resources Technical Advisory Committee (GTAC)

Draft as of November 15, 2024

Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework

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Draft statutory language (Appendix A): Minnesota Statutes, section 103I.706, subdivision 8; Minnesota Statutes, section 103I.706, subdivision 2; Minnesota Statutes, section 103I.707, subdivision 11.

Rationale

Prior to a person beginning to seal a gas well, the Department must be informed of the intent to seal the proposed gas well. This allows for the Department to plan for and inspect gas well sealing to ensure compliance and the protection of public health and groundwater. The sealing notification fee will financially support the processing of the received notification and inspection of gas wells. The proposed gas well notification is like existing notification requirements in Minnesota Rules, chapter 4725, for other well sealing.

Environmental Quality Board

Agency background

A key component of this regulatory framework – temporary or permanent - is the need to define when a project is subject to mandatory environmental review.

The function of Minnesota's Environmental Review Program is to provide information about future projects to avoid and minimize damage to Minnesota's environmental resources caused by public and private actions. The program accomplishes this by requiring certain proposed projects to undergo review, following defined procedures, prior to obtaining needed approvals and permits. Environmental review provides an opportunity for both the public and decision makers to understand the potential for significant environmental effects from a project prior to the project moving forward.

The Minnesota Environmental Policy Act identifies environmental review as a requirement for any project that has the potential for significant environmental effects. The Environmental Quality Board, as administrator of the Environmental Review program, identifies in rule all project types for which environmental review is mandatory. These rules are referred to as the mandatory category rules, and define a threshold for when certain project types, based on the size or scope, may or will have the potential for significant environmental effects. If a project is one listed within the mandatory categories and meets or exceed the thresholds defined by the rules, then environmental review is required.

The mandatory categories can require one of two different levels or processes of review. The Environmental Assessment Worksheet (EAW) process is used to review a project that may have the potential for significant environmental effects. An Environmental Impact Statement (EIS) is the process for reviewing a project that does have the potential for significant environmental effects. The EIS has increased requirements for the level of information provided and analyzed as well as the amount of interaction required with the public. For example, an EIS must include evaluation of alternative scenarios of the proposed project in order to explore methods of reducing adverse environmental effects. Mandatory category thresholds are usually based on project size; EAW thresholds typically align with a smaller size project while an EIS is triggered by a larger project.

A project that meets a mandatory category threshold for an EAW may have the potential for significant environmental effects; it is the role of the environmental review process to identify if the project may lead to actual significant effects or if mitigation efforts and regulatory requirements can allow the project to proceed without the potential for significant environmental effects. If the EAW process identifies that the project does have the potential for significant environmental effects, then the project review will proceed to the EIS process to further analyze the effects from the project compared to potential alternatives.

The rules assign a unit of government – the Responsible Governmental Unit (RGU) – to conduct the review, following standardized public processes to disclose information about environmental effects and ways to minimize and avoid them.

Recommendation EQB-1: Require a mandatory environmental assessment worksheet (EAW) for any gas resource development project. The DNR will serve as the responsible governmental unit (RGU).

Rationale

Establishing a new mandatory category or requirement for environmental review necessitates understanding the potential for significant environmental effects from a project; defining what size of project and at what phase of development needs review; and identifying an RGU to complete the review.

Draft statutory language: 116D.04 Subd. 16a.

Potential for significant environmental effects:

EQB staff believe that for the duration of a temporary regulatory framework it is appropriate to require an EAW for all gas development projects, recognizing that any projects of this type may have the potential for significant environmental effects. A gas development project may have the potential for significant environmental effects relating to air quality, land use, transportation, noise, and water quality.

Timing for environmental review and defining of gas projects:

Mandatory categories are written to ensure that a project proposer and responsible governmental unit understand what project action triggers environmental review. Construction, expansion, and development are common terms used within the rules to define the need for environmental review at a certain project phase.

The environmental review process needs to ensure that the impacts from a gas project can be properly evaluated prior to permitting, making the timing of the review and its tie to the triggering event important. For many mining or extractive projects, typically exploratory boring is completed to evaluate the subsurface extent of the natural resource that is intended to be extracted. In those cases, the initial exploration may not require environmental review; instead, review may not be required until a more complete mining project plan is needed. In these cases, the environmental impacts are tied much more to the overall project development rather than the initial exploration.

However, gas extraction projects work differently. The drilling of even an "exploratory" well for gas extraction is likely to result in a permanent location, from which the project developer will likely proceed to extract and produce gas (if any gas is found). Therefore, the environmental effects are most closely tied to the initial project steps.

Because of this, the recommendation from the EQB includes the language "gas resource development project" and is intended to ensure environmental review takes place before any drilling, even what might be considered "exploratory drilling", take place. This language is tied to the gas resources development permit that is being recommended by the Department of Natural Resources (DNR). Those recommendations include the need to obtain a gas development permit before drilling any well.

The existing framework for drilling wells (or exploratory borings) in Minnesota does not require a permit or government approval prior to drilling the well, and therefore does not meet the requirements for environmental review. DNR's recommendations to require issuance of a development permit prior to drilling a gas well would allow for environmental review to evaluate the potential environmental impacts from the project as a whole, including the drilling of the well and the long-term extraction and production of the gas. If these projects are allowed to proceed following the existing framework for exploratory borings and well notifications, then environmental review will likely not encompass the project as a whole and will only have the opportunity to evaluate a portion of the project before it proceeds to permitting.

Gas production is new to Minnesota. Completing an environmental review can be extremely beneficial for a new project type; new project types are likely to raise a lot of questions, and the environmental review process informs the public and decision-makers about a project's potential environmental impact prior to permitting.

Additionally, requiring an EAW for any gas project as a part of the interim temporary framework allows the EQB and permitting agencies to gather information about potential environmental effects, supporting future work to further develop a mandatory category in rule that includes a scientifically supported size threshold for the type of projects expected to take place in Minnesota.

While EQB staff are not recommending a mandatory EIS threshold for a gas project at this time, the RGU maintains the responsibility to evaluate and decide whether any project going through the EAW process does have the potential for significant environmental effects and will require an EIS.

Responsible Governmental Unit:

The final component of a framework for environmental review is determining who should serve as the Responsible Governmental Unit. EQB recommends that the Department of Natural Resources serve as the Responsible Governmental Unit. The DNR is the natural fit for serving as the RGU as they have the greatest responsibility for supervising or approving the project as a whole and the greatest expertise as an RGU in reviewing these project types.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT H

GTAC, Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework (EQB Recommendations), Jan. 15, 2025.

MINNESOTA

https://gasproductionrules.mn.gov/GTAC-final-recommendations-with-appendices.pdf

Gas Resources Technical Advisory Committee (GTAC)

Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework

Gas Resources Technical Advisory Committee (GTAC)

Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework

01/15/2025

Legislative Charge

Minnesota Laws of 2024, Chapter 116, Article 3, Section 55 (e)

By January 15, 2025, the commissioner must submit to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over environment recommendations for statutory and policy changes to facilitate gas and oil exploration and production in this state and to support the issuance of temporary permits issued under the temporary framework in a manner that benefits the people of Minnesota while adequately protecting the state's natural resources.

Department of Natural Resources
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(Phone) 651-259-5689
dnr.state.mn.us

As requested by Minnesota Statute 3.197: This report cost approximately $20,000 to prepare, including staff time, printing and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, Braille or audio recording. Printed on recycled paper.

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Minnesota Environmental Quality Board

Agency and Program background

A key component of the regulatory framework for gas production projects – whether temporary or permanent - is the need to define when a project is subject to mandatory environmental review.

The function of Minnesota's Environmental Review Program is to provide information about future projects to avoid and minimize damage to Minnesota's environmental resources. The program accomplishes this by requiring certain proposed projects to undergo review, following defined procedures, prior to obtaining needed approvals and permits. Environmental review provides an opportunity for both the public and decision makers to understand the potential for significant environmental effects from a project prior to the project moving forward.

The Minnesota Environmental Policy Act establishes Minnesota's environmental review program, which requires environmental review for any project that has or may have the potential for significant environmental effects.

The Environmental Quality Board, as administrator of the Environmental Review program, identifies in rule certain project types for which environmental review is mandatory. These rules are referred to as the mandatory category rules and define a threshold for when projects of the listed type may or will have the potential for significant environmental effects. If a project is one listed within the mandatory categories and meets or exceed the thresholds defined by the rules, then environmental review is required.

The mandatory categories can require completion of one of two different processes of review. The Environmental Assessment Worksheet (EAW) process is used to review a project that *may* have the potential for significant environmental effects. An Environmental Impact Statement (EIS) is the process for reviewing a project that does have the potential for significant environmental effects. The EIS has increased requirements for the level of information provided and analyzed as well as the amount of interaction required with the public. For example, an EIS must include evaluation of alternative scenarios of the proposed project in order to explore methods of reducing adverse environmental effects. Mandatory category thresholds are usually based on project size; EAW thresholds typically align with a smaller size project while an EIS is triggered by a larger project.

A project that meets a mandatory category threshold for an EAW *may* have the potential for significant environmental effects; it is the role of the environmental review process to identify if the project does have the potential for significant effects or if mitigation efforts and regulatory requirements can allow the project to occur without that potential. If the EAW process identifies that the project does have the potential for significant environmental effects, then the project review proceeds to the EIS process to further analyze the effects from the project compared to potential alternatives.

The rules assign a unit of government – the Responsible Governmental Unit (RGU) – to conduct the review, following standardized public processes to disclose information about environmental effects and ways to minimize and avoid them.

Recommendation EQB-1: Require a mandatory environmental assessment worksheet (EAW) for any gas resource development project. The DNR will serve as the responsible governmental unit (RGU).

Draft statutory language: 116D.04 Subd. 16a. (a)

Rationale

Establishing a new mandatory category or requirement for environmental review necessitates understanding the potential for significant environmental effects from a project; defining what size of project and at what phase of development needs review; and identifying an RGU to complete the review.

Potential for significant environmental effects:

EQB staff believe that for the temporary regulatory framework it is appropriate to require an EAW for all gas development projects, recognizing that any projects of this type *may* have the potential for significant environmental effects. A gas development project may have the potential for significant environmental effects relating to air quality, land use, transportation, noise, and water quality.

Gas production and extraction projects are new in Minnesota, and there is still work to be done to understand the full type and extent of possible environmental impacts, along with their likelihood. Requiring a mandatory EAW recognizes that at least some of these types of projects are likely to affect the environmental in some ways and allows opportunities for governmental units to learn about potential impacts from these projects.

Some input received from Tribal governments and the public suggested that all gas resource development projects need an EIS to properly evaluate their impacts. In the framework of Minnesota's environmental review program, requiring an EIS for all projects would indicate that all gas resource development projects affirmatively have the potential for significant environmental effects. EQB does not yet have the information to make this decision. Similarly, project developers provided input indicating that they do not feel that an EAW is necessary because of the small footprint of gas projects. Not requiring an EAW for all projects would indicate that at least some gas resource development projects clearly do not have the potential for significant environmental effects. EQB also does not have sufficient information to make this decision.

With current information, EQB believes that any gas resource development project may have the potential for significant environmental effects. The EAW process is used to review those projects that *may* have the potential for significant environmental effects and to determine if that potential does exist; if so, the review proceeds to the EIS process. The purpose of the EAW is to decide if an EIS is required. The mandatory EAW process allows the RGU to determine on a project-by-project basis if the nature and location of those projects require further analysis of environmental effects through an EIS.

Any EAWs completed during the temporary framework will also contribute to EQB's future determination (through rulemaking) of the size and scope of projects that have or may have the potential for significant environmental effects and the creation of permanent mandatory categories for these types of projects.

Timing for environmental review and defining of gas projects:

The mandatory category rules are written to ensure that a project proposer and responsible governmental unit understand what project action triggers environmental review. Construction,

expansion, and development are common terms used within the rules to define the need for environmental review at a certain project phase.

The environmental review process needs to ensure that the impacts from a gas project can be properly evaluated prior to permitting, making the timing of the review and its tie to the triggering event important. For many mining or extractive projects, typically exploratory boring is completed to evaluate the subsurface extent of the natural resource that is intended to be extracted. In those cases, the initial exploration may not require environmental review; instead, review may not be required until a more complete mining project plan is needed. In these cases, the environmental impacts are tied much more to the overall project development rather than the initial exploration.

However, gas extraction projects have an opportunity to work differently. The drilling of even an "exploratory" well for gas extraction is likely to result in a permanent location, from which the project developer will likely proceed to extract and produce gas (if any gas is found). Environmental review is required to provide information regarding potential environmental effects from all proposed aspects of a project that may impact the environment. It is important to ensure that the required environmental review (an EAW) adequately encompasses a project as a whole.

Converting an exploratory boring into a production well creates a connection from the exploration phase to the production phase, so it is impractical to distinguish between the two. In this scenario, there is a single project which requires environmental review to analyze both the exploration and production prior to the initial (exploratory) action. Therefore, converting an exploratory boring (which has not been through environmental review) to a production well greatly limits the analysis that can take place and understanding of potential environmental effects from a gas resource development project. EQB does not believe this supports effective environmental review. Therefore, the initial draft recommendation was that an EAW should be done prior to exploration, assuming that wells would generally be converted from exploratory to production.

Through the public input period GTAC members have heard that there is a need for exploratory actions to take place in order to define a production project. The initial recommendations called for environmental review and permitting to be completed prior to any exploration; therefore, all phases of the project would be evaluated through the environmental review process. In response to the input received, MDH has proposed to include exploration for gas resources in their program for construction and sealing of exploratory borings. Under MDH rules, exploratory borings require notifications but not permits. In conjunction, the recommendations include a prohibition on the use of an exploration well for production purposes and requires sealing of exploration wells.

With this change, the act of exploring for gas for the purposes of gaining information in order to properly define a project is allowed to follow the existing exploratory framework for wells without first requiring environmental review. The requirements of constructing and sealing exploratory borings would not be subject to the EAW requirement. The regulatory framework for drilling wells (or exploratory borings) in Minnesota does not require a permit or government approval prior to drilling the well, and therefore does not meet the definition of a "project" within the scope of the environmental review rules. This does not preclude this type of information from being included in environmental review if a project is pursuing a gas resource development permit with a conceptual approach.

A mandatory EAW would still be required prior to the issuance of a gas resource development permit, but the permit will no longer be required for exploratory borings. Because of the prohibition of production from an exploratory boring as well as the sealing requirements, the EAW would still provide opportunities for effective analysis of and mitigation measures for environmental effects for gas resource development projects which may need to consider cumulative potential effects from exploration activities.

DNR currently has requirements for reclamation of exploratory borings on state land, however there is no requirement for privately owned lands. This could become an issue if project proposers over develop sites that are being utilized for exploration with the intent to convert the area to a production area. Care should be taken when permitting land use development for exploration sites to ensure project proposers are not segmenting projects into smaller pieces in order to avoid environmental review. The requirement for reclamation of exploratory borings on state land would mitigate these potential issues but only on state land; most local units of government do not have policies requiring reclamation of exploration sites on private land.

Gas production is new to Minnesota. Completing an environmental review can be extremely beneficial for a new project type; new project types are likely to raise a lot of questions, and the environmental review process informs the public and decision-makers about a project's potential environmental impact prior to permitting.

Additionally, requiring an EAW for any gas project as a part of the interim temporary framework allows the EQB and permitting agencies to gather information about potential environmental effects, supporting future work to further develop a mandatory category in rule that includes a scientifically supported size threshold for the type of projects expected to take place in Minnesota.

While EQB staff are not recommending a mandatory EIS threshold for a gas project at this time, the RGU maintains the responsibility to evaluate and decide whether any project going through the EAW process does have the potential for significant environmental effects and will require an EIS.

Responsible Governmental Unit:

The final component of a framework for environmental review is determining who should serve as the Responsible Governmental Unit. EQB recommends that the Department of Natural Resources serve as the Responsible Governmental Unit. The DNR is the appropriate choice for serving as the RGU as they have the greatest responsibility for supervising or approving the project as a whole and the greatest expertise as an RGU in reviewing these project types.

Recommendation EQB-2: Require all environmental review notices for gas resource development projects to include tribal contacts.

Draft statutory language: 116D.04 Subd. 16a. (b)

Rationale

Tribal governments have expressed the need to be included in the environmental review process for gas resource development projects and to have coordination and consultation with reviewing and permitting agencies. EQB has, in the FY25 organizational workplan, identified the need to update our guidance to provide best practices that support RGUs in considering Tribal resources. We envision this will likely

include best practices for communicating environmental review information with Tribes. EQB's rules set forth distribution lists for sharing environmental review documents; these lists include the Minnesota Indian Affairs Council, but do not otherwise mention Tribal governments.[3] Based on the Tribal feedback, the EQB has added this recommendation that would require any EAW publication and notification for a gas resource development project also include Minnesota Tribal governments as defined in Minn. Stat. 10.65. Minn. Stat. 10.65 also identifies the need for certain state agencies to coordinate and consult with Minnesota Tribal governments. EQB does not have the authority to define when agencies must consult with Tribal governments but believes this requirement will support communication and information sharing with Tribal governments and their inclusion in the environmental review process for gas resource development projects.

Recommendation EQB-3: The RGU for gas resource development projects should work collaboratively with all units of government for which a project undergoing environmental review will ultimately be subject to regulation.

Draft statutory language: NA

Rationale

Input received from the public and from Tribal governments indicate a desire for the MPCA to serve as the RGU rather than the DNR. EQB's recommendations for the DNR to serve as the RGU align with existing rules and longstanding practice on how RGUs are chosen. The EQB recognizes the "gas resource development permit" being proposed by the DNR as the action which constitutes the supervision or approval of a gas extraction/production project as a whole. A gas resource development permit is intended to encompass all the activities on site under one overarching permit. Other agencies, such as the MPCA, may need to issue multiple permits for individual actions within the overall gas production project - but a higher number of these permits does not constitute a greater supervision over the project as a whole. There are similarities with other project types where the MPCA issues permits for individual actions of a project such as commercial and some industrial uses as well as metallic and non-metallic mineral mining, but the RGU is designated as either the local unit of government or the DNR. These designations of RGU's in those types of projects are supported by the fact that the permit for which those units of government are responsible is representative of the overarching permit which constitutes the supervision of a project as a whole.

However, as noted by the input received from the public and Tribal governments, the MPCA will potentially need to issue numerous regulatory permits for a gas resource development project. It is not uncommon for a project undergoing environmental review to need multiple permits from multiple authorities. The EQB finds it useful to emphasize the need for collaborative work within environmental review as a recommendation within this report. It has been noted throughout this report that gas extraction and production is a new project type in Minnesota and governmental units can benefit from the environmental review process in order to learn about potential environmental effects from this project type. The recommendation suggests that the RGU incorporate all governmental units that may have regulation over a gas resource development project within the environmental review process to ensure that all environmental effects can be properly understood and to inform those future decisions

[3] Separately from this recommendation, EQB has identified the need to review and potentially update rules around EAW and EIS distribution.

and permits that fall outside of the RGU's responsibility. This recommendation does not include statutory language as the rules of environmental review are already in place to allow for collaborative work to inform decision makers and the public regarding potential environmental effects from projects.

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT I

The Nature Conservancy, Letter to DNR Commissioner Strommen and EQB Executive Director Catherine Neuschler, Feb. 17, 2026.

The Nature Conservancy Minnesota

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Commissioner Sarah Strommen
Minnesota Department of Natural Resources
1500 Lafayette Road
Saint Paul, MN 55155

Executive Director Catherine Neuschler
Minnesota Environment Quality Board
520 Lafayette Road
Saint Paul, MN 55155

February 17, 2026

Dear Commissioner Strommen and Executive Director Neuschler,

In response to the enacted legislation calling for expedited rulemaking in Laws of Minnesota 2024, Ch. 116, Art. 3, Secs. 21-25, We understand the Department of Natural Resources (DNR) and Environmental Quality Board (EQB) are in the process of completing expedited rulemaking related to gas resources production in Minnesota, pursuant to Laws of Minnesota 2024, Ch. 116, Art. 3, Secs. 21-25. We at The Nature Conservancy seek to offer recommendations for your consideration in the rulemaking process.

The mission of The Nature Conservancy (TNC) is to conserve the land and water on which all life depends. TNC is a leading conservation organization working in all 50 states and more than 70 countries, and our work is solutions-oriented and grounded in science. With this lens, we write to offer the following recommendations to ensure continued natural resources conservation of critical lands in Minnesota which provide multiple benefits for clean water, carbon sequestration, wildlife habitat and more.

We are sharing the following recommendations with both agencies for transparency, recognizing the first recommendation is relevant for both DNR and EQB, while remaining recommendations are primarily relevant for DNR, but may inform EQB efforts.

References below to the "***GTAC Recommendations***" refer to the Gas Resources Technical Advisory Committee (GTAC) Recommendations and Statutory Language for Permitting Gas Resources Development dated 1/15/2025.

References below to the "***Proposed Legislation***" refers to SF2530, Second engrossment, 94th Sess. (MN 2025).

References below to "**Conservation Lands**" shall refer to the definition established in recommendation 1 below.

1. **Establish Inclusive Definition of Conservation Lands and Align to Minnesota's Conservation Objectives**

"Conservation Lands" should be robustly defined in rulemaking and should trigger environmental review in all cases. Additionally, exploration and mining should be prohibited or restricted

appropriately on Conservation Lands to preserve and maintain the benefits those lands provide to Minnesotans and the state's air, water and wildlife. Conservation Lands in Minnesota provide multiple benefits for clean water, carbon sequestration, wildlife habitat and critical species conservation aligned with goals of the State's Climate Action Framework, Wildlife Action Plan, and other natural resources plans. These benefits could be adversely impacted by gas exploration and production.

We recommend the following definition of "**Conservation Lands,**" which reflects definitions used in the GTAC Recommendations (*page 74-75*) and the Proposed Legislation (*Article 1, Section 13, Subd. 8)* but makes critical additions to include lands that should be uniquely reflected in rules:

> *(1) Lands acquired, restored, protected, or enhanced using appropriations from the outdoor heritage fund under section 97A.056.*
>
> *(4) Lands protected under the reinvest in Minnesota reserve program established under section 103F.515, including lands encumbered by conservation easements or restoration projects funded under that section.*
>
> *(5) Lands designated as wetland preservation areas under sections 103F.612 to 103F.616.*
>
> *(6) Lands protected under section 103H.101, including lands identified or regulated for the preservation of groundwater quality, recharge areas, or other hydrologic features where mineral exploration or extraction would conflict with statutory groundwater protection purposes.*
>
> *(7) Lands subject to a conservation easement under chapter 84C, when the easement restricts or prohibits mineral exploration or extraction to protect natural, scenic, habitat, ecological, hydrologic, or open-space values.*
>
> *(8) State-owned or state-administered conservation lands where mining or surface disturbance is limited under law or rule, including but not limited to:*
>
> *(i) state parks, state recreation areas, and state wilderness areas;*
> *(ii) scientific and natural areas designated under section 84.033; or*
> *(iii) calcareous fens and peatlands designated under sections 103G.223 and 84.035;*
> *(iv) state wildlife management areas established and designated under section 97A.133;*
> *(v) state trails designated under section 85.015 or lands acquired for trails and recreational uses related to trails under section 84.029, subdivision 2;*
> *(vi) peatlands identified as peatlands watershed protection areas in the Department of Natural Resources report entitled Protection of Ecologically Significant Peatlands in Minnesota (November 1984);*
> *(vii) waters that are classified by the commissioner for primary use as trophy lakes, family fishing lakes, designated trout lakes, designated trout streams, special species management lakes, and other designated uses under section 97C.005;*
> *(viii) the Boundary Waters Canoe Area Wilderness Mineral Management Corridor, identified on the Department of Natural Resources map entitled Minnesota Department of Natural Resources B.W.C.A.W. Mineral Management Corridor (February 1991);*

(ix) lands located within 0.25 miles of Voyageurs National Park and other protected areas identified in the Department of Natural Resources mapping series, where mineral exploration or surface disturbance is restricted to protect adjacent conservation lands;

(x) lands within national wild, scenic, or recreational river districts of a national wild, scenic, or recreational river and within the areas identified by the document entitled A Management Plan for the Upper Mississippi River, produced by the Mississippi Headwaters Board (January 1981);

(xi) lands within designated state land use districts of a state wild, scenic, or recreational river under the Minnesota Wild and Scenic Rivers Act;

(xii) lands within the area adjacent to the north shore of Lake Superior identified in the document entitled North Shore Management Plan, produced by the North Shore Management Board (December 1988);

(xiii) waters identified in the public waters inventory under section 103G.201 that have not been created or substantially altered in size by human activities or in the adjoining shorelands, as defined in section 103F.205, subdivision 4.

(9) Federal conservation lands, including that are withdrawn from mineral entry under federal law, national forests or portions thereof designated for conservation purposes, national parks, national monuments, national wilderness areas, national wildlife refuges, national waterfowl protection areas, and units of the National Park System, subject to valid existing rights.

(10) Lands owned in fee by a nonprofit conservation organization.

(11) Lands subject to conservation easements or similar recorded conservation agreements or restrictions held by soil and water conservation districts, watershed districts, counties, or other local government units for the protection of soil, water, wetlands, riparian areas, habitat, or other natural resources.

(12) Any other lands withdrawn from mineral exploration or extraction or formally designated or mapped for conservation purposes by state or federal law, local government action, rule, or designation order, including lands where the primary purpose of the designation is the protection of natural resources, ecological systems, water resources, wildlife habitat, or outdoor recreation consistent with conservation purposes, and where mineral exploration or extraction would be incompatible with the primary purpose of said lands.

The GTAC Recommendations and Proposed Legislation created a tiered approach to protection of different types of conservation lands. The most protective category prohibits all gas resource development (*see GTAC Recommendations (page 75, Section 16, Subd. 2) and Proposed Legislation (Article 1, Section 13, Subd. 8(c)*). We propose all Conservation Lands (as defined above) fall into this most protective category. If this is not possible, we provide an alternative framework in the attached *Appendix A: Gas Production Locations.*

The GTAC Recommendations and Proposed Legislation has established a category of lands in which gas resource development are allowed only if "the commissioner determines that there is no prudent and feasible siting alternative" (*GTAC Recommendations (page 76, Section 16. Subd. 5)* and *Proposed Legislation (Article 1, Section 13, Subd. 8(f))*. This category should require a public hearing and comment period of no less than 60 days prior to the commissioner's decision.

2. Add Clear Well Spacing and Setback Standards

The spacing unit minimum area included in the GTAC Recommendations *(Page 64, Section 9, Subd. 1)* and the Proposed Legislation (*Article 1, Section 9),* of a quarter-quarter section, or 40 acres, would increase the possibility of land clearing, fragmentation and disturbance from associated infrastructure. There is precedence in numerous states requiring greater well spacing and setbacks from waters or drinking water sources. TNC recommends well spacing of 640-acres per well and minimum setbacks of 500 feet from public waters, wetlands ,public and private drinking water wells, Drinking Water Supply Management Areas or sensitive water features. See the following state statutes for examples:

<u>States with 640-acre spacing units and 1,320-1,660 feet minimum setbacks</u>:

1. Alaska: 640-acre unit size and 1,500 feet setback from property lines (20 AAC 25.055).
2. Arizona: 640-acre unit size and 1,660 feet setback from unit boundaries (Ariz. Admin. Code SS R12-7-107).
3. Florida: 640-acre unit size and 1,320 feet setback from boundaries (Fla. Admin Code r. 62C-26.004(2).
4. Iowa: 640-acre unit size and 1,320 feet setback from boundary lines (IAC 561.17.16).
5. Mississippi: 640-acre unit size and 1,500 feet setback from unit boundaries (26 Miss. Code. R. 2-1-8).

<u>States with minimum setbacks specific to water or drinking water sources</u>:

6. Maryland: 200 feet setback from wells and 100 feet setback from drinking water supplies and wellhead protection areas (Md. Code Regs. 26.19.01.09).
7. Michigan: 330 feet setback from freshwater for human or animal consumption (Mich. Admin. Code R.324.301).
8. Pennsylvania: 200 feet setback from conventional wells, 500 feet setback from unconventional wells and 1000 feet setback from certain water resources. (Pennsylvania Statutes Title 58 P.S. Oil and Gas § 507).

3. Include Clear Reclamation and Restoration Requirements

The GTAC Recommendations *(page 72, Section 15)* and the Proposed Legislation (*Article 1, Section 13, Subd. 1(7))* require a plan for reclamation and restoration of gas development locations, but do not contain definitions of those terms nor detailed performance standards.

We recommend the following definition be reflected in rules pertaining to reclamation and/or restoration:

> *"The process of assisting the recovery of an ecosystem that has been degraded, damaged or destroyed. Ecological restoration aims to assist in recovering the ecosystem to the trajectory it would be on if degradation had not occurred, accounting for environmental change." (Source: Gann GD, et. al. 2019. International principles and standards for the practice of ecological restoration. Second edition. Restoration Ecology S1-S46).*

Locations affected by gas development should be reclaimed and restored as if the disturbance had never occurred. This would require specific activities such as soil restoration, tilling and reseeding, revegetation to specific cover benchmarks, contouring and grading, pit closure requirements, and options for converting wells to water wells. These standards would provide consistency and ensure restoration meets established, concrete thresholds.

4. Establish Specific Bonding Types and Amounts

To meet permit requirements for reclamation and restoration, rules should ensure that reclamation, contamination cleanup, and surface damage are fully funded for immediate reclamation and into the future, and should specify which financial assurances will be accepted. The open-ended discretion reflected in the GTAC Recommendations and Proposed Legislation could lead to insufficient bonding or inconsistent application. Other states require defined bond amounts or structured formulas. We recommend setting a minimum bond amount in addition to requiring specific financial assurances. Examples from other states include:

1. Colorado, as preferred example, requires a blanket bond amount of $100,000 and additional bonds to protect surface owners who are not party to a lease or other agreement; also requiring operators to obtain permission for types of financial assurance not named in rule (ECMC Rule 701).
2. Alaska, as an example of a moderate standard, requires a $400,000 per well bond amount in effect until all wells operated by that company are plugged, abandoned, and restored, and for which surety or personal bonds must be accompanied by a security guarantee via CD or irrevocable letter of credit (20 AAC 25.025).
3. Arizona, as an example of a minimum standard. requires a $10,000 bond for wells less than 10,000 feet and $20,000 bond for deeper wells; also requiring a performance bond before any well activity and that will guarantee the operator will properly drill, plug, and repair the well, prevent waste and pollution, and restore well sites (Ariz. Admin. Code R12-7.103).

5. Expand Environmental Protection Standards

Rules affecting gas production permitting should provide measurable and accountable requirements for groundwater protection, especially for well drilling and sealing, which disproportionately impacts groundwater. Minnesota Department of Health was named in *Law of Minnesota 2024, Ch. 116, Art. 3, Sec. 24* as being responsible for GTAC recommendations under the temporary framework related to drilling and sealing. However, it is our understanding that Minnesota Department of Health has not been directed to or does not yet have authority to draft rules pertaining to drilling and sealing standards for gas production or extraction wells, Therefore, TNC is deferring further comment on this until there is rulemaking authorized.

6. Surface Owner Notice and Surface Use Agreements

Rules should require operators to provide detailed advance written notice to surface owners and require operators to secure surface owner consent prior to engaging in activities impacting their surface rights. No exploration or extraction activities should begin without a mutually agreeable surface use agreement between an operator and the surface rights holder, and providing or affirming a surface use agreement should be a permitting condition. The surface owner should be able to reject the proposed surface use. For example, see the following statutory language from New Mexico:

> *Upon receipt of the notice required [by operators to surface owners], the surface owner may:*
> *(1) accept the proposed surface use and compensation agreement within twenty days; or*
> *(2) reject the proposed surface use and compensation agreement; provided that, failure to accept the proposed agreement within twenty days shall be deemed to be a rejection by the surface owner. If the proposed agreement is rejected, the surface owner may enter into negotiations with the operator, including, if the parties agree, binding arbitration or mediation.* (New Mexico Statutes Annotated, Chapter 70. Article 12, D. NM 2007)

We recommend a minimum of 60-days' advance written notice to surface owners be required before operators enter the land, begin planned operations, abandonment activities, or any significant changes affecting the surface estate.

Numerous states require operators to compensate surface owners for damages and to negotiate in good-faith before entering the land. Rules should include a compensation framework, mandatory notice periods, and dispute-resolution mechanisms that ensure surface owners are not disadvantaged when estates are severed. Damages should include damage to conservation values and not purely economic losses. Some examples include:

1. Montana: Operators must negotiate with surface owners and compensate them for damages resulting from gas operations. Surface owners are entitled to payment for losses. At any point in negotiations, either party may request dispute resolution, including mediation. (Mont. Code §§ 82-10-504-05)
2. New Mexico: Operators must compensate surface owners for damages sustained by the surface owner for loss of certain income, lost land value, and loss of certain access causes by oil and gas operations. (N.M. Stat. Ann. § 70-12-4)
3. North Dakota: Developers must pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner for lost land value, lost use of access, and lost value of improvements. (N.D. Cent. Code § 38-11.1)
4. Oklahoma: Prior to entering the site with heavy equipment, the operator must negotiate with the surface owner for they payment of any damages it may causes, and if an agreement is not reached, the operators shall petition the court for appointment of appraisers. (52 Okla. Stat, 318.5)

7. Preclude Involuntary Pooling

We recommend no involuntary pooling be allowed on Conservation Lands. If involuntary pooling is allowed, we recommend a threshold of at least 75% of mineral interest ownership be required. In fact, Kansas uses a 90% unitization threshold (K.S.A. 551301 to 551317). The surface owners should have a mechanism to contest proposed surface operations on their property, and an opportunity to influence or negotiate well spacing and other surface impacts via required surface use agreements with an operator. No surface operations should be allowed to proceed without agreement with the surface rights holder. For example:

1. Montana provides for general protest hearing opportunity (Montana Administrative Rule 36.22.601).
2. Texas also allows for protests to applications for disposal wells (16 Tex. Admin. Code § 3.9), and injection wells (16 Tex. Admin. Code § 3.46).

Overall, we cannot overstate the importance of crafting an enhanced definition of "Conservation Lands" for the proposed rules. Additional components of the rulemaking should ensure protections for lands and waters that help the State deliver on goals for clear air, water, carbon sequestration, and wildlife, which could be negatively impacted by gas development. If you have any questions about these recommendations, we welcome the opportunity to be a continued resource and to have clarifying conversations with you or your staff. Thank you for your consideration.

Sincerely,

Ann Mulholland
Chapter Director
The Nature Conservancy in
Minnesota-North Dakota-South Dakota

Angie Becker Kudelka
Deputy Director, Conservation
The Nature Conservancy in
Minnesota-North Dakota-South Dakota

CC:
Joe Henderson, Minnesota Department of Natural Resources
Mike Liljgren, Minnesota Department of Natural Resources
Don Elsenheimer, Minnesota Department of Natural Resources
Jesse Krzenski, Environment Quality Board
Anna Johnson, Office of Governor Tim Walz and Lt. Governor Flanagan

Appendix A: Gas Resource Development Locations

As stated in Recommendation 1 above, TNC proposes that all Conservation Lands be placed in Tier 1. However, if that is not possible, we recommend the following categorization of types of conservation lands within the four tiers identified in the GTAC Recommendations and Proposed Legislation.

	GTAC recommendations for Temporary Framework and SF2530, Second engrossment, 94th Sess. (MN 2025)	***TNC Recommendation***
TIER 1 ("must not be located within or alter the gas resources of" *per Minnesota Legislature 2025 SF2530 Article 1, Section 16., Subd. 8 (c))*	(1) The Boundary Waters Canoe Area Wilderness, as legally described in the Federal Register, volume 45, number 67 (April 4, 1980), with state restrictions specified in section 84.523, subdivision 3; (2) Voyageurs National Park, with state restrictions specified in section 84B.03, subdivision 1; or (3) the federal Agassiz and Tamarac Wilderness areas and Pipestone and Grand Portage National Monuments.	(1) State-owned or state-administered conservation lands where mining or surface disturbance is limited under law or rule, including but not limited to: (i) state parks, state recreation areas, and state wilderness areas; (ii) scientific and natural areas designated under section 84.033; or (iii) calcareous fens and peatlands designated under sections 103G.223 and 84.035; (iv) state wildlife management areas established and designated under section 97A.133. (v) state trails designated under section 85.015 or lands acquired for trails and recreational uses related to trails under section 84.029, subdivision 2. (vi) peatlands identified as peatlands watershed protection areas in the Department of Natural Resources report entitled Protection of Ecologically Significant Peatlands in Minnesota (November 1984); (vii) waters that are classified by the commissioner for primary use as trophy lakes, family fishing lakes, designated trout lakes, designated trout streams, special species management lakes, and other designated uses under section 97C.005; (viii) the Boundary Waters Canoe Area Wilderness Mineral Management Corridor, identified on the Department of Natural Resources map entitled Minnesota Department of Natural Resources B.W.C.A.W. Mineral Management Corridor (February 1991); (ix) lands located within 0.25 miles of Voyageurs National Park and other protected areas identified in the Department of Natural Resources mapping series, where mineral exploration or surface disturbance is restricted to protect adjacent conservation lands; (x) Lands within national wild, scenic, or recreational river districts of a national wild, scenic, or recreational river and within the areas identified by the document entitled A Management Plan for the Upper Mississippi

		River, produced by the Mississippi Headwaters Board (January 1981); (xi) Lands within designated state land use districts of a state wild, scenic, or recreational river under the Minnesota Wild and Scenic Rivers Act; (xii) Lands within the area adjacent to the north shore of Lake Superior identified in the document entitled North Shore Management Plan, produced by the North Shore Management Board (December 1988); (xiii) waters identified in the public waters inventory under section 103G.201 that have not been created or substantially altered in size by human activities or in the adjoining shorelands, as defined in section 103F.205, subdivision 4.
TIER 2 *("passive subsurface activities allowed but subsurface directional drilling prohibited"* *per Minnesota Legislature 2025 SF2530 Article 1, Section 16., Subd. 8 (d))*	(1) state wilderness areas; (2) state scientific and natural areas; (3) within state peatland scientific and natural areas where directional drilling would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or natural features of the peatland scientific and natural areas, except in the event of a national emergency declared by Congress; (4) calcareous fens identified under section 103G.223; (5) a state park, except that gas resource development operations must be allowed if the park has been established as a result of its association with mining; and (6) designated trout streams and lakes.	(1) Lands owned in fee by a nonprofit charitable conservation organization. (2) Lands acquired, restored, protected, or enhanced using appropriations from the outdoor heritage fund under section 97A.056. (3) State wildlife management areas established and designated under section 97A.133. (4) Lands protected under the reinvest in Minnesota reserve program established under section 103F.515, including lands encumbered by conservation easements or restoration projects funded under that section. (5) Lands designated as wetland preservation areas under sections 103F.612 to 103F.616. (6) Lands protected under section 103H.101, including lands identified or regulated for the preservation of groundwater quality, recharge areas, or other hydrologic features where mineral exploration or extraction would conflict with statutory groundwater protection purposes. (7) Lands subject to conservation easements or similar recorded conservation agreements or restrictions held by soil and water conservation districts, watershed districts, counties, or other local government units for the protection of soil, water, wetlands, riparian areas, habitat, or other natural resources. (8) Lands subject to a conservation easement under chapter 84C, when the easement restricts or prohibits mineral exploration or extraction to protect natural, scenic, habitat, ecological, hydrologic, or open-space values. (9) Any other lands withdrawn from mineral exploration or extraction or formally designated or mapped for conservation purposes by state or federal law, local government action, rule, or designation order, including lands where the primary purpose of the

		designation is the protection of natural resources, ecological systems, water resources, wildlife habitat, or outdoor recreation consistent with conservation purposes, and where mineral exploration or extraction would be incompatible with the primary purpose of said lands. (10) State parks, except that gas resource development operations must be allowed if the park has been established as a result of its association with mining.
TIER 3 (*"subsurface development including subsurface drilling activities allowed but gas development locations prohibited"* *per Minnesota Legislature 2025 SF2530 Article 1, Section 16., Subd. 8 (e))*	(1) in the Boundary Waters Canoe Area Wilderness Mineral Management Corridor, identified on the Department of Natural Resources map entitled Minnesota Department of Natural Resources B.W.C.A.W. Mineral Management Corridor (February 1991); (2) within 0.25 miles of Voyageurs National Park; (3) within 0.25 miles of a state wilderness area; (4) within 0.25 miles of the federal Agassiz and Tamarac Wilderness areas and Pipestone and Grand Portage National Monuments; (5) within 0.25 miles of a state scientific and natural area; (6) within 0.25 miles of a state park, except surface and subsurface disturbances must be allowed if the park has been established as a result of its association with mining; (7) within 0.25 miles of a calcareous fen identified under section 103G.223; (8) on sites designated in the National Register of Historic Places, except that gas resource development operations must be allowed if the sites have been established as a result of their association with mining; (9) on sites designated in the registry of state historic sites, except gas resource	(1) State trails designated under section 85.015 or lands acquired for trails and recreational uses related to trails under section 84.029, subdivision 2. (2) On sites designated in the National Register of Historic Places, except that gas resource development operations must be allowed if the sites have been established as a result of their association with mining; (3) On sites designated in the registry of state historic sites, except gas resource development operations must be allowed if the sites have been established as a result of their association with mining; (4) Within national wild, scenic, or recreational river districts of a national wild, scenic, or recreational river and within the areas identified by the document entitled A Management Plan for the Upper Mississippi River, produced by the Mississippi Headwaters Board (January 1981); (5) Within designated state land use districts of a state wild, scenic, or recreational river; (6) Within the area adjacent to the north shore of Lake Superior identified in the document entitled North Shore Management Plan, produced by the North Shore Management Board (December 1988); and (7) In the following areas, provided they were in existence before a gas resource development permit was issued: (i) Within 500 feet of an occupied dwelling, public school, church, public institution, or

	development operations must be allowed if the sites have been established as a result of their association with mining; (10) within national wild, scenic, or recreational river districts of a national wild, scenic, or recreational river and within the areas identified by the document entitled A Management Plan for the Upper Mississippi River, produced by the Mississippi Headwaters Board (January 1981); (11) within designated state land use districts of a state wild, scenic, or recreational river; (12) within the area adjacent to the north shore of Lake Superior identified in the document entitled North Shore Management Plan, produced by the North Shore Management Board (December 1988); and (13) in the following areas, provided they were in existence before a gas resource development permit was issued: (i) within 500 feet of an occupied dwelling, public school, church, public institution, or county or municipal park, unless allowed by the owner; or (ii) within 100 feet of a cemetery or the outside right-of-way line of a public roadway.	county or municipal park, unless allowed by the owner; or ii) Within 100 feet of a cemetery or the outside right-of-way line of a public roadway.
TIER 4 ("must be allowed if DNR says no prudent alternative" *per Minnesota Legislature 2025 SF2530 Article 1,*	(1) in a national wildlife refuge, a national waterfowl protection area, or on a national trail; (2) in a state wildlife management area or on a state-designated trail either listed in section 85.015 or acquired under the authority of section 84.029, subdivision 2;	

Section 16., Subd. 8 (f))	(3) in peatlands identified as peatland watershed protection areas in the Department of Natural Resources report entitled Protection of Ecologically Significant Peatlands in Minnesota (November 1984); and (4) in waters identified in the public waters inventory under section 103G.201 that have not been created or substantially altered in size by human activities or in the adjoining shorelands, as defined in section 103F.205, subdivision 4, of the unaltered waters.	

WaterLegacy Comment on Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

ATTACHMENT J

EQB, Environmental Assessment Worksheet Form, since Dec. 2022.

December 2022 version

Environmental Assessment Worksheet

This most recent Environmental Assessment Worksheet (EAW) form and guidance documents are available at the Environmental Quality Board's website at**:** https://www.eqb.state.mn.us**/** The EAW form provides information about a project that may have the potential for significant environmental effects. Guidance documents provide additional detail and links to resources for completing the EAW form.

Cumulative potential effects can either be addressed under each applicable EAW Item or can be addressed collectively under EAW Item 21.

Note to reviewers: Comments must be submitted to the RGU during the 30-day comment period following notice of the EAW in the *EQB Monitor*. Comments should address the accuracy and completeness of information, potential impacts that warrant further investigation and the need for an EIS.

1. Project title:

2. Proposer:

Contact person:
Title:
Address:
City, State, ZIP:
Phone:
Fax:
Email:

3. RGU:

Contact person:
Title:
Address:
City, State, ZIP:
Phone:
Fax:
Email:

4. Reason for EAW Preparation: (check one)

Required:
☐ EIS Scoping
☐ Mandatory EAW

Discretionary:
☐ Citizen petition
☐ RGU discretion
☐ Proposer initiated

If EAW or EIS is mandatory give EQB rule category subpart number(s) and name(s):

5. Project Location:

- County:
- City/Township:
- PLS Location (¼, ¼, Section, Township, Range):
- Watershed (81 major watershed scale):
- GPS Coordinates:
- Tax Parcel Number

At a minimum attach each of the following to the EAW:

- County map showing the general location of the project;
- U.S. Geological Survey 7.5 minute, 1:24,000 scale map indicating project boundaries (photocopy acceptable); and
- Site plans showing all significant project and natural features. Pre-construction site plan and post-construction site plan.
- List of data sources, models, and other resources (from the Item-by-Item Guidance: *Climate Adaptation and Resilience* or other) used for information about current Minnesota climate trends and how climate change is anticipated to affect the general location of the project during the life of the project (as detailed below in item 7. Climate Adaptation and Resilience).

6. Project Description:

a. Provide the brief project summary to be published in the *EQB Monitor*, (approximately 50 words).

b. Give a complete description of the proposed project and related new construction, including infrastructure needs. If the project is an expansion include a description of the existing facility. Emphasize: 1) construction, operation methods and features that will cause physical manipulation of the environment or will produce wastes, 2) modifications to existing equipment or industrial processes, 3) significant demolition, removal or remodeling of existing structures, and 4) timing and duration of construction activities

c. Project magnitude:

Description	Number
Total Project Acreage	
Linear project length	
Number and type of residential units	
Residential building area (in square feet)	
Commercial building area (in square feet)	
Industrial building area (in square feet)	
Institutional building area (in square feet)	
Other uses – specify (in square feet)	
Structure height(s)	

d. Explain the project purpose; if the project will be carried out by a governmental unit, explain the need for the project and identify its beneficiaries.

e. Are future stages of this development including development on any other property planned or likely to happen? □ Yes □ No
If yes, briefly describe future stages, relationship to present project, timeline and plans for environmental review.

f. Is this project a subsequent stage of an earlier project? □ Yes □ No
If yes, briefly describe the past development, timeline and any past environmental review.

7. Climate Adaptation and Resilience:

a. Describe the climate trends in the general location of the project (see guidance: *Climate Adaptation and Resilience*) and how climate change is anticipated to affect that location during the life of the project.

b. For each Resource Category in the table below: Describe how the project's proposed activities and how the project's design will interact with those climate trends. Describe proposed adaptations to address the project effects identified.

Resource Category	**Climate Considerations** **(example text provided below is to be replaced with project-specific information)**	**Project Information**	**Adaptations**
Project Design	For example, aspects of the building architecture/materials choices and site design that may negatively affect urban heat island conditions in the area considering changing climate zones, temperature trends, and potential for extended heat waves	Climate change risks and vulnerabilities identified include:	
Land Use	For example, any critical facilities (i.e. facilities necessary for public health and safety, those storing hazardous materials, or those with housing occupants who may be insufficiently mobile) that are proposed in floodplain areas and other areas identified as at risk for localized flooding; describe the risk potential considering changing precipitation and event intensity	Climate change risks and vulnerabilities identified include:	
Water Resources	Address in item 12	Address in item 12	Address in item 12
Contamination/ Hazardous Materials/Wastes	For example, how current Minnesota climate trends and anticipated climate change in the general location of the project may	Climate change risks and vulnerabilities identified include:	

Resource Category	Climate Considerations (example text provided below is to be replaced with project-specific information)	Project Information	Adaptations
	influence the potential environmental effects of generation/use/storage of hazardous waste and materials		
Fish, wildlife, plant communities, and sensitive ecological resources (rare features)	Address in item 14.	Address in item 14.	Address in item 14.

8. Cover types: Estimate the acreage of the site with each of the following cover types before and after development:

Cover Types	Before (acres)	After (acres)
Wetlands and shallow lakes (<2 meters deep)		
Deep lakes (>2 meters deep)		
Wooded/forest		
Rivers/streams		
Brush/Grassland		
Cropland		
Livestock rangeland/pastureland		
Lawn/landscaping		
Green infrastructure TOTAL (from table below*)		
Impervious surface		
Stormwater Pond (wet sedimentation basin)		
Other (describe)		
TOTAL		

Green Infrastructure*	Before (acreage)	After (acreage)
Constructed infiltration systems (infiltration basins/infiltration trenches/ rainwater gardens/bioretention areas without underdrains/swales with impermeable check dams)		
Constructed tree trenches and tree boxes		
Constructed wetlands		
Constructed green roofs		
Constructed permeable pavements		
Other (describe)		
TOTAL*		

Trees	**Percent**	**Number**
Percent tree canopy removed or number of mature trees removed during development		
Number of new trees planted		

9. Permits and approvals required: List all known local, state and federal permits, approvals, certifications and financial assistance for the project. Include modifications of any existing permits, governmental review of plans and all direct and indirect forms of public financial assistance including bond guarantees, Tax Increment Financing and infrastructure. *All of these final decisions are prohibited until all appropriate environmental review has been completed. See Minnesota Rules, Chapter 4410.3100.*

Unit of Government	Type of Application	Status

Cumulative potential effects may be considered and addressed in response to individual EAW Item Nos. 10-20, or the RGU can address all cumulative potential effects in response to EAW Item No.22. If addressing cumulative effect under individual items, make sure to include information requested in EAW Item No. 21.

10. Land use:

a. Describe:
   i. Existing land use of the site as well as areas adjacent to and near the site, including parks and open space, cemeteries, trails, prime or unique farmlands.

   ii. Plans. Describe planned land use as identified in comprehensive plan (if available) and any other applicable plan for land use, water, or resources management by a local, regional, state, or federal agency.
   iii. Zoning, including special districts or overlays such as shoreland, floodplain, wild and scenic rivers, critical area, agricultural preserves, etc.

   iv. If any critical facilities (i.e. facilities necessary for public health and safety, those storing hazardous materials, or those with housing occupants who may be insufficiently mobile) are proposed in floodplain areas and other areas identified as at risk for localized flooding, describe the risk potential considering changing precipitation and event intensity.

b. Discuss the project's compatibility with nearby land uses, zoning, and plans listed in Item 9a above, concentrating on implications for environmental effects.

c. Identify measures incorporated into the proposed project to mitigate any potential incompatibility as discussed in Item 10b above and any risk potential.

11. Geology, soils and topography/land forms:

a. Geology - Describe the geology underlying the project area and identify and map any susceptible geologic features such as sinkholes, shallow limestone formations, unconfined/shallow aquifers, or karst conditions. Discuss any limitations of these features for the project and any effects the project could have on these features. Identify any project designs or mitigation measures to address effects to geologic features.

b. Soils and topography - Describe the soils on the site, giving NRCS (SCS) classifications and descriptions, including limitations of soils. Describe topography, any special site conditions relating to erosion potential, soil stability or other soils limitations, such as steep slopes, highly permeable soils. Provide estimated volume and acreage of soil excavation and/or grading. Discuss impacts from project activities (distinguish between construction and operational activities) related to soils and topography. Identify measures during and after project construction to address soil limitations including stabilization, soil corrections or other measures. Erosion/sedimentation control related to stormwater runoff should be addressed in response to Item 12.b.ii.

- NOTE: For silica sand projects, the EAW must include a hydrogeologic investigation assessing the potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water. Descriptions of water resources and potential effects from the project in EAW Item 12 must be consistent with the geology, soils and topography/land forms and potential effects described in EAW Item 11.

12. Water resources:

a. Describe surface water and groundwater features on or near the site in a.i. and a.ii. below.

i. Surface water - lakes, streams, wetlands, intermittent channels, and county/judicial ditches. Include any special designations such as public waters, shoreland classification and floodway/floodplain, trout stream/lake, wildlife lakes, migratory waterfowl feeding/resting lake, and outstanding resource value water. Include the presence of aquatic invasive species and the water quality impairments or special designations listed on the current MPCA 303d Impaired Waters List that are within 1 mile of the project. Include DNR Public Waters Inventory number(s), if any.

ii. Groundwater – aquifers, springs, seeps. Include: 1) depth to groundwater; 2) if project is within a MDH wellhead protection area; 3) identification of any onsite and/or nearby wells, including unique numbers and well logs if available. If there are no wells known on site or nearby, explain the methodology used to determine this.

b. Describe effects from project activities on water resources and measures to minimize or mitigate the effects in Item b.i. through Item b.iv. below.

i. Wastewater - For each of the following, describe the sources, quantities and composition of all sanitary, municipal/domestic and industrial wastewater produced or treated at the site.

1) If the wastewater discharge is to a publicly owned treatment facility, identify any pretreatment measures and the ability of the facility to handle the added water and waste loadings, including any effects on, or required expansion of, municipal wastewater infrastructure.

2) If the wastewater discharge is to a subsurface sewage treatment systems (SSTS), describe the system used, the design flow, and suitability of site conditions for such a system. If septic systems are part of the project, describe the availability of septage disposal options within the region to handle the ongoing amounts generated as a result of the project. Consider the effects of current Minnesota climate trends and anticipated changes in rainfall frequency, intensity and amount with this discussion.

3) If the wastewater discharge is to surface water, identify the wastewater treatment methods and identify discharge points and proposed effluent limitations to mitigate impacts. Discuss any effects to surface or groundwater from wastewater discharges, taking into consideration how current Minnesota climate trends and anticipated climate change in the general location of the project may influence the effects.

ii. Stormwater - Describe changes in surface hydrology resulting from change of land cover. Describe the routes and receiving water bodies for runoff from the project site (major downstream water bodies as well as the immediate receiving waters). Discuss environmental effects from stormwater discharges on receiving waters post construction including how the project will affect runoff volume, discharge rate and change in pollutants. Consider the effects of current Minnesota climate trends and anticipated changes in rainfall

frequency, intensity and amount with this discussion. For projects requiring NPDES/SDS Construction Stormwater permit coverage, state the total number of acres that will be disturbed by the project and describe the stormwater pollution prevention plan (SWPPP), including specific best management practices to address soil erosion and sedimentation during and after project construction. Discuss permanent stormwater management plans, including methods of achieving volume reduction to restore or maintain the natural hydrology of the site using green infrastructure practices or other stormwater management practices. Identify any receiving waters that have construction-related water impairments or are classified as special as defined in the Construction Stormwater permit. Describe additional requirements for special and/or impaired waters.

iii. Water appropriation - Describe if the project proposes to appropriate surface or groundwater (including dewatering). Describe the source, quantity, duration, use and purpose of the water use and if a DNR water appropriation permit is required. Describe any well abandonment. If connecting to an existing municipal water supply, identify the wells to be used as a water source and any effects on, or required expansion of, municipal water infrastructure. Discuss environmental effects from water appropriation, including an assessment of the water resources available for appropriation. Discuss how the proposed water use is resilient in the event of changes in total precipitation, large precipitation events, drought, increased temperatures, variable surface water flows and elevations, and longer growing seasons. Identify any measures to avoid, minimize, or mitigate environmental effects from the water appropriation. Describe contingency plans should the appropriation volume increase beyond infrastructure capacity or water supply for the project diminish in quantity or quality, such as reuse of water, connections with another water source, or emergency connections.

iv. Surface Waters

    a) Wetlands - Describe any anticipated physical effects or alterations to wetland features such as draining, filling, permanent inundation, dredging and vegetative removal. Discuss direct and indirect environmental effects from physical modification of wetlands, including the anticipated effects that any proposed wetland alterations may have to the host watershed, taking into consideration how current Minnesota climate trends and anticipated climate change in the general location of the project may influence the effects. Identify measures to avoid (e.g., available alternatives that were considered), minimize, or mitigate environmental effects to wetlands. Discuss whether any required compensatory wetland mitigation for unavoidable wetland impacts will occur in the same minor or major watershed and identify those probable locations.

    b) Other surface waters- Describe any anticipated physical effects or alterations to surface water features (lakes, streams, ponds, intermittent channels, county/judicial ditches) such as draining, filling, permanent inundation, dredging, diking, stream diversion, impoundment, aquatic plant removal and riparian alteration. Discuss direct and indirect environmental effects from physical modification of water features, taking into consideration how current Minnesota climate trends and

anticipated climate change in the general location of the project may influence the effects. Identify measures to avoid, minimize, or mitigate environmental effects to surface water features, including in-water Best Management Practices that are proposed to avoid or minimize turbidity/sedimentation while physically altering the water features. Discuss how the project will change the number or type of watercraft on any water body, including current and projected watercraft usage.

13. Contamination/Hazardous Materials/Wastes:

a. Pre-project site conditions - Describe existing contamination or potential environmental hazards on or in close proximity to the project site such as soil or ground water contamination, abandoned dumps, closed landfills, existing or abandoned storage tanks, and hazardous liquid or gas pipelines. Discuss any potential environmental effects from pre-project site conditions that would be caused or exacerbated by project construction and operation. Identify measures to avoid, minimize or mitigate adverse effects from existing contamination or potential environmental hazards. Include development of a Contingency Plan or Response Action Plan.

b. Project related generation/storage of solid wastes - Describe solid wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from solid waste handling, storage and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of solid waste including source reduction and recycling.

c. Project related use/storage of hazardous materials - Describe chemicals/hazardous materials used/stored during construction and/or operation of the project including method of storage. Indicate the number, location and size of any new above or below ground tanks to store petroleum or other materials. Indicate the number, location, size and age of existing tanks on the property that the project will use. Discuss potential environmental effects from accidental spill or release of hazardous materials. Identify measures to avoid, minimize or mitigate adverse effects from the use/storage of chemicals/hazardous materials including source reduction and recycling. Include development of a spill prevention plan.

d. Project related generation/storage of hazardous wastes - Describe hazardous wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from hazardous waste handling, storage, and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of hazardous waste including source reduction and recycling

14. Fish, wildlife, plant communities, and sensitive ecological resources (rare features):

a. Describe fish and wildlife resources as well as habitats and vegetation on or in near the site.

b. Describe rare features such as state-listed (endangered, threatened or special concern) species, native plant communities, Minnesota Biological Survey Sites of Biodiversity Significance, andother sensitive ecological resources on or within close proximity to the site. Provide the license agreement number (LA-____) and/or correspondence number (MCE_____) from which the data were obtained and attach the Natural Heritage Review letter from the DNR. Indicate if any additional habitat or species survey work has been conducted within the site and describe the results.

c. Discuss how the identified fish, wildlife, plant communities, rare features and ecosystems may be affected by the project including how current Minnesota climate trends and anticipated climate change in the general location of the project may influence the effects. Include a discussion on introduction and spread of invasive species from the project construction and operation. Separately discuss effects to known threatened and endangered species.

d. Identify measures that will be taken to avoid, minimize, or mitigate the adverse effects to fish, wildlife, plant communities, ecosystems, and sensitive ecological resources.

15. Historic properties:

Describe any historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Include: 1) historic designations, 2) known artifact areas, and 3) architectural features. Attach letter received from the State Historic Preservation Office (SHPO). Discuss any anticipated effects to historic properties during project construction and operation. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to historic properties.

16. Visual:

Describe any scenic views or vistas on or near the project site. Describe any project related visual effects such as vapor plumes or glare from intense lights. Discuss the potential visual effects from the project. Identify any measures to avoid, minimize, or mitigate visual effects.

17. Air:

a. Stationary source emissions - Describe the type, sources, quantities and compositions of any emissions from stationary sources such as boilers or exhaust stacks. Include any hazardous air pollutants, criteria pollutants. Discuss effects to air quality including any sensitive receptors, human health or applicable regulatory criteria. Include a discussion of any methods used assess the project's effect on air quality and the results of that assessment. Identify pollution control equipment and other measures that will be taken to avoid, minimize, or mitigate adverse effects from stationary source emissions.

b. Vehicle emissions - Describe the effect of the project's traffic generation on air emissions. Discuss the project's vehicle-related emissions effect on air quality. Identify measures (e.g. traffic operational improvements, diesel idling minimization plan) that will be taken to minimize or mitigate vehicle-related emissions.

c. Dust and odors - Describe sources, characteristics, duration, quantities, and intensity of dust and odors generated during project construction and operation. (Fugitive dust may be discussed under item 17a). Discuss the effect of dust and odors in the vicinity of the project including nearby sensitive receptors and quality of life. Identify measures that will be taken to minimize or mitigate the effects of dust and odors.

18. Greenhouse Gas (GHG) Emissions/Carbon Footprint

a. GHG Quantification: For all proposed projects, provide quantification and discussion of project GHG emissions. Include additional rows in the tables as necessary to provide project-specific emission sources. Describe the methods used to quantify emissions. If calculation methods are not readily available to quantify GHG emissions for a source, describe the process used to come to that conclusion and any GHG emission sources not included in the total calculation.

The following tables are examples; other layouts are acceptable for providing GHG quantification results

Construction Emissions

Scope	**Type of Emission**	**Emission Sub-type**	**Project-related CO_2e Emissions (tons/year)**	**Calculation method(s)**
Scope 1	Combustion	Mobile Equipment		
Scope 1	Land Use	Conversion		
Scope 1	Land Use	Carbon Sink		
TOTAL				

Operational Emissions

Scope	**Type of Emission**	**Emission Sub-type**	**Existing facility CO_2e Emissions (tons/year)**	**Project-related CO_2e Emissions (tons/year)**	**Total CO_2e Emissions (tons/year)**	**Calculation method(s)**
Scope 1	Combustion	Mobile Equipment				
Scope 1	Combustion	Stationary Equipment				
Scope 1	Combustion	Area				
Scope 1	Non-Combustion	Stationary Equipment				

Scope	Type of Emission	Emission Sub-type	Existing facility CO_2e Emissions (tons/year)	Project-related CO_2e Emissions (tons/year)	Total CO_2e Emissions (tons/year)	Calculation method(s)
Scope 1	Land Use	Carbon Sink				
Scope 2	Off-site Electricity	Grid-based				
Scope 2	Off-site Steam Production	Not applicable				
Scope 3	Off-site Waste Management	Area				
TOTAL						

b. GHG Assessment
   i. Describe any mitigation considered to reduce the project's GHG emissions.
   ii. Describe and quantify reductions from selected mitigation, if proposed to reduce the project's GHG emissions. Explain why the selected mitigation was preferred.
   iii. Quantify the proposed projects predicted net lifetime GHG emissions (total tons/#of years) and how those predicted emissions may affect achievement of the Minnesota Next Generation Energy Act goals and/or other more stringent state or local GHG reduction goals.

19. Noise

Describe sources, characteristics, duration, quantities, and intensity of noise generated during project construction and operation. Discuss the effect of noise in the vicinity of the project including 1) existing noise levels/sources in the area, 2) nearby sensitive receptors, 3) conformance to state noise standards, and 4) quality of life. Identify measures that will be taken to minimize or mitigate the effects of noise.

20. Transportation

a. Describe traffic-related aspects of project construction and operation. Include: 1) existing and proposed additional parking spaces, 2) estimated total average daily traffic generated, 3) estimated maximum peak hour traffic generated and time of occurrence, 4) indicate source of trip generation rates used in the estimates, and 5) availability of transit and/or other alternative transportation modes.
b. Discuss the effect on traffic congestion on affected roads and describe any traffic improvements necessary. The analysis must discuss the project's impact on the regional transportation system. *If the peak hour traffic generated exceeds 250 vehicles or the total daily trips exceeds 2,500, a traffic impact study must be prepared as part of the EAW.* Use the format and procedures described in the Minnesota Department of Transportation's Access Management Manual, Chapter 5 *(available at: http://www.dot.state.mn.us/accessmanagement/resources.html)* or a similar local guidance,

c. Identify measures that will be taken to minimize or mitigate project related transportation effects.

21. Cumulative potential effects: (Preparers can leave this item blank if cumulative potential effects are addressed under the applicable EAW Items)

a. Describe the geographic scales and timeframes of the project related environmental effects that could combine with other environmental effects resulting in cumulative potential effects.

b. Describe any reasonably foreseeable future projects (for which a basis of expectation has been laid) that may interact with environmental effects of the proposed project within the geographic scales and timeframes identified above.

c. Discuss the nature of the cumulative potential effects and summarize any other available information relevant to determining whether there is potential for significant environmental effects due to these cumulative effects.

22. Other potential environmental effects: If the project may cause any additional environmental effects not addressed by items 1 to 19, describe the effects here, discuss the how the environment will be affected, and identify measures that will be taken to minimize and mitigate these effects.

RGU CERTIFICATION. *(The Environmental Quality Board will only accept **SIGNED** Environmental Assessment Worksheets for public notice in the EQB Monitor.)*

I hereby certify that:

- The information contained in this document is accurate and complete to the best of my knowledge.
- The EAW describes the complete project; there are no other projects, stages or components other than those described in this document, which are related to the project as connected actions or phased actions, as defined at Minnesota Rules, parts 4410.0200, subparts 9c and 60, respectively.
- Copies of this EAW are being sent to the entire EQB distribution list.

Signature_____ Date _____

Title _____

RECEIVED BY CAH
7/2/2026

WATERLEGACY

Sophia Patane, Community Engagement Director
(651-252-7680) sophia@waterlegacy.org

July 2, 2026

Submitted via https://minnesotaoah.granicusideas.com/discussions/41570-minnesota-environmental-quality-board-notice-of-intent-to-adopt-expedited-rules

Administrative Law Judge Suzanne Todnem
Court of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: Comments and Requests for Public Hearing Related to Proposed Amendments to Rules Governing the Environmental Review Program [Mandatory EAW and EIS Categories] for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945 Proposed Expedited Rules CAH Docket No. 23-9008-41570

Dear Judge Todnem,

Attached and delivered to you today, please find 199 comments submitted on behalf of members of the public, many of whom individualized their comments. These comments request that the Court of Administrative Hearings disapprove the Environmental Quality Board's (EQB) Proposed Rules governing environmental review of gas resource development projects, that the EQB withdraw these Proposed Rules and start over, and that a public hearing be held by EQB on environmental review for gas projects to listen to the Tribes and other members of the community that would be harmed by reckless gas development.

Please also find my declaration explaining that each comment made by an individual has been downloaded as a PDF file without alteration.

Thank you for considering the views of members of the public during this important regulatory process.

Respectfully yours,

Sophia Patane

Sophia Patane
Community Engagement Director

Enclosures: Declaration and Public Comments and Requests for Public Hearing

RECEIVED BY CAH
72/2026

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

Proposed Amendments to Rules Governing the Environmental Review Program [Mandatory EAW and EIS Categories] for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

Public Comments and Requests for Public Hearing (199)

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though MINNESOTA LAW PROHIBITS FRACKING!!!. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Jerome Comeau
3316 Emerson Ave S
Minneapolis, MN, 55408-3527
agacomeau@netzero.net

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. Fracking has caused water to be contaminated, earthquakes to occur where none had ever happened before, and ground to subside. These are NOT desirable outcomes!

Karen Bell-Brugger
5207 Humboldt Ave S
Minneapolis, MN, 55419-1121
bugglipps@yahoo.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. Please do an enviornmental review.

Sincerely yours,

Michael Steffes
4004 London Rd
Duluth, MN, 55804-2594
steff001@umn.edu

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

The people of Minnesota have a right to be heard. No public hearing? Not allowing them a voice is criminal. Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Carla Arneson
1177 Ringrock Rd
Ely, MN, 55731-8235
carneson@frontiernet.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

To the Assigned Administrative Law Judge and the Minnesota Environmental Quality Board: I am writing as a Minnesota resident to oppose the EQB's Proposed Gas Resource Development Rules and to urge that they be disapproved or withdrawn and substantially rewritten. The EQB is charged under Minn. Stat. § 93.514 with establishing mandatory categories for environmental review of gas production. As drafted, these rules fall short of that responsibility — and in at least one respect conflict with state law.

1. What is actually being extracted. Gas resource development in Minnesota is not a clean 'helium' project. Even when helium is the commercial target, it is a small fraction of the reservoir — 90 percent or more of the extracted gas will be other gases, including hydrogen, methane, and carbon dioxide. Hydrogen and methane are flammable and explosive, posing real risks to nearby communities, while methane and carbon dioxide are potent greenhouse gases that deepen the climate crisis. Rules governing this industry must be written for the full gas stream, not the marketing label.

2. 'High-volume' fracking conflicts with state law. The Proposed Rules would require an Environmental Impact Statement — the only review that seriously examines impacts and alternatives — solely when a project involves 'high-volume' fracking. But the Legislature has acted to prohibit fracking in Minnesota. Rules that contemplate and permit 'high-volume' fracking, even on the condition that an EIS is prepared, are inconsistent with that prohibition. Minn. R. 4410.0200, subp. 38a and 4410.4400, subp. 29 should be disapproved or withdrawn.

3. No EIS for even the largest projects. Most troubling, the Proposed Rules never require an EIS for gas production, no matter how large the project. Under 4410.4400 as written, a development with dozens of gas wells, miles of drilling and pipeline, a gas processing plant, and extensive new roads — together with the wetland and forest destruction all of that entails — could proceed without a single Environmental Impact Statement. That is precisely the kind of large, complex, high-impact project that EIS review exists to evaluate. The rules must set mandatory EIS thresholds scaled to a project's size and impact.

4. No protection for sensitive locations or Tribal resources. Finally, the Proposed Rules contain no definition of sensitive environmental locations and reject the extensive input that Tribal nations provided. Tribes proposed that reservations, trust lands, ceded territories, key resources, and culturally sensitive areas trigger EAW screening or EIS review depending on the project and its proximity. Instead, the rules defer to DNR rules that have not yet been promulgated, and require only an EAW — never an EIS — and only if the DNR decides to prohibit drilling at a site (4410.4300, subp. 38, items B and C). That is not adequate protection for irreplaceable resources, or for the Tribal sovereignty and treaty rights at stake. The EQB should write its own protections and honor the Tribal input it received.

For these reasons, I respectfully urge the EQB to disapprove or withdraw the Proposed Gas Resource Development Rules and to bring forward rules that require genuine environmental review, comply with Minnesota's prohibition on fracking, and protect sensitive lands, waters, and Tribal resources.

Sincerely yours,

Thomas Sullivan
4061 209th Ln NW
Anoka, MN, 55303-8705
tsullivan79@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you! I'd like to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I STRONGLY believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment. This is Shocking to Me.

I have heard Nothing about this and in my own state They seem to be pushing this through quickly. Which is a red flag to me.

We seem to be a target of mining and oil. Perhaps politically motivated.

I think this needs A lot more time to review this! It would be Very Bad for our state in So Many ways! EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Deborah Crocker
2400 Interlachen Rd
Spring Park, MN, 55384-9745
debdc@earthlink.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I do not think that Minnesota should open up to fracking or gas resource development. Moreover, I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Listen to the tribes.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

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3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

I want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Lisa Fitzpatrick
5229 Peabody St
Duluth, MN, 55804-2445
llfitzpat@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

As a state and as a country, we need to move away from polluting sources of energy, like gas, and focus on and invest in clean energy. We need to clean up the environment and leave it in a better state for our children and grandchildren.

Sincerely yours,

Mary Zink
30 Mallard Rd
Saint Paul, MN, 55127-2212
addiszink@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. In this time it is essential to regulate any development regarding our environment...We can only drain our resources so long.

Let's get some common sense back into our resource policies and conserve/preserve instead of expanding exploitation of our natural resources without proper reviews.

Sincerely yours,

stephanie johnson
35 E White St
Ely, MN, 55731-1247
rosskemo@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Given our fragile ecosystems, environmental protection and reviews are essential to the well being of all humanity. We are all interconnected and that realization is essential in decision making that impacts our common right to clean water and air.

Sincerely yours,

Elene Loecher
4001 19th Ave NW
Rochester, MN, 55901-4505
elene@usfamily.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Stephen Wiley
229 Cedar Lake Rd N
Minneapolis, MN, 55405-1223
srwiley46@hotmail.com

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. The destruction being done in this country is horrific! Fracking should never be allowed anywhere, but in my backyard is very concerning and dangerous. Do not allow this to take place! We gotcha land iron, or trying to destroy our boundary waters and now this. This is all got to stop allowing corporations to destroy the environment, the animals the people it's so wrong and we have people in Minnesota will not stand for. Stop this now!!!

Sincerely yours,

Vickie Hocking
6320 Barrie Rd
Minneapolis, MN, 55435-2237
vickie5cats@juno.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

As MN enters a new era, where prospectors begin looking for all sorts of gases potentially locked up in billion year old bedrock, we should always prepare for the worst when dealing with the unknown. That is why I feel the proposed new rules fall short of protecting human health and safety, and the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB's Proposed Rules.

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Craig Sterle
2676 County Road 104
Barnum, MN, 55707-8815
csterle777@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. All over the country, we are facing issues regarding safe drinking water due to environmental contamination and drought. Now is the time to protect and preserve Minnesota's water resources.

I believe that these proposed Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Besides fracking concerns, communities are being pressured to allow data centers which also consume vast water resources. In addition, our population is growing and as communities expand, more drinking water will be needed.

It is important to consider the future generations. Our children's children need clean and safe water. Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Please, take care of our most precious resource. water=life.

Sincerely yours,

Sheila Packa
2 Chester Pkwy
Duluth, MN, 55805-1528
sheilapacka@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. As a citizen who has multiple sensitivities, I urge the stringent review and regulation of environmental impacts as my health and wellbeing depend on prevention.

Sincerely yours,

Mary Busch
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Minneapolis, MN, 55406-2320
busch019@umn.edu

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. As a retired local community planner in southeast Minnesota involved in Wetland Conservation Act administration and county water management planning I recognize the sensitivity of the geology to groundwater pollution and the continued loss of our wetland resources in the state. These rules appear to brush aside any detailed review of the impacts of drilling. They ignore the related infrastructure impacts such as pipelines industrial impacts on local community infrastructure and resources. Ask the local communities in Pennsylvania and North Dakota about such impacts on quality of life. The impacts of drilling go far beyond the drilling pad and need to be accounted for.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

John Harford
208 Prairie Way N
Bayport, MN, 55003-1604
harfordjohn52@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I have a comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I think that these Rules have not been properly reviewed and that they allow for fracking without looking closely at all the consequences.

For this reason, these Rules should not be approved by the Judge. Alternatively, they could simply be withdrawn by the EQB to start over. Minnesota laws now prohibit fracking - so these fast-tracked rules are clearly out of line for our state.

The proposed Rules do not require EIS environmental review of a new gas industry - even though that industry has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. I have read that these harms could include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. It appears that there has not been the required full consultation with affected Tribes before issuing these proposed rules. I thought the state had finally come to respect the requirement of consultation before rule making that could affect tribal lands and people.

4. If developers do not label their project as 'high volume fracking' there is no required review, no matter how many wells and pipes they may actually employ.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. It would also be appropriate for the EQB to simply withdraw these Proposed Rules and start over.

And before Rules are written this time, there need to be public hearings on environmental review for gas projects.

It is time to listen to the Tribes and other communities that could be harmed by unregulated gas development. The idea of supporting helium extraction is not in itself a problem - it could be a great opportunity. But it is new, and such an industry needs regulations and thorough environmental review before moving forward.

We do not want to regret unanticipated and unstudied harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Beth Tamminen
502 Madison Ave
Duluth, MN, 55811-5928
bethtamminen@yahoo.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

In this time of climate change, we need to change how we approach meeting energy needs, both in Minnesota and globally.

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

kathy glover
1953 Selby Ave
Saint Paul, MN, 55104-5822
glover8@comcast.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I have been a member and past president of the Eagan-Inver Grove Heights WMO for many years and am very aware of the need to protect our clean water. Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB because they fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

The problems with EQB's Proposed Rules include:

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

We need strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Monica Foss
1284 Carriage Hills Dr
Eagan, MN, 55123-2131
Fossme@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I appreciate the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. This is an important matter to me. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Juliann Rule
35002 115th Ave
Avon, MN, 56310-9636
schugrule@aol.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment. I am asking the Judge to deny them.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

I want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Dianne Polasik
14400th St
Stillwater, MN, 55082
dspolasik@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

I am appalled. I thought the EQB's purpose was to protect the environment. Apparently its purpose is to protect the industries that want to exploit the environment, poison water, wild rice, forests, and native peoples. Seriously: who wrote this rule? Who agreed to it? Who thinks the EQB can completely ignore current state law and offer up our precious lands to be destroyed, with no consideration for sensitive sites, treaties, human health, or that national jewel that is our northland. Forgive me for being confrontational, but truth is more important. And a public hearing is essential. EQB’s Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB’s Proposed Rules.

1. EQB Rules would allow “high-volume” fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren’t even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) “high-volume” fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB’s Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Shodo Spring
16922 Cabot Ave
Faribault, MN, 55021-7947
shodo.spring@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Please accept my comments on gas resource development in Minnesota:

1. the environmental impacts of fracking are well known from experience in other states

2. Minnesota's tribal lands and treaty rights are especially vulnerable to environmental disruption

3. to permit ANY extractive industry without environmental review endangers all of Minnesota's resources

Thank you.

Marlise Riffel
1001 1st St S
Virginia, MN, 55792-3454
mriffel@outlook.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on the Environmental Quality Board's (EQB) proposed rules for gas development in Minnesota. These rules should be disapproved by the Administrative Law Judge or withdrawn by the EQB because they conflict with Minnesota's prohibition on fracking and improperly defer to the Minnesota Department of Natural Resources (DNR) instead of establishing independent environmental protections.

The proposed rules also fail to require Environmental Impact Statements (EIS) for a new gas industry capable of causing significant harm to Minnesota's water, air, land, climate, and rural and Tribal communities. Potential impacts include contamination of groundwater, drinking water, and wild rice waters; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and the release of toxic and greenhouse gases. Key deficiencies include:

1. The rules would allow 'high-volume' fracking if an EIS is completed, despite Minnesota law prohibiting fracking. Parts 4410.0200, subpart 38a, and 4410.4400, subpart 29 should be disapproved.

2. The rules improperly rely on DNR siting restrictions that are not even final and would still fail to protect drinking water, wetlands, wild rice, or Tribal lands and resources. Parts 4410.4300, subpart 38(B) and (C) should be disapproved, and EQB should withdraw these rules and work with Tribes and the public to establish meaningful EAW screening and EIS review for sensitive areas.

3. Unless a project includes prohibited 'high-volume' fracking, the rules would never require an EIS, regardless of the number of wells, pipelines, processing facilities, or the scale of forest and wetland destruction. This is arbitrary, irrational, and inconsistent with Minnesota environmental law.

I respectfully ask the Judge to disapprove these proposed rules and urge the EQB to withdraw them, begin a new rulemaking process, and hold a public hearing that meaningfully includes Tribes and communities that would bear the impacts of gas development.

Regardless of whether one supports gas development, Minnesota deserves strong safeguards and rigorous environmental review to protect our water, wetlands, forests, climate, and communities for future generations.

Sincerely yours,

Aaron Christopher
3514 2nd St NE
Minneapolis, MN, 55418-1108
urbansamuraipro@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. Clean water is critical to all life!!

Sincerely yours,

Carol Kivi
8005 Congdon Blvd
Duluth, MN, 55804-3101
cskivi@hotmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

There is a long history of problems associated with fracking operations. As we have never had such activity in Minnesota, and in light of the recent mining rights debacle, we don't need any more threats to our environment and recreation.

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Bryan Krantz
21425 Elaine Ln
Brainerd, MN, 56401-5616
shangrila10380@outlook.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

The Environmental Quality Board's (EQB) proposed rules for development of gas in Minnesota fail to require an EIS. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. This conflicts with Minnesota laws.

This new gas industry has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gas.

I respectfully ask the Judge to disapprove EQB’s Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over.

Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Sincerely yours,

Linda Peck
12299 Sauk River Rd
Saint Cloud, MN, 56301-9755
peckjoandli@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas projects,, pipelines and fracking in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over.

As proposed, they clearly are in conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR), rather than setting their own standards to protect the environment.

It boggles my mind how these toothless rules were developed by the EQB, which is by definition entrusted with the protection of our environment in Minnesota. With the endless stories of problems and environmental degradation of fracking and gas drilling/piping projects in other states, I consider this weak proposal as malfeasance on the part of the EQB.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those who may support a new gas industry surely also their families adequately protected from potential environ,ental harms and want strict regulations and thorough environmental review to avoid harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Bryan Wyberg
2458 Farrington Cir
Roseville, MN, 55113-3608
bryan.wyberg@juno.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

MN touts itself as a state with high environmental standards. A needed transition away from fossil fuels and towards clean energy sources is delayed with continued gas usage. MN should be a leader in clean air and water, not a leaner. As stewards of our most precious natural resources, clean water and air, we have to do the right thing. Thank you.

Sincerely yours,

Kevin Heaslip
2511 W 13th St
Duluth, MN, 55806-1110
kheas@charter.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB on both procedural grounds and environmental harm grounds. These rules conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment. Throwing a wrench like these rules into existing Minnesota law will create further delay in addressing the environmental harms underway in our state.

At a time when pollinators and wildlife in general are declining at alarming rates, these rules represent a dereliction of duty on the EQB's part. EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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Sincerely yours,

Sharon Coombs
3400 Owasso St
Shoreview, MN, 55126-4132
sharoncoombs.sc@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Sincerely yours,

Michael Shoop
8200 W 33rd St
Minneapolis, MN, 55426-3895
michaelphoto2@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Please see letter below for factual information. I personally want to share that I was present for over a week near a fracking site. There was noise and banging 24 hours a day which totally disrupted the experience, disturbing sleep and destroying quality of life. No one will want to live in this place and local people likely completely lost their property value because no one would want to live there! This is the SOS yet again! Why is the EQB not taking on its mission of protecting the environment and people of Minnesta?

There are not endless resources for greedy businesses to destroy, and everyone deserves to share in quality of life in this state!

Please consider with utmost care protecting against a future where everything is destroyed.

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

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hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Julie Anne Larkin
69208 US-169
Hill City, MN, 55748
julieannelarkin@gmail.com

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Thank you.

Karen Peters
3420 Cleveland St NE
Minneapolis, MN, 55418-1533
kkpeters@usfamily.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. Not doing so sets a precedent difficult or impossible to reverse.

Sincerely yours,

Michael Maleska
12761 Smith Rd
Hibbing, MN, 55746-8525
vedge_m@yahoo.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I urge the EOB to withdraw the proposed rules for gas exploration and extraction in Minnesota and start over with reasonable protections to the environment and health and safety for the people of Minnesota and future generations. At a minimum, the rules should require Environmental Impact statements for proposed gas exploration and extraction. We cannot let the industry regulate itself. That is not in the interest of the citizens of Minnesota and the environment. We must act as responsible stewards of our water, land and air. These rules conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Julie Nester
112 E White St
Ely, MN, 55731-1250
jnester4800@msn.com

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Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota.

The proposed Rules violate Minnesota laws, and lower standards meant to protect our state from environmental damage.

I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review. There are many dangers from fracking, contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

It is irresponsible and unethical to bypass an EIS review of a new gas industry.

Here are some specific problems with EQB's Proposed Rules.

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Sincerely yours,

Marjorie Pitz
182 Mounds Blvd
Saint Paul, MN, 55106-6231
pitz@bitstream.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking.

It shouldn't be incumbent on a citizen like me to have to police the industry— the EQB has the science and the smarts to protect our water and quality of life.

Sincerely yours,

Nancy Conger
8010 275th Ave NE
North Branch, MN, 55056-4904
nancyconger26@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

This moment is ripe for weaning OFF the poisonous fossil-fule industry. Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

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Kristina Boerger
3445 Oakland Ave
Minneapolis, MN, 55407-2013
kristinabrgr48@gmail.com

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As a very concerned citizen, I just simply don't understand how EQB rules do not protect us or the environment. This seems like a real violation of the role of the board and its stewardship responsibilities. Below are specific problems with the EQB's Proposed Rules. Approving the rules, as is, is unacceptable. Please reconsider.

Here are some specific problems with EQB's Proposed Rules.

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Claudia Oxley
2931 Vernon Ave S
St Louis Park, MN, 55416-1841
csoxley60@gmail.com

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Dear Judge Todnem, Mr. Krzenski,

Thank you for your attention to the Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or entirely withdrawn by the EQB.

They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include groundwater contamination, foul drinking water, and destructionof wild rice beds, wetlands, and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I ask EQB to comletely withdraw these Proposed Rules. Rewrite new rules to address potentional issues. Finally, I request that EQB hold a public hearing on environmental review for gas projects, and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of who support the gas industry want strict regulations and thorough environmental review to \minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Mary Verrill
1430 Eleanor Ave
Saint Paul, MN, 55116-2231
mkverrill@comcast.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Sincerely yours,

Gabriela Santiago
1024 Marshall Ave
Saint Paul, MN, 55104-6505
gfsantiago89@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

Minnesota has never had a gas extraction or production project. Yet the Environmental Quality Board (EQB) Proposed Rules would allow "high-volume" fracking for gas in Minnesota. No matter how many production wells, pipelines, and acres of wetlands destruction a gas project would cause, the EQB Rules would never require detailed EIS environmental review of impacts and alternatives.

The EQB has used "expedited" rulemaking and none of its rules have had public hearings. The EQB rules conflict with applicable law, improperly rely on the Department of Natural Resources (DNR) for standards, and fail to require environmental review of even the most serious threats to Minnesota waters, wetlands, climate, and communities.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Fern Peterson
1111 W River Pkwy
Minneapolis, MN, 55415-7537
fernpeterson@comcast.net

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

No public hearings? No deal. Violation of existing statutes? No deal. Start over and do this honorably and responsibly. Please.

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Dave Crawford
1520 Lexington Pkwy N
Saint Paul, MN, 55117-3315
naturalistdave@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. We are watching!

Sincerely yours,

Mary Thompson
1370 White Lake Dr
Duluth, MN, 55803-9712
maryarps@icloud.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. These Rules should be disapproved by the Judge or withdrawn by the EQB to start over because they conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR), rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to water, land, air, climate, and rural and Tribal communities in Minnesota. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Some specific problems with EQB's Proposed Rules are:

1. EQB Rules would allow "high-volume" fracking if an EIS environmental review was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

With these concerns come three requests:

1. For the Judge to disapprove EQB's Proposed Rules for gas development.

2. For the EQB to withdraw these Proposed Rules and start over.

3. For the EQB to hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Strict regulations and thorough environmental review are essential to avoid or at least minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Rebecca Myerly
12283 Arcola Trl N
Stillwater, MN, 55082-5500
r.p.myerly@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

We need strict rules protecting our state's land, water and air. The poisoning of our environment is not worth the risks of irresponsible extraction.

Sincerely yours,

Grant Thrall
4038 Blaisdell Ave
Minneapolis, MN, 55409-1511
grntthrall@proton.me

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

I am gravely disappointed in the EQB and other Minnesota regulatory agencies. Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

David Wee
1920 S 1st St
Minneapolis, MN, 55454-1096
david_j_wee@yahoo.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

As with so many environmental issues, we only get to do it once. When something has been defiled, there's no going back.

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Kenneth A Harris
5099 157th St N
Hugo, MN, 55038-8810
farblondjet2000@yahoo.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I live on a central Minnesota lake. Please do not jeapodize any of our Minnesota lakes rivers or groundwater with this reckless proposal. Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

LeMoyne Corgard
45996 286th Ln
Aitkin, MN, 56431-4596
MoyneCorgard@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, and climate, and to harm state and Tribal communities of all types. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and state.

Sincerely yours,

Charles Ernst
562 Arlington Ave W
Saint Paul, MN, 55117-4221
ernst392@umn.edu

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. These Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment. Flawed Rules lead to inadequate protections for our water rich environment, the safety of communities and thriving habitat for other forms of life.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. An EIS ENVIRONMENTAL REVIEW is an absolute necessity to prevent harms that include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved. Fracking violates MN statutes.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development. Tribal and public input is vital.

3. Failing to require a thorough EIS review be completed is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy. Details of the size and scope of such a project must be determined before current prohibitions on fracking be lifted. These prohibitions exist for good reason, namely to protect the health of the environment.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Kathleen McQuillan
10816 Plum Creek Rd
Cook, MN, 55723-8525
kathmcquillan19@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment. Furthermore, the Minnesota Pollution Control Agency (MPCA) should be involved rather than the DNR.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has high risk for significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, dangerous, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

This is a time when we need to be promoting clean energy projects and weaning our economy off of polluting fossil fuels. While the state should not allow any new gas projects, strict regulations and thorough environmental review is the bare minimum needed to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Julie Maurer
1727 W 2nd St
Duluth, MN, 55806-3458
juliemaurer@proton.me

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

As an Enrolled member of the Lac Courte Oreilles Band of Lake Superior Chippewa and life-long citizen of the State of Minnesota I want to thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

John Koepke
24900 Hope Dr
Park Rapids, MN, 56470-5298
koepk002@umn.edu

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Minnesota is the head water of the Mississippi river, which is vital to our entire country. We should not take this responsibility lightly. We are one of the few states left in our country with protected wilderness and bodies of clean water that seem to be raidly disappearing. Please do what you can to protect our environment and our current resources.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Lorraine Birskovich
4267 E Linden Blvd
Nisswa, MN, 56468-2713
lorraine52b@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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I write as a concerned citizen. We are not doing enough as a county and as a state to protect people and the environment, and the benefit from the destruction of our environment is going directly to corporations alone. Many of these companies are based outside of MN, and outside of the US. Already in MN we have chemical levels and pollution levels in our water that are known to cause significant harm. For example, I previously lived in Washington County, MN where PFAS forever chemicals in ground water were present to such an extent that the drinking water was unsafe without special added filtration and kids could not swim or eat any fish from the nearby lakes. My parents have a home in a beautiful rural spot in Aitken County, and the maximum recommended fish consumption by the MN DNR is ONE fish per month. Our DNR is not posting this data or sharing it with neighbors - it is only known if you know where to look for the data. I currently live in St. Paul MN where our drinking water comes from the Mississippi River - which is also extensively polluted. When we are taking about the importance of protecting basic water supplies, people, and the environment, our system and government rules related to manufacturing, mining and methods of gathering energy resources has already been shown to be completely inadequate.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Those who may support a new gas industry still want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Katie Sih
1667 Scheffer Ave
Saint Paul, MN, 55116-1429
k.sih@hotmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. As a community member impacted by contaminated groundwater from decades past, I urge you to consider the lasting implications of not involving communities and regulations on these companies.

Sincerely yours,

Marnna Anderson
7824 Demontreville Trl N
Lake Elmo, MN, 55042-9537
marn.anderson@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

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Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely,

Karen Clingerman
1245 E Harvey St
Ely, MN, 55731-1734
karenclingerman@me.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Additional harm, as seen in Oklahoma from the proposed high pressure fracking, including dangerous resulting change to the subterranean architecture which may well be causing potentially damaging earthquakes.

Here are some other specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

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I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, subterranean architecture,climate, and neighbors.

Sincerely,

John and Betsy Flaten
1375 Walsh Rd
Ely, MN, 55731-8034
jpflaten@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota.

I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB's Proposed Rules.

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Sincerely yours,

Rin Porter
801 E 3rd St
Fairmont, MN, 56031-4008
rporter@rea-alp.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I am very concerned about EQB's Proposed Rules that fail to require EIS environmental review of a new gas industry. I believe it has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities including contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases. Here are some specific problems with EQB's Proposed Rules.

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Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota.

Sincerely,

Richelle Schenfeld
990 Rosabell St
Marine On Saint Croix, MN, 55047-7524
schenfeldshelly@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

My husband and I have lived in Minnesota for most of our lives - 70+ years.

We care deeply about the environment, especially MN pristine waters, a rare and precious resource. We are outraged about the threats to MN water being proposed WITH NO PUBLIC COMMENT!! We appreciate the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

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We want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors. WE MUST PROTECT MINNESOTA'S ENVIRONMENT! Fossil fuels must be phased out, not developed!

Sincerely yours,

Mary McNellis
316 4th St S
Stillwater, MN, 55082-4911
mzztravel@yahoo.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

Dear Judge Todnem, Mr. Krzenski,

I urge the EQB to strengthen its proposed Gas Resource Development Rules to better protect Minnesota's groundwater, surface water, climate, Tribal resources, and communities. The rules should be revised to align with the Legislature's ban on fracking by removing provisions that allow 'high-volume' fracking with an EIS. They should also require Environmental Impact Statements for large-scale gas development projects involving multiple wells, pipelines, processing facilities, and significant land disturbance. Finally, the rules must include meaningful environmental review for projects affecting sensitive ecosystems and Tribal lands and resources, rather than relying on future DNR decisions. Given that gas extraction includes large amounts of methane, hydrogen, and carbon dioxide—not just helium—Minnesota's rules should reflect the full environmental and climate risks of these projects.

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

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Dawn Pape
5901 Birchwood St
Saint Paul, MN, 55126-8423
dawnd44@hotmail.com

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The EIS process is the industry's chance to prove that this can be done safely. Let them prove it! Here are some specific problems with EQB's Proposed Rules.

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Sincerely yours,

Linda Ganister
13411 Villa Rd
Ely, MN, 55731-8188
dcnduff@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Gio Antell Cerise
16421 Olivine St NW
Ramsey, MN, 55303-3612
giocerise@icloud.com

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Dear Judge Todnem, Mr. Krzenski,

Please, no fracking without an environmental impact statement, anywhere in Minnesota, especially near the fragile Boundary Waters!
Save these valuable pristine waters for future Generations!

Thank you,

Andrew Keith
822 west 2nd St
Grand Marais, MN, 55604

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Barbara Akre
1921 W Kent Rd
Duluth, MN, 55812-1155
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Michael Alexander
78 10th St E
Saint Paul, MN, 55101-2206
msalexander1955@gmail.com

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3310 69th St E
South Saint Paul, MN, 55076-2149
shredbetty70@gmail.com

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Edina, MN, 55424-2203
karlaanderson@hotmail.com

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9450 Decatur Dr N
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sa.business1821@gmail.com

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Augies9ers@gmail.com

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Richard Bachman
13000 Sylvan Ave
Lindstrom, MN, 55045-9414
bachmansphotography@gmail.com

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2170 Passi Rd
Ely, MN, 55731-8135
lbogolub@comcast.net

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lylebrandt@hotmail.com

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St Louis Park, MN, 55426-4136
Albrooke246@gmail.com

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Elizabeth Burr
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Saint Paul, MN, 55105-1548
elizabethgburr@gmail.com

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Eden Prairie, MN, 55347-1568
buxton5858@gmail.com

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Minneapolis, MN, 55419-2016
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jcharrier21@gmail.com

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pcragun01@gmail.com

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Sincerely yours,

Roger Cuthbertson
4735 Lakeway Ter
Excelsior, MN, 55331-9367
rogercuthbertson1014@gmail.com

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Cook, MN, 55723-8529
erdahlmd@aol.com

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Judith Derauf
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Duluth, MN, 55804-1803
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Cecilia Dingledy
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Rochester, MN, 55906-5436
ceceding56@gmail.com

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veverett2121@gmail.com

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Sincerely yours,

Joaquin Guerrero
13086 Dodd Blvd
Rosemount, MN, 55068-5002
jangelguerrero7029@gmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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nlh1952@gmail.com

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Minneapolis, MN, 55419-4823
sajeha@msn.com

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Minneapolis, MN, 55439-1246
shedren@gmail.com

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Mankato, MN, 56001-4707
herbsthelms@hotmail.com

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Bob Jalonen
918 E Washington St
Ely, MN, 55731-1672
bobjalonen@gmail.com

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Brooklyn Park, MN, 55444-1050
jensen149@aol.com

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36901 Xenon St NW
Princeton, MN, 55371-5600
stevejorgenson@icloud.com

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16207 Wilderness Way
Brainerd, MN, 56401-2992
judyjuske@gmail.com

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Alexandria, MN, 56308-8915
gkrevvv@gmail.com

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Duluth, MN, 55812-2019
ben.karlgaard@gmail.com

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loonscats2@gmail.com

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mklemz@charter.net

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Sincerely yours,

Linda KRIEL
1314 3rd Ave
Newport, MN, 55055-1141
linda.e.k@hotmail.com

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Janelle Kuznia
26775 Grand Ave
Elko New Market, MN, 55020-9574
janellekuznia@gmail.com

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Phedra Larson
826 Wall St
North Mankato, MN, 56003-3039
pl8ja4vi3@gmail.com

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Susan Lasoff
1235 Yale Pl
Minneapolis, MN, 55403-1949
susanlasoff@comcast.net

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Sue Lawrence
2130 4th Ln SE
Cambridge, MN, 55008-4421
suelawrence980@gmail.con

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Kathy Lee
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Cohasset, MN, 55721-8992
ewakeman.klee@gmail.com

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Lake Elmo, MN, 55042-9709
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Sincerely yours,

Debra Masters
395 Bucher Ave
Shoreview, MN, 55126-4617
mastersdl@yahoo.com

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Terry McCarthy
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Duluth, MN, 55803-1508
jtmjourneys@gmail.com

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MARY MCGILLIGAN
814 5th Ave
Two Harbors, MN, 55616-1429
memcgilligan53@gmail.com

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Rochester, MN, 55906-3447
dave.mickelson@gmail.com

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Saint Paul, MN, 55116-1158
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kmoraski45@gmail.com

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Heyward Nash
1425 10th Ave S
Minneapolis, MN, 55404-5306
HLNASH2006@YAHOO.COM

RE: Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, Rules Chapter 4410, R-4945, CAH Docket No. 23-9008-41570

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Rush City, MN, 55069-7001
kjrcnelson@gmail.com

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Robin Nicholson
4386 Cottage Park Rd
White Bear Lake, MN, 55110-3804
Rcrwnicholson@yahoo.com

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Janet Oconnell
4990 Linden Trl N
Lake Elmo, MN, 55042-8530
joconn2955@hotmail.com

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d.plehn@mchsi.com

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Sincerely yours,

Kate Reinhardt
2604 Abbott Ave N
Robbinsdale, MN, 55422-3715
reinhard@augsburg.edu

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Ty Richardson
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Minneapolis, MN, 55406-3208
ty.richardson@gmail.com

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18538 School Lake Rd NE
Bemidji, MN, 56601-6811
mattx20@live.com

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3405 Chandler Rd
Shoreview, MN, 55126-3915
aron.rolnitzky@gmail.com

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36181 690th Ln
Hill City, MN, 55748-4618
mirourke66@gmail.com

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rscheierl@live.com

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Diane Tessari
1011 Feltl Ct
Hopkins, MN, 55343-3909
dctessa@gmail.com

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Minneapolis, MN, 55408-2559
bt@bt.gen.nz

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hlnjff@yahoo.com

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Apple Valley, MN, 55124-6370
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David Lien
3615 Cranswood Way
Colorado Springs, CO, 80918-6341
dlien2@yahoo.com

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405 91st St
Daly City, CA, 94015-1963
noahhaydon@gmail.com

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Luann kleppe
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Saint Croix Falls, WI, 54024-7941
luanntree@yahoo.com

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Ellsworth, WI, 54011-4808
warmfieldsfarm@gmail.com

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Dear Judge Todnem, Mr. Krzenski,

Thank you for the opportunity to comment on Environmental Quality Board (EQB) proposed rules for development of gas in Minnesota. I believe that these Rules should be disapproved by the Judge or withdrawn by the EQB to start over. They conflict with Minnesota laws that prohibit fracking and improperly rely on another agency, the Minnesota Department of Natural Resources (DNR) rather than setting their own standards to protect the environment.

EQB's Proposed Rules fail to require EIS environmental review of a new gas industry that has the potential to result in significant environmental harm to Minnesota water, land, air, climate, and rural and Tribal communities. These harms include contamination of groundwater, drinking water, and wild rice beds; destruction of wetlands and forests; fires and explosions; air, noise, and light pollution; and leaks and flaring of toxic and greenhouse gases.

Here are some specific problems with EQB's Proposed Rules.

1. EQB Rules would allow "high-volume" fracking if an EIS was done, even though Minnesota law prohibits fracking. These Rules in part 4410.0200, subpart 38a and 4410.4400, subpart 29 should be disapproved.

2. EQB Proposed Rules rely on DNR siting prohibitions that aren't even final rules to decide what locations may require environmental review. This is improper, and DNR siting limits would not protect drinking water, wild rice, wetlands, or Tribal lands and resources. Rules in part 4410.4300, subpart 38 (B) and (C) should be disapproved and EQB should withdraw its Rules and work with Tribes and members of the public to provide both EAW screening and EIS environmental review to protect sensitive locations from gas development.

3. Unless a developer proposes (prohibited) "high-volume" fracking, EQB Proposed Rules would never require EIS real environmental review no matter how many gas wells, pipelines, processing facilities, or acres of forest and wetlands destruction a gas production project would demand. This is irrational, arbitrary, and inconsistent with Minnesota environmental laws and policy.

I respectfully ask the Judge to disapprove EQB's Proposed Rules for gas development. I also ask EQB to withdraw these Proposed Rules and start over. Finally, I request that EQB hold a public hearing on environmental review for gas projects and listen to the Tribes and other communities that would be harmed by reckless gas development.

Even those of us who may support a new gas industry want strict regulations and thorough environmental review to avoid and minimize harm to our water, wetlands, forests, climate, and neighbors.

Sincerely yours,

Caroline Sévilla
All Marc Chagall
Schenectady, NY, 12345
caronyna@msn.com

RECEIVED BY CAH
7/2/2026

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

Proposed Amendments to Rules Governing the Environmental Review Program [Mandatory EAW and EIS Categories] for Gas Resource Development Projects, Minnesota Rules, Chapter 4410; Revisor's ID Number R-4945
Proposed Expedited Rules CAH Docket No. 23-9008-41570

DECLARATION OF SOPHIA PATANE

I, SOPHIA PATANE, in accordance with section 358.116 of Minnesota Statutes and Rule 15 of the Minnesota Rules of General Practice, declare as follows:

1. I am the Community Engagement Director for WaterLegacy, a Minnesota non-profit corporation formed to protect Minnesota water resources and the plant, animal, and human communities that rely on them from pollution and destruction. In that capacity, among other responsibilities, I support members of the public who would like to make comments and have their voices heard in connection with government decisions. I often assist members of the public in making comments supported by WaterLegacy's online systems.

2. Attached to this declaration, in connection with the above-described Proposed Amendments to Rules Governing the Environmental Review Program for Gas Resource Development Projects, is a PDF document, **Public Comments and Requests for Public Hearing**, containing comments on the Proposed Rule Amendments and requests for public hearing on the rules for environmental review for gas projects from 199 individuals, 183 of whom reside in Minnesota. Each of these commenters has requested that WaterLegacy facilitate the submittal of their comments and hearing requests.

3. I have personally ensured that each comment made by an individual in connection with these Proposed Rules through WaterLegacy's online system has been converted to a PDF document without alteration. I have also confirmed to the best of my ability that 183 comments in the attached **Public Comments and Requests for Public Hearing** document provide a Minnesota address, request some change in the Proposed Rules, and make a request for a public hearing.

4. I am submitting these **Public Comments and Requests for Public Hearing** through the Court of Administrative Hearings portal on behalf of these members of the public to ensure that their comments are received and included in the public record.

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

Dated: July 2, 2026

s/s Sophia Patane
Sophia Patane

RECEIVED BY CAH
7/2/2026

The Nature Conservancy Minnesota

The Nature Conservancy in Minnesota
1101 West River Parkway, Suite 200
Minneapolis, MN 55415-1291

Phone: 612-331-0700
Email: minnesota@tnc.org
nature.org/tristate

Executive Director Catherine Neuschler
Minnesota Environment Quality Board
520 Lafayette Road
Saint Paul, MN 55155

RE: Comments on the Environmental Quality Board Proposed Expedited Permanent Rules for Environmental Review of Gas Resource Development Projects.

Dear Executive Director Neuschler, July 2, 2026

The mission of The Nature Conservancy (TNC) is to conserve the land and water on which all life depends. TNC is a leading conservation organization working in all 50 states and more than 70 countries, and our work is solutions-oriented and grounded in science. With this lens, we write to offer the following recommendations to ensure continued natural resources conservation of critical lands in Minnesota which provide multiple benefits for clean water, carbon sequestration, wildlife habitat and more.

1. **Refer to existing statutory definitions for the following term:**
   - Part 4410.0200 Subp. 38A: We request EQB strike Part 4410.0200 Subp. 38a from the draft rules. Laws of Minnesota 2026, Ch. 127, Art. 2, Sec. 16 Subd. 2 prohibits hydraulic fracturing in gas wells. Therefore, a definition of "High-volume hydraulic fracturing" is not needed in the EQB rules and could lead to confusion.

2. **Further delineate protocol on the following requirements for environmental review:**
   - Part 4410.4300 Mandatory EAW Categories Subp. 38: describe the RGU for activities not listed in this section. Additionally, we request further explanation on whether activities not listed in this section require a mandatory EAW.
   - Part 4410.4300 Mandatory EAW Categories Subp. 38 A: we request an EAW be mandatory for all projects and not limited to projects with 5 or more proposed wells.

If you have any questions about these recommendations, we welcome the opportunity to be a continued resource and to have clarifying conversations with you or your staff. Thank you for your consideration.

Ann Mulholland
Chapter Director
The Nature Conservancy in
Minnesota-North Dakota-South Dakota

Angie Becker Kugelka
Deputy Chapter Director
The Nature Conservancy in
Minnesota-North Dakota-South Dakota

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Memo

Date: October 9, 2026

To: Environmental Quality Board Members

From: Jesse Krzenski and Catherine Neuschler

Re: Staff recommendation on variance request for Hillview Business Park

Background

Maplewood Development and Construction, Inc. (proposer) seeks to construct the Hillview Business Park. This project is located on a 62-acre site in the City of Arden Hills, the former Twin Cities Army Ammunition Plant (TCAAP) property.

Because of its size, the Hillview Business Park project falls under the environmental impact statement (EIS) mandatory category for industrial, commercial, and institutional facilities (Minn. R. 4410.4400, subp. 11). The City of Arden Hills is the Responsible Governmental Unit (RGU) preparing the EIS. Arden Hills expects to release a draft EIS for public comment late this calendar year, with final adoption anticipated to occur in the spring of next year.

Both statute and rule provide that no governmental approvals can be issued and construction of a project may not be started until the review process has been finished, unless a variance has been granted by the Environmental Quality Board (EQB). Minn. Stat. § 116D.04, subd. 2b and Minn. R. 4410.3100. The EQB has rules that provide a variance procedure. If the EQB grants a variance, a project can be allowed to proceed with construction.

The variance process and requirements are set forth in Minn. R. 4410.3100, subparts 4 – 8.

Variance application

A variance application must provide the following details per Minn. R. 4410.3100 subp. 4.

A. a detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted;
B. the anticipated environmental effects of undertaking the proposed construction or granting the governmental approvals;
C. the reversibility of the anticipated environmental effects;
D. the reasons necessitating the variance; and
E. a statement describing how approval would affect subsequent approvals needed for the project and how approval would affect the purpose of environmental review.

Contents of variance application

On August 6, 2026, the proposer submitted an application for a variance seeking allowance to proceed with demolition of abandoned buildings on the site while the EIS is under development. The proposer states that demolition is necessary to reduce trespassing, vandalism, and fires in the abandoned buildings while Arden Hills completes the EIS.

Detailed explanation

The application noted that the Project Site currently consists of buildings, roads, and specialized infrastructure constructed in the 1940s and 1950s that is in "various stages of disrepair." The proposer noted that there are approximately 60 vacant buildings or structures on the site, most under 1,000 square feet, and that the main building is located in the center portion of the site and is approximately 62,000 square feet. The application sought a variance allowing the proposer to "demolish the existing vacant buildings…as well as cap certain manholes and other hazards to public safety." The proposer stated that "construction activities would be limited only to demolition of the existing above-ground buildings (including any partially buried bunkers) and any below-ground foundations."

Anticipated environmental effects

In the application the proposer claims to "not anticipate any significant environmental effects from undertaking the proposed construction" based on the following:

- A determination from Rice Creek Watershed district that did not identify any wetlands in the areas of proposed construction.
- The affirmation that the proposer would "take all necessary steps to protect against runoff and other impacts to the adjacent wetlands during all proposed construction activities."
- A claim that the Department of Natural Resources (DNR) has conducted a Natural Heritage Review and that the proposer would "follow standard and approved avoidance plans to address any potential concerns regarding these areas of potential habitat." The proposer attached DNR findings that identified a number of species of concern.

Reversibility

The proposer did not anticipate any significant environmental effects from the construction activities, and the application notes, "there should not be any significant environmental effects that need to be reversed."

Reasons for the variance

In the application, the proposer notes the variance is "necessitated by public safety. Despite the efforts of the Proposer to keep the public out of the Project Site, including installing locked gates, fencing, and other security measures (all of which have been destroyed or removed) various urban explorers and other trespassers continue to access the site to explore, vandalize, and utilize the various structures and bunkers."

The proposer noted "numerous instances of vandalism, fires, and parties" that resulted in the need for emergency response, which was made more difficult "due to lack of roads and other infrastructure." The proposer argued that removal of the structures will reduce the attractiveness to urban explorers and teenagers who break into the project site and climb on the structures. The proposer notes that if all that is left is "rubble piles, the allure of trespassing should subside."

How approval will affect environmental review

The proposer notes that it "does not anticipate that approval of the requested variance will have any effect on subsequent approvals for the project. The structures will need to be demolished as part of the overall proposed project, the variance simply jumpstarts that process. In the event that the project is not approved, the impact on the overall site is minimal and the structures are all things that should be removed or demolished regardless."

Additional information

On August 11, 2026, EQB staff asked for additional information from the applicant, including whether detailed plans for this work were available, documentation regarding public safety incidents, whether rubble would be left on site, whether the RGU supported the variance and whether the public had been informed that a variance would be sought. The proposer responded to this request with some new information, but detailed plans for the work were not provided. With regard to rubble left on site, the proposer stated it "would like to remove the rubble piles as soon as possible" but no timeline or plan was provided. The proposer stated that Arden Hills agreed to the variance application at its August 10, 2026, meeting and provided a copy of the city's resolution. The applicant provided no further information regarding concerns from the DNR Natural Heritage Review noted in the application.

Comments received

On August 25, 2026, EQB staff published notice of the application of a variance in the EQB Monitor and in the Shoreview Press as required by Minn. R. 4410.3100, subp. 5. The comment period closed on September 14; 11 comments were received. Ten members of the public provided input, and the Metropolitan Council also submitted comments.

All commenters opposed granting the variance. Many commenters, including Metropolitan Council staff, noted the potential for demolition activities to disturb contamination known to be on the site, and that one purpose of the EIS was to determine how demolition and redevelopment of the site could be appropriately managed.

Attachment 1 to the findings of fact as well contains a copy of all comments received; the comments can also be found on the EQB website.

Variance criteria and evaluation

It is EQB's responsibility to evaluate the variance application and make a determination on whether to grant or deny the variance. Per the rules a variance must be granted if **all** of the following are met:

A. the RGU consents to a variance;
B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship is hardship caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state. It does not include hardship caused by the proposer's own action, or inaction, if the hardship was reasonably foreseeable;
C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and
D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Staff recommendation

EQB staff recommend that the Board deny the request for a variance.

Justification

Based on review of the application and the public comments received, EQB staff believe that the applicant has not demonstrated that they have met the requirements for granting a variance laid out in Minn. R. 4410.3100, subp. 6. Specifically, the applicant has not proven that the standards of Minn. R. 4410.3100, subp. 6, items B, C, or D, are met.

Threat to health and safety (item B)

The staff do not believe that the applicant has demonstrated that the construction requested is *necessary* to avoid a serious threat to health and safety.

The applicant did not claim that the conditions of the buildings themselves pose a health and safety risk, rather that people are undertaking risky behavior in the buildings, requiring security.

While the applicant has identified issues regarding trespassing on the site, information available to the EQB demonstrates that this has been an ongoing issue beginning long before the Proposer acquired the property. Per information provided by the City, fencing built by the federal government has been in place at this site since the 1940s or 1950s and additional fencing was installed in August 2026. However, the application provides very little information regarding the security measures that the applicant has put into place, other than replacing locks when removed by trespassers or repairing the fencing. Based on the information provided in the application and the comments received, the applicant has not demonstrated an effort to improve these measures, for example, by adding lights, signage or cameras. Public commenters suggested that law enforcement coordination has increased in recent months and that this has improved response to trespassing on the site.

EQB staff believe, based on the documents supporting adoption of the variance rules, that a variance should only be granted if the applicant has demonstrated there are no reasonable alternatives because a variance can only be granted if "construction is necessary in order to…avoid a serious threat to public health or safety." In this case, the applicant has submitted no proof that it lacks alternatives that might improve the site security such that demolition of these buildings before environmental review is completed is reasonable.

Serious adverse effect on the environment (item C)

The application states that the "Proposer does not anticipate any significant environmental effects from undertaking the proposed construction." The application then discusses two potential areas of impact: wetlands and ecologically significant areas and state-listed species (noted in the Natural Heritage Review). Natural Heritage Review is the first step in rare species coordination, but this coordination is not yet complete. This coordination is necessary to rule out the take of protected species. The Natural Heritage Review does not constitute complete comments on behalf of DNR. The application contains no detail on how the Proposer will manage potential environmental impacts other than to affirm an intent to abide by government instructions when provided. The application does not specifically describe or address mitigation of the potential environmental effects associated with demolition at this site, including some issues discussed in the environmental review process. The final scoping decision document for the mandatory EIS, (published in the September 8, 2026 EQB Monitor as a part of the EIS preparation notice) indicates concerns about certain rare species located in the area and that the potential impacts to these features from the demolition of structures on site and states the general site development will be included as part of the Draft EIS analysis.

Based on the limited information provided by the Proposer and the public comments, particularly the comment from Metropolitan Council staff, EQB staff have concluded that the applicant has not demonstrated that the construction for which the variance is sought will not have a serious adverse effect on the environment. The applicant provides only vague assurances that they will take the actions needed to protect species of concern. The applicant states it "would follow standard and approved avoidance plans to address any potential concerns regarding these areas of potential habitat during all construction activities." However, such plans are not included and do not yet appear to be developed or approved. Although not directly applicable to a variance application, case law related to mitigation measures included in environmental review documents requires that when these measures are considered as "offsetting the potential for significant environmental effects" the measures need to be "specific, targeted, and…certain to be able to mitigate the environmental effects" (*See CARD*, 713 N.W.2d at 835). EQB staff believe it is similarly appropriate to require at least a degree of certainty about these measures when a variance is requested.

Second, the application does not include information related to any other environmental effects. As noted by the Metropolitan Council, the application "does not address how demolition might mobilize contaminants in the

soil," and does not discuss the site's location within two drinking water supply management areas, and therefore the potential for construction activities to impact drinking water.

More crucially, there is no mention whatsoever of the potential environmental effects of soil contamination that are likely from the type of action being requested (demolition) and clearly identified in the scoping EAW and scoping decision document. Metropolitan Council staff notes the findings of a 2024 Phase 1 Environmental Site Assessment, prepared as part of the project's Scoping EAW process and referenced in the scoping EAW, are that "it is probable that when the storage bunkers are demolished that soil that has historically been in contact with creosote impregnated retaining walls could be impacted by PAHs at concentrations of potential concern." Neighbors also raised concerns about the site contamination and how it will be managed.

Given that the RGU has determined, through the scoping EAW, that impacts from demolition to species of concern and the potential exposure to contaminated soil require further analysis in the EIS (indicating they may have the potential for significant environmental effects), the applicant bears the burden of demonstrating that there will not be a serious adverse effect on the environment. Since certain key potential impacts were not discussed, the EQB must find that the applicant has not established that the proposed construction will not have a serious adverse effect on the environment.

Separable from the remainder of the project with no effects on mitigation or alternatives analysis (item D)

In the application, the Proposer argued that because demolition will need to occur in any development scenario, it is separable from the more flexible aspects of the overall redevelopment project. However, EQB staff do not believe the application demonstrated that if the demolition was allowed prior to the completion of the EIS, it would not influence the alternatives analysis or the mitigation considerations in the EIS. As noted in the discussion above, the RGU has determined, through the scoping EAW, that impacts from demolition to species of concern and the potential exposure to contaminated soil require further analysis in the EIS. Allowing demolition to proceed prior to the completion of the EIS may limit the consideration of future mitigation options. As noted above, no plans describe how soil contamination will be assessed and managed, and how ecological assets will be protected.

Conclusion

EQB staff have concluded that the application lacks the information necessary to support issuance of a variance allowing demolition to proceed before the EIS is determined adequate. The application has not demonstrated that the applicant has exhausted efforts to control trespassing on the site, nor has the application demonstrated the existence of plans to control the likely environmental impacts from demolition in advance of the Final EIS, which will contain information that is relevant to how the demolition is managed.

MINNESOTA
ENVIRONMENTAL QUALITY BOARD

RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the matter of the Application for Variance by Maplewood Development and Construction, Inc., for Proposed Hillview Business Park

Maplewood Development and Construction, Inc., acting as developer for SPQR Arden Hills, LLC at the Proposed Hillview Business Park is proposing to construct a 62-acre, 972,200 square foot warehouse/distribution/office park development in Arden Hills, Minnesota. An environmental impact statement (EIS) is required for the project because it exceeds the threshold for industrial, commercial, and institutional facilities set forth in Minn. R. 4410.4400, subp. 11.

The City of Arden Hills is the Responsible Governmental Unit (RGU) for the EIS and has prepared a Scoping Environmental Assessment Worksheet (EAW) and Draft Scoping Decision Document (SDD) for the project. Notice of the availability of the scoping EAW, draft scoping decision document, and public meeting was published in the EQB Monitor on June 16, 2026 (Volume 50, number 24), with a public comment period running through July 16, 2026.

Under Minn. R. 4410.3100, subp. 4, a project proposer can apply for a variance to the rules (Minn. R. 4410.3100, subps. 1 and 2) that prohibit construction and final governmental decisions prior to the completion of environmental review.

On August 6, 2026, the proposer submitted an application for a variance to commence certain construction activity related to demolition of various structures and other hazards currently located within the proposed Hillview Business Park.

Following Minn. R. 4410.3100, subp. 5, a notice of variance application was published in both the EQB Monitor (Volume 50, Number 24) and in the public notices section of the Shoreview Press on August 25, 2026, commencing a 20-day comment period that ended September 14, 2026. The variance application and additional materials were made available on the EQB website.

Pursuant to Minn. R. 4410.3100, subp. 6, the EQB considered the variance at its meeting on October 21, 2026.

The board resolves to adopt the attached Findings of Fact, Conclusions of Law, and Order denying the Application for Variance by Maplewood Development and Construction, Inc. acting as developer for SPQR Arden Hills, LLC at Proposed Hillview Business Park.

The board further resolves that the Chair of the board is authorized to sign the attached Findings of Fact and Order.

The board approved and adopted this resolution on October 21, 2026.

_____ Date: _____

Nancy Daubenberger, Chair
Minnesota Environmental Quality Board

Attachment: Order of the Minnesota Environmental Quality Board, denying a variance for Hillview Business Park

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MINNESOTA
ENVIRONMENTAL QUALITY BOARD

ORDER OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD

Denying a variance for Hillview Business Park

In the matter of the Application for Variance by Maplewood Development and Construction, Inc. acting as developer for SPQR Arden Hills, LLC ("Proposer") at Proposed Hillview Business Park.

The board makes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1) Maplewood Development and Construction, Inc., acting as developer for SPQR Arden Hills, LLC ("proposer") at the Proposed Hillview Business Park ("project") is proposing to construct a 62-acre, 972,200 square foot warehouse/distribution/office park development in Arden Hills, Minnesota.

2) The project is located near the corner of County Road I and Fairview Avenue, on a site previously owned by the federal government and used by the Minnesota National Guard for the Arden Hills Army Training Site ("AHATS"). The property was formerly associated with the Twin Cities Army Ammunition Plant ("TCAAP") operations.

3) An environmental impact statement (EIS) is required for the project because it exceeds the threshold for industrial, commercial, and institutional facilities set forth in Minnesota Rule 4410.4400, subp. 11. The City of Arden Hills is the Responsible Governmental Unit (RGU) for the EIS.

4) The City of Arden Hills prepared a Scoping Environmental Assessment Worksheet (EAW) and Draft Scoping Decision Document (SDD) for the project. Notice of the availability of the scoping EAW, draft scoping decision document, and public meeting was published in the EQB Monitor on June 16, 2026 (Volume 50, number 24), with a public comment period running through July 16, 2026.

5) The City of Arden Hills prepared a Final Scoping Decision Document (FSDD) and published an EIS preparation notice in the EQB Monitor on September 8, 2026 (Volume 50, number 36).

6) Minnesota Rule 4410.3100, subp. 1 establishes a prohibition on governmental approvals until any required environmental review process is complete, and in relevant part reads:

> **Prohibitions**. If an EAW or EIS is required for a governmental action under parts 4410.0200 to 4410.6500…a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:
>
> A. a petition for an EAW is dismissed;
> B. a negative declaration on the need for an EIS is issued;
> C. an EIS is determined adequate; or
> D. a variance is granted under subparts 3 to 7 or the action is an emergency under subpart 8.
>
> To start or begin a project includes taking any action within the meaning of "construction," as defined in part 4410.0200, subpart 10.

7) Minnesota Rule 4410.0200, Subp. 10 reads:

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Construction. "Construction" means any activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping.

8) On August 6, 2026, the proposer submitted an Application for a Variance ("application") under Minnesota Rule 4410.3100, subp. 4 to commence certain construction activity related to demolition of various structures and other hazards currently located within the proposed Hillview Business Park.

9) Minnesota Rule 4410.3100, subp. 4, reads:

> **Variance.** Construction may begin on a project if the proposer applies for and is granted a variance from subparts 1 and 2. A variance for certain governmental approvals to be granted prior to completion of the environmental review process may also be requested. A variance may be requested at any time after the commencement of the 30-day review period following the filing of an EAW or a scoping document, when allowed under part 4410.2100, subpart 2. The proposer shall submit an application for a variance to the EQB together with:
>
> A. a detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted;
>
> B. the anticipated environmental effects of undertaking the proposed construction or granting the governmental approvals;
>
> C. the reversibility of the anticipated environmental effects;
>
> D. the reasons necessitating the variance; and
>
> E. a statement describing how approval would affect subsequent approvals needed for the project and how approval would affect the purpose of environmental review.

10) The application states that the proposer is seeking a variance for reasons of public safety, noting that "Despite the efforts of the Proposer to keep the public out of the Project Site, including installing locked gates, fencing, and other security measures (all of which have been destroyed or removed) various urban explorers and other trespassers continue to access the site to explore, vandalize, and utilize the various structures and bunkers. There have been numerous instances of vandalism, fires, and parties that result in the necessity for emergency responders to intervene. The emergency responders have difficulty accessing many of these more remote areas with the necessary equipment and vehicles due to lack of roads and other infrastructure. This results in emergency situations that cannot be adequately addressed on a timely basis and lead to further escalation of the problem."

11) On August 18, 2026, the proposer provided additional information in response to a request from EQB staff for more documentation of the work that the proposer planned to undertake if the variance is granted and more information on the public safety threat. Again, on September 1, 2026, the proposer provided additional information in response to EQB staff seeking clarity on the number of buildings and square footage of proposed demolition.

12) Minnesota Rule 4410.3100, subp. 5, reads:

> **Variance applications**. The EQB chair shall publish a notice of the variance application in the EQB Monitor within 15 days after receipt of the application. The EQB chair shall issue a press release to at least one newspaper of general circulation in the area where the project is proposed. The notice and press release shall summarize the reasons given for the variance application and specify that comments on whether a variance should be granted must be submitted to the EQB within 20 days after the date of publication in the EQB Monitor.

13) The EQB finds that the proposer submitted the necessary information for an application for a variance.

14) The EQB published a notice of variance application in both the EQB Monitor (Volume 50, Number 24) and in the public notices section of the Shoreview Press on August 25, 2026, commencing a 20-day comment

period that ended September 14, 2026. The EQB also made the variance application and additional materials available on the EQB website.

15) During the public comment period, EQB received one comment from the Metropolitan Council and ten comments from members of the public. The comments received are provided as Attachment 1.

16) Minnesota Rule 4410.3100, subp. 6, reads:

> **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:
>
> A. the RGU consents to a variance;
>
> B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship is hardship caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state. It does not include hardship caused by the proposer's own action, or inaction, if the hardship was reasonably foreseeable;
>
> C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and
>
> D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

17) On August 10, 2026, the City of Arden Hills passed Resolution No. 2026-038, consenting to the variance requested by the Proposer, with the following conditions:

a) The Proposer may apply for a demolition permit from the City to demolish or knock down the above ground structures on the Property.

b) The Proposer must provide erosion control required by the City before, during, and after the demolition.

c) The Proposer may remove demolished materials, install a fence to deter unauthorized access to the Property, and fill in subgrade structures.

d) The Proposer must not remove or damage significant trees or wildlife.

e) The Proposer must not perform any site preparation work beyond demolishing the structures, perform subgrade excavation work, bring fill into grade the Property, or any grading.

18) The EQB finds that the RGU has consented to the variance, based on City of Arden Hills Resolution No. 2026-038. (Attachment 2)

19) The EQB finds, based on the variance application and the comments received, that the proposer has not demonstrated that the proposed construction is necessary to avoid a serious threat to public health or safety. The EQB finds the following regarding this issue:

a) The applicant stated that they have installed “locked gates, fencing, and other security measures (all of which have been destroyed or removed).”

b) City of Arden Hills staff provided information to EQB staff via email on September 8, 2026 (Attachment 3). In this email, the City staff noted:

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i) fencing, likely installed by the Federal government as owners of the site, has been in place around the perimeter of the entire site since 1953, and additional fencing was installed in August of 2026, again by the federal government

ii) the applicant has replaced locks to the gated entrance multiple times since gaining ownership of the site at the beginning of 2026

c) Commenters indicate a history of security concerns at the site dating back prior to the applicant acquiring the property, while noting no improvements have been installed such as lights, cameras, or signage by either the applicant or others.

20) The EQB finds that the statements in the application do not provide sufficient information about the gates, fencing, or additional security measures to demonstrate a significant effort to improve security or to consider measures beyond maintaining current security, other than proposing the actions for which the variance has been requested (demolition of the structures).

21) The EQB finds, based on the variance application and comments received, that the proposer has not demonstrated that the construction for which the variance is sought will not have a serious adverse effect on the environment. The EQB finds the following about this issue:

a) The application states that the "Proposer does not anticipate any significant environmental effects from undertaking the proposed construction." The application then discusses two potential areas of impact; wetlands and ecologically significant areas and state-listed species.

i) The application notes that the wetland delineation did not identify any wetlands in the areas of proposed construction.

ii) The application includes the DNR Natural Heritage review findings, and notes that the Proposer "would follow standard and approved avoidance plans to address any potential concerns regarding these areas of potential habitat during all construction activities."

iii) The application does not include information related to any other environmental effects identified in the scoping EAW and FSDD.

b) The DNR Natural Heritage review findings identify rare features that may be impacted by the proposed project, including: the AHATS-Rice Creek Important Bird Area, multiple bird species, Blanding's Turtle, and multiple plant and insect species. The findings note the need for avoidance plans, particularly for the Blanding's turtle and Ghost tiger beetle. The application states that standard and approved avoidance plans would be followed, but such plans are not yet approved and therefore cannot be demonstrated to prevent effects on these species.

c) Comments from the Metropolitan Council raise concerns that the application "does not address how demolition might mobilize contaminants in the soil" and that such mobilization could pose risks to groundwater.

i) MetCouncil notes that the application does not address the site's location within two drinking water supply management areas, and therefore the potential for construction activities to impact drinking water. Without further information, it cannot be determined whether the proposed construction will not have a serious adverse effect on the environment.

ii) MetCouncil also notes that the application's statement of no significant environmental effects is inconsistent with the findings of a 2024 Phase 1 Environmental Site Assessment, prepared as part of the project's Scoping EAW process and referenced in the scoping EAW, "It is probable that when the storage bunkers are demolished that soil that has historically been in contact with creosote impregnated retaining walls could be impacted by PAHs at concentrations of potential concern." As this concern, which is specific to the action being requested, was not addressed, it cannot be

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determined whether the proposed construction will not have a serious adverse effect on the environment.

d) The public comments raise similar concerns about rare features, habitat, and site contamination.

22) The EQB finds, based on the variance application and the comments, that the applicant has not demonstrated that the construction for which the variance is sought is separable from the remainder of the project. Although demolition will likely be necessary for whatever project is eventually constructed, demolition could have the effect of eliminating from consideration certain feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

23) The scoping EAW and FSDD indicated the need for further analysis to understand potential impact from the proposed project, which includes the construction seeking a variance. Based on the FSDD, the RGU will be further analyzing potential impacts from the proposed project to the existing "contamination/hazardous materials/wastes" in the Draft EIS, as well as impacts to "fish, wildlife, plant communities & sensitive ecological resources (rare features)."

24) Therefore, the application has failed to meet the requirements for granting a variance found in Minnesota Rule 4410.3100, subp. 6.

CONCLUSIONS OF LAW

1) Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.

2) The EQB concludes that pursuant to Minnesota Rules 4410, the EQB has authority to grant or deny a variance to the prohibition on governmental approvals in Minnesota Rule 4410.3100, subp. 1.

3) The EQB concludes that the proposer has submitted the necessary information for an application for a variance under Minnesota Rule 4410.3100, subp. 4.

4) The EQB concludes that the standards laid out in Minnesota Rule 4410.3100, subp. 6 have not been met based on the evidence provided in the initial application, subsequent supporting information, and comments.

ORDER

The EQB hereby denies the Application for Variance by Maplewood Development and Construction, Inc. acting as developer for SPQR Arden Hills, LLC at Proposed Hillview Business Park.

The board approved and adopted this order on October 21, 2026.

_____ Date: _____

Nancy Daubenberger, Chair
Minnesota Environmental Quality Board

Attachments:

Attachment 1: Public comments

Attachment 2: City of Arden Hills Resolution No. 2026-038

Attachment 3: Email from City of Arden Hills, September 9, 2026

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Attachment 1: Public comments

Note: EQB staff are providing a copy of the comments for accessibility purposes. The originals can be made available on request.

Commenter	Comment
Metropolitan Council staff	Metropolitan Council Staff recommend that the EQB should not grant an EIS variance for Hillview Business Park in Arden Hills at this time. The submitted EIS variance application does not provide enough information to understand the full impacts of demolishing the structures. While the EIS variance application addresses, to some degree, how demolition will affect surface water resources and natural habitat, and notes that Rice Creek Watershed District and DNR staff have been involved in these discussions, it does not address how demolition might mobilize contaminants in the soil. This is a significant concern, as soil contaminant mobilization could pose risks to groundwater resources and create other environmental hazards if demolition proceeds before a full EIS investigation is completed. The EIS variance application also does not acknowledge that the site is located in the City of New Brighton's Drinking Water Supply Management Area, which has been designated by the Minnesota Department of Health and the city as moderately to highly vulnerable to contamination. Groundwater flowing beneath this site moves within 10 years or less to municipal wells and treatment infrastructure that supply around 23,000 people with drinking water. The application also does not acknowledge that the site overlies part of the Priority B Surface Water Drinking Water Supply Management Area for the Minneapolis and St. Paul drinking water supplies. The applicant should consider potential impacts on downstream water supplies from potential contamination that could result from construction activities at this site. Any work that could create or mobilize groundwater contamination in this area should include plans to monitor and mitigate risks to groundwater and public health. The EIS variance application also contains a significant inconsistency with a prior study of the area. The applicant writes under subpart B. Anticipated Environmental Effects of Undertaking the Proposed Construction: "The Proposer does not anticipate any significant environmental effects from undertaking the proposed construction." This statement contradicts a finding in Stantec's 2024 Phase 1 Environmental Site Assessment, prepared as part of the project's Scoping EAW process: "It is probable that when the storage bunkers are demolished that soil that has historically been in contact with creosote impregnated retaining walls could be impacted by PAHs at concentrations of potential concern." (Scoping EAW, Appendix C, 7.3 Conclusions). This discrepancy should be corrected and addressed in the application before it is considered for approval. Given Stantec's Phase 1 findings, there is reasonable basis to conclude that demolishing these structures could have a detrimental environmental impact significant enough to warrant completion of a full EIS before this portion of the project moves forward. It is therefore recommended the variance be denied at this time. Finally, the applicant should outline any potential visual, noise, air, and water impacts of the demolition activities referenced in the EIS Variance request to adjacent Rice Creek North Regional Trail corridor.

Morgan Gabrielson	I am a resident of the Shamrock Park neighborhood, directly across County Road I from the Hillview Business Park site. I am asking the EQB to deny the requested variance allowing demolition to proceed before the Environmental Impact Statement is complete. My biggest concern is that demolition and site disturbance could undermine the very environmental review that is supposed to determine how this property can be developed safely. The site is immediately adjacent to Rice Creek and its watershed and provides habitat for significant wildlife, including a large osprey population and bald eagles. The EIS should establish what is there and what protections are needed before the site is altered. I am also concerned about hazardous materials. The property has a history of contamination, and the proposed demolition includes partially buried structures and foundations. I don't feel comfortable assuming there will be no significant environmental impact before the EIS has actually evaluated it. I understand the developer's concerns about trespassing and safety, but I don't think those concerns should automatically justify moving ahead of the environmental review. There are other ways to secure the property while that process is completed. The neighborhood has also received very little clear information throughout this process, which makes it difficult for residents to understand what is actually being proposed and what risks we are being asked to accept. Please deny the variance and allow the EIS process to be completed before demolition begins.
Alyssa Kruzel	**Public comments for Maplewood Development Variance request for Hillview Business Park in TCAAP in Arden Hills** **September 2026** I live in the Shamrock Park neighborhood of County Rd. I (Arona St. between Pascal and Asbury) across the county road from the proposed Hillview Industrial Business Park Development in TCAAP in Arden Hills. The Shamrock Park neighborhood is in Shoreview so we don’t have an elected voice representing our concerns on the Arden Hills City Council. The closest Arden Hills resident is about a 7-minute drive to this proposed development, making us the most impacted residents. County Rd. I is the only access in and out of our neighborhood. I am one of the neighbors actively informing and organizing our neighborhood of 565 plus homes. Many in our neighborhood are very concerned about this proposed development as well as demo and clean up variance request. We had over 100 people at a neighborhood meeting on July 15 hosted by the developer, 75 people at the Aug 17 Shoreview City Council meeting and another 60 people at the Arden Hills City Council meeting on Aug 24. We have an engaged and concerned neighborhood. A variance is being requested to start demo and clean up on the existing buildings for public safety to reduce trespassing, vandalism and fires on the site. I strongly ask the Board to uphold the integrity of Minnesota’s environmental review process due to the concerns outlined here and deny the variance request.

The toxins in the existing buildings on the Hillview development site and trespassing on the property have been an area of concerns for decades and many in the neighborhood have shared their concerns with the City of Arden Hills, Shoreview and Ramsey County Sheriff for years and no action has been taken by any of these agencies to meaningful address the safety and nuisance concerns on the site. There has been poor site security, lack of warning signs and miscommunication about site access between the local agencies, Lake Johanna Fire and the County Sheriff's Office so public safety professionals weren't able to access the site in a timely manner or do any monitoring or proactive enforcement. Tragically, a fatal incident occurred over the 4th of July weekend. Since then, some of these access and local coordination issues have been resolved, now giving law enforcement the access needed for proactive monitoring and response as needed.

The concerns of trespassing, vandalism and fires can now continue to be prevented and monitored with local code and law enforcement and without bypassing the environmental review. These safety concerns can be addressed by requiring the developer to install no trespassing signage, security fencing, lighting, security cameras and active site monitoring. As the Responsible Governmental Unit (RGU), Arden Hills has the authority to enforce public safety and hazardous property ordinances—bypassing state environmental protections to achieve site security and law enforcement is not appropriate.

Under **Minnesota Rules 4410.3100, Subpart 6(B)**, a variance cannot be granted to relieve an economic or safety hardship caused by a proposer's own action or inaction if that hardship was reasonably foreseeable. The developer knowingly purchased a site with pre-existing structural concerns, have done nothing to address these safety concerns, so they cannot use a known, self-created risk as a legal shortcut around the environmental review.

An EIS studies the land and environment to protect water, wildlife, open space and neighboring homes. Demolishing buildings, running heavy machinery and moving soil right now alters the land before experts can accurately measure environmental impacts, runoff, etc. being proposed by this development.

This site is currently open space, close to Rice Creek and contains the following wildlife: one of the largest recolonization of ospreys with at least 9 active nests in the area, bald eagles, kestrels which are a declining species, the rare tiger beetle, the rare Henslow Sparrow and Blanding's turtles

Asbestos and cresol are on the site along with unverified underground bunkers with unknown contents. Approving demolition before the EIS is complete creates a major public health risk as it will disturb hazardous structures including ones where the hazards aren't fully known.

Under **Minnesota Rules 4410.3100, Subpart 6(D)**, a variance cannot be granted if it would eliminate feasible and prudent alternatives or mitigation measures that would otherwise be evaluated in the EIS. Altering site topography and soil conditions prematurely destroys the baseline conditions needed to assess protection measures for Rice Creek, wildlife and the surrounding neighborhood.

Throughout this process, both the developer, Hillview Development, and Arden Hills have not provided clear, timely communication to the Shamrock Park neighborhood and their own Arden Hills residents. Whild the communications from the City of Arden Hills is improving, our public trust and safety concerns remain unaddressed. Many in the neighborhood are concerned about continued lack of communications and transparency if this variance were to be approved, now putting our families and homes at health risks before we have the answers from the EIS.

I strongly ask the Board to uphold the integrity of Minnesota's environmental review process due to the concerns shared and deny the variance request.

If the EQB approves the variance request and allows demolition of the existing buildings and the start of the environmental clean up before the EIS is complete, the neighborhood wants strict, enforceable safety conditions to protect neighboring residents and local natural resources:

• **Air sampling:** Mandatory air monitoring for airborne asbestos fibers, particulate matter, and cresol/chemical vapors during all excavation and demolition activities.

• **Dust suppression:** Dust-control requirements such as watering, covered transport trucks and regular debris clean up.

• **Erosion & runoff barriers:** Heavy-duty fencing, sediment traps and catch basin protection to prevent runoff from reaching Rice Creek or surrounding stormwater systems.

• **Groundwater protection:** Protocols to prevent toxic soil and materials from coming into contact with local water sources.

• **Working hours:** Demolition and hauling restricted to standard weekday business hours (e.g., 8:00 AM – 5:00 PM) to minimize noise and traffic impacts.

• **Neighborhood meeting**: A neighborhood meeting before the start of any site work or demolition activities as County Rd I is our only access in and out of the neighborhood. Meeting will have schedules/timeline, safety protocols, process, etc.

• **Direct mailings**: Advance written notice mailed directly to all residents in the Shamrock Park neighborhood (565+ homes) to alert of both the neighborhood meeting and information about any site work.

• **Project webpage**: Weekly updates to the Arden Hills project webpage containing schedules/timelines, safety protocols and updates.

• **Staff contact:** A contact person for neighbors to report safety, dust, or noise concerns within 24-hour response time.

	Also, County Rd. I and the access roads to the Hillview site are currently being used to remove toxic waste/mud from the drugging of Round Lake in Arden Hills. The toxic waste/mud was supposed to be taken out on Highway 96 but due to utility work by Xcel Energy, County Rd. I is now the exit for this toxic waste. No one in our neighborhood was informed even though County Rd. I is our only access in and out of the neighborhood and our children walk along County Rd. I to get to school at Pinewood Elementary and Edgewood Middle Schools. We are worried about the amount of toxic waste being taking out with both the Hillview and Round Lake projects at the same time on the only road to get to our homes and continued lack of communications and transparency from local government agencies.
Amber Brookman	I am a member of the Shamrock Park neighborhood closest to the proposed project and have serious concerns regarding Maplewood Development's request for a variance before a comprehensive environmental impact study can be conducted. This development is could lead to serious impacts on the local watershed, specifically the Rice Creek regional north corridor that runs right through the property. Additionally, I'm worried about Maplewood Development wanting to plow through important and necessary timelines when this patch of land has repatriated into an extremely delicate ecosystem full of keystone species, some of which were believed to be functionally extinct in Minnesota but have been found thriving on this piece of land. This area, once a toxic waste pit has flourished despite the odds, with native species that deserve the time and care and respect of a thorough environmental study. Lastly, this development is going to have devastating impacts to the already underdeveloped traffic infrastructure. Neighbors are not being informed in a timely manner, people will be deeply impacted by decisions that we werent even allowed in the room for. This project impacts the safety of pedestrians and animals in the area as well and I'm concerned by the lack of interagency communication on the developers part. Please allow the necessary process of a comprehensive study to be completed before allowing them to tear up the site.
Mary Peterson	I am a resident of Shoreview whose neighborhood will be impacted by the proposed Hillview development in Arden Hills. I have many concerns about this project and the possibility of a variance allowing construction to begin before the EIS is complete. There are significant environmental concerns about this project. I am opposed to this variance **Prejudicing the Environmental Impact Statement (EIS)** • An EIS studies the land and environment in its current state to protect Rice Creek, the wildlife, open space and our neighboring homes. Demolishing buildings, running heavy machinery and moving soil right now alters the land before experts can accurately measure environmental impacts, runoff, etc.

- In addition to being very close to Rice Creek, the area contains the following wildlife: largest recolonization of ospreys with at least 9 active nests in the area, bald eagles, kestrels which are a declining species, the rare tiger beetle and the rare Henslow Sparrow.

- Known toxins like asbestos and cresol are present on-site, alongside unverified underground bunkers with unknown contents. Approving demolition before the EIS is complete creates a major public health risk because it is completely unclear from the developer whether work will stay above ground or disturb hazardous subsurface structures.
- Under Minnesota Rules 4410.3100, Subpart 6(D), a variance cannot be granted if it would eliminate feasible and prudent alternatives or mitigation measures that would otherwise be evaluated in the EIS. Altering site topography and soil conditions prematurely destroys the baseline conditions needed to assess protection measures for Rice Creek, wildlife and the surrounding neighborhood.

Self-imposed hardship vs. local code and law enforcement

- Under Minnesota Rules 4410.3100, Subpart 6(B), a variance cannot be granted to relieve an economic or safety hardship caused by a proposer's own action or inaction if that hardship was reasonably foreseeable. The developer knowingly purchased a site with pre-existing structural hazards; have done nothing to address these safety concerns, so they cannot use a known, self-created risk as a legal shortcut around environmental review.
- Safety hazards which have been known about for decades call for local code and law enforcement, not a bypass of environmental laws. Tearing down buildings isn't the only way to fix safety concerns.
- Unlawful gatherings on the property have been a long-standing issue, largely driven by poor site security, access issues and miscommunication between the City of Arden Hills and the Ramsey County Sheriff's Office. Tragically, these unresolved gaps culminated in a fatal incident over the 4th of July weekend. Since then, those access and coordination barriers have been resolved, now giving law enforcement the access needed for proactive, regular patrols—proving that site safety can be managed through active monitoring without bypassing environmental review.
- As the Responsible Governmental Unit (RGU), Arden Hills has always had the authority to enforce hazardous property ordinances—bypassing state environmental protections to achieve basic site security and law enforcement is unnecessary and inappropriate.
- Safety can be addressed immediately by requiring the developer to install high-security fencing, lighting, security cameras and active site monitoring. A property owner's delay in securing their own land shouldn't be an excuse to rush the review.

Lack of transparency & communication:

- Throughout this process, both the developer, Hillview Development, and Arden Hills—as the Responsible Governmental Unit (RGU)—have consistently failed to provide clear, timely communication to the Shamrock Park neighborhood and their own Arden Hills residents. Granting a variance under this pattern of poor communications transparency creates severe safety risks and undermines public trust and leaves critical community safety concerns unaddressed. Arden Hills must hold themselves and the developer to a higher standard of open communication and environmental review, rather than approving exceptions behind a wall of poor communications and lack of transparency. Public safety requires open communication, not shortcuts.

If the EQB approves the variance and allows demolition to move forward before the EIS is complete, the neighborhood wants strict, enforceable safety conditions to protect neighboring residents, public health, and local natural resources:

- **Continuous Air Sampling:** Mandatory real-time air monitoring at the property boundary for airborne asbestos fibers, particulate matter, and chemical vapors (cresol) during all excavation and demolition activities.
- **Dust Suppression Standards:** Enforceable dust-control requirements (e.g., continuous water misting, covered transport trucks, and prompt street sweeping).
- **Subsurface Protocol:** Clear, published procedures specifying that work must halt immediately if unknown underground structures or hazardous materials are uncovered.
- **Erosion & Runoff Barriers:** Heavy-duty silt fencing, sediment traps, and catch basin protection to prevent runoff from reaching Rice Creek or surrounding storm systems.
- **Groundwater Protection:** Protocols to prevent soil disturbance or excavation from coming into contact with local water tables or unverified subsurface vaults.
- **Working hours:** Demolition and hauling restricted to standard weekday business hours (e.g., 8:00 AM – 5:00 PM) to minimize noise and traffic impacts.
- **Direct Mailings**: Advance written notice mailed directly to all residents in the Shamrock Park neighborhood (565+ homes) to the start of any site work or demolition activities as County Rd I is our only access in and out of the neighborhood.
- **Public project webpage**: Enhanced communications including weekly updates to the Arden Hills project webpage containing schedules and timelines, plans, reports and safety protocols.
- **Dedicated community contact:** A contact person for neighbors to report safety violations, dust, or noise concerns with guaranteed 24-hour response times.

Karen Langenfeld	To Jesse Krzenski and voters on variance request from Maplewood construction to conduct demolition with the Primer-tracer area prior to an environmental study. I am a resident of Shoreview in the Shamrock Park neighborhood. My property is directly across from the Primer-Tracer development area, just a couple of thousand feet from the proposed demolition. I have been living in Shoreview for 27 years and have a Ph.D. in Educational Psychology from the University of Minnesota. Please deny the requested variance to demolish the buildings in the primary-tracer area. While our Shamrock community agrees that "something must be done" we are concerned that skipping an important environmental assessment is not answer. **There are additional environmental hazards that the developer has not disclosed.** Many more environmental hazards other than the ones listed on the variance request exist in this area, including lead from munitions testing and target practice over the years. I am concerned that dust from the debris will affect my health and those of my neighbors, and that pollutants may enter the water supply. For more details, please see the evidence provided by Ann Maslansky-Takahashi. **The debris from the demolition will also be a hazard** Maplewood construction has not committed to the safe disposal of the rubble from taking down the buildings. Anything small enough to fit into a pocket, or large enough to be used as a destructive tool is trading one problem for another set of problems. **The real issue is lack of security and oversight** The incidents of dangerous and unlawful behavior have increased dramatically since Maplewood Construction purchased the property. The buildings have been there for many decades, and have always attracted trespassers. With or without the old buildings, the area is a handy, adult-free zone where the cops don't show, alarms won't sound, and cameras won't take your picture. The locks are broken? Ask how long it takes Maplewood Construction to notice the break-in and replace the locks or repair the fence. Ask why there are no cameras. Ask why the buildings aren't boarded up. Ask why hazardous materials warnings aren't posted. Ask why they don't have security on site. Ever. Ask Arden Hills and Ramsey county whether they plan to address crime and enforce the law, or if they think that the problems will magically disappear in a cloud of toxic dust without them lifting a finger or spending a dime. The buildings should be removed when the rest of the development takes place, with enough activity in the area to deter trespassers, and we know more about the potential effects on the environment. If the decision is made to allow the demolition to proceed, ask for a detailed description of how they will assure the safe disposal and testing of the debris and find out *what else* Arden Hills and Ramsey County willing to do to keep the area safe. I don't believe the demolition is necessary – but it certainly isn't **sufficient** to solve the problem. Decisions have consequences – please do not make this one hastily.

Mary Rempfer

Dear Environmental Quality Board Members,

I am writing to voice my strong opposition to the variance request submitted by Maplewood Development, Inc. to begin demolition of structures at the former Primer Tracer site prior to the completion of the Environmental Impact Statement (EIS). As a resident of the Shamrock neighborhood living directly on County Road I in Shoreview, I have serious concerns regarding the environmental and health impacts this premature action could have on our community.

Environmental Concerns & Lack of Due Diligence The site carries a documented history of severe contamination linked to the former Twin Cities Army Ammunition Plant. Known hazardous materials detected in the area include:

- Trichloroethylene (TCE) and Tetrachloroethylene (PCE)
- Volatile Organic Compounds (VOCs)
- Heavy metals, including lead
- Asbestos and creosote

Commencing demolition before the EIS is fully completed poses a significant risk of disturbing these toxins and contaminating surrounding soil and groundwater. Granting a variance undermines the very purpose of the EIS process, which is designed to ensure thorough due diligence and protect local public health and ecosystems before physical site disturbance begins.

Site Security vs. Environmental Protection While I deeply sympathize with the tragic loss of life on the property last summer, rushing demolition under the guise of public safety is the wrong approach. The trespass issues and safety risks over the past twenty years stem from inadequate property management. As the property owner, Maplewood Development, Inc. should be held responsible for securing the site immediately through basic, standard measures:

- Installing secure perimeter fencing
- Adding adequate lighting and security cameras
- Posting clear "No Trespassing" signage
- Discussing and planning trespassing measures with the Ramsey County Sheriff Department

Pushing for immediate demolition appears to be driven by liability concerns from Ramsey County, Arden Hills, and Maplewood Development, Inc., rather than a grounded assessment of environmental safety. Liability mitigation must not override the mandatory environmental review process.

Conclusion After sitting vacant for decades, this property must not be rushed through demolition without understanding the full environmental footprint. The potential exposure to toxic substances directly impacts key stakeholders, including the residents of the Shamrock neighborhood.

I respectfully request that the EQB **deny the variance** and require that all demolition efforts remain on hold until the comprehensive EIS is fully completed and reviewed.

	Thank you for your time, consideration, and commitment to protecting our community's environment.
Diane Hofer	My name is Diane Hofer and I live in the northwest corner of Shoreview, Minnesota, directly two blocks north of the famous piece of undeveloped land here in the Twin Cities, known as the property of the old Army Ammunition Plant. Ever since moving here 33 years ago, there has always been discussion on how to clean this property up from its toxins and develop it. Besides this land being used by the National Guard for training purposes, development projects have never really become a reality, after many ideas being proposed, including the building of a new Minnesota Vikings Stadium. In the meantime, our residential neighborhood has thrived and been built up as a hotspot for outdoor recreational trail hiking and canoeing on the Rice Creek, with an extremely active city park (Shamrock Park), and the future hopeful addition of cross-country ski trails. We have two local elementary schools on each end of the neighborhood. We are a neighborhood of hardworking citizens who believe strongly in investing and taking care of community and family. And we treasure our neighborhood and believe in investing into keeping it safe and healthy. Early this summer, a few of the neighbors happen to stumble on to a possible development on the arsenal land of a “light industrial park”. Very little information was available initially, but as these neighbors dug into further research, a great alarm went up. The neighborhood has united in expressing our concern over this development, as we have NO idea what exactly is being proposed to be built in our community. We are not being given information as to what exactly this development is or who is behind it. We do know that the builder is Maplewood Development, who expressed upfront that neighboring concerns are of no interest to them. Neighbors have expressed concerns to both the City of Arden Hills and the City of Shoreview. The only residents in this entire area being affected by this development will be our neighborhood, a residential area that sits on the north side of County Road I, directly east of the 35W freeway. After learning that there will be approximately 1200 employee parking lot spaces and possibly 100 trucks coming and going from this industrial site daily, we neighbors were shocked, as this will GREATLY IMPACT us, with traffic coming in and leaving all on the north end of the site, along County Road I. What will this do to our property value? We are already landlocked into this neighborhood, with County Road I being our ONLY way in and out. As you can imagine, traffic safety issues and noise pollution are heavy on our minds. Our neighborhood has been built over time with an emphasis on outdoor recreation, and we have our children coming and going from school along that county road throughout the year. It has been stated that this county road is not designed/built to handle traffic any heavier than what already exists. One other MAJOR concern for our neighborhood is the demolition of the old buildings that still exist on that old property, buildings Maplewood Development is responsible for demolishing, if this industrial site project is approved. Land contamination is also worrisome to us, as this land will be dug up. What toxins will fill the air during all of this construction? The building project is currently pending, while a deeper than initially thought environmental safety review is conducted. Maplewood Development is requesting a variance from the Environmental Quality Board (EQB) rule that prohibits construction activities before the Environmental Impact Statement (EIS) is

	complete to begin demolition and cleanup of the existing buildings on the Hillview site. With the developers disregard for the local citizens/neighborhood, you can imagine that accountability on their part is concerning to us. Because of the lack of information, transparency and disregard as to how this development will impact our neighborhood, we residents have serious concerns. As I stated, this land and its structures are known to be associated with toxins… NO secret. I would question how this whole clean up process is going to affect the county open space, the Rice Creek Watershed and the Shoreview neighborhood. It would be appreciated amongst our concerned community that we be given an opportunity to review the clean up documents from Rice Creek Commons and we ask that the Hillview Development follow the same process. Also, it would be appreciated if we the community were able to see a plan for th actual movement of the materials from the clean up. This neighborhood is where we live and call our home, and all aspects surrounding this proposed development will impact us… and not ideally. Please know we ask for proper procedures to be considered, respected and followed, especially when taking into account the community that already exists here.
Ann M. Maslansky-Takahashi	Thank you for the opportunity to comment on Maplewood Development and Arden Hills as RGU for multiple projects and current Variance requests. I am Ann M. Maslansky-Takahashi. I am a GIS Technician and have advance course work with GIS/LIS Consortium and also ESRI. I have past served on the NWA SOC Union Liaison for NWA operations as well as Homeland Security liaison after 9/11. I have certified as an EMT-D as well as a "GO Team" response member and CISM trained. I also have graduate course work through Hamiline University Mississippi River Institute. I also am District 1 Charter Commissioner and a 31 year resident in the Shamrock Neighborhood to the North of TCAAP and County Road I. I would like to raise concerns regarding Comments on the requested Variance by Patrick J Lindmark from Taft Stettinius & Hollister LLP and Arden Hills Resolution NO.2026-038. Specifically, a denial of the variance is respectfully requested under criteria that is outlined in Minnesota Rules Part 4410.3100. [1,2]. Also, I am requesting a statutory stay due to the EIS being incomplete, inaccurate and failure to properly disclose critical elements of the development site. The RGU Arden Hills under MInnesota Rules 4410.2500 to disclose and acknowledge gaps. 1. Primer Tracer site is an island and not accessible as stated in the EIS. a. the easement given to Maplewood Developement is not legal under Ramsey County Home Rule Charter i. Ramsey County Board violated The Charter when in fact it did not include a "no net-loss" prior to granting the sub easement which also may be in question. https://assets.ramseycountymn.gov/files/migrated-files/RC_Charter_Introduction_April_2019.pdf "Pursuant to Section 2.02 K of the Charter, the County Board has the power to sell, lease or otherwise dispose of park property upon

such terms as it considers best in the public interest. This Section allows for transfer of park property by shifting

the decision-making process from the state legislature to the county board and requires at least two public

hearings. If the county board decides to proceed with the transfer, it must be done by ordinance.

In 1994, the electorate approved an amendment to this section of the Charter stating that the County Board

shall adopt, by resolution, a policy requiring no net loss of park, recreational or open space land and facilities

before it can convert county park or open space to other uses."

The exact governing text is found under **Section 2.02 (K)** of the Ramsey County Home Rule Charter. The 1994 voter-approved "no net loss" amendment added the following specific legal directive to the County Board's powers: [1]

"...the County Board shall adopt, by resolution, a policy requiring no net loss of park, recreational or open space land and facilities before it can convert county park or open space to other uses." [1]

2. Arden Hills, Ramsey County, Shoreview and the Metropolitan Council have written agreements that the easement access parcel that this is designated Park, open space and wildlife corridor.

a. proposal and agreement includes acquisition of the Primer Tracer site to preserve the intended usage of the Rice Creek Regional Trail

b. Ramsey County waste advised of the proposed boundary adjustments and associated 2,407.24 acre (including the Primer Tracer site) was to be submitted to the Metropolitan Council system request. This was affirmed in the 2024 Regional Parks policy.

c. Ramsey County and Arden Hills as RGU failed to send preliminary plans to the Environmental Services Assistant MAnager at the Metropolitan Council **PRIOR to initiating any new development of the regional trail corridor.**

Reference 2040 Regional Parks Policy Plan.

Metropolitan Council Business Item 2021-1 January 7, 2021

3. No EIS or any studies have been done on Parcel C (chimney looking parcel that gives only access for the Primer Tracer site connected to County I)that is clearly mapped as Park and is designated as such.

This was a referenced in a presentation by Ramsey County Park and Recreaction to the Ramsey County Charter Commission in 2022

Improper Project Prejudgement makes assumptions not based in fact. Again the Primer Tracer EIS Scoping document is incomplete and violates Minnesota Rules 4410.2500

Maplewood Developer stated this will be a 1 million acre site with 100-200 heavy trucks and 1,200 employee parking spots. This was stated at multiple public meetings and to concerned residents.

1. This fact alone indicated Arden Hills as RGU is violating its own city code as such a large capacity Development is not considered “light industrial, office, and warehouse/distribution complex. a. In fact there is no zoning in Arden Hills that aligns with this designation. In Chapter 13(zoning code) of the City Code of Ordinances, there are I-1 Limited Industrial District, the I-2 General Industrial District, and the I-Flex District.

The above shows that a stay of this project and denial of the variance due to gross misrepresentation of the project.

The sheer size would nullify the Rice Creel Regional Trail Corridor and its planned usage. It would also Eliminate Alternative mitigation and intended usage.

Maplewood Development and Arden Hills as RGU have failed to show extreme hardship.

Arden Hills and now Maplewood Development has a long and extensive documented history of Environmental hazards.

See Aug 6th letter from Taft Stettinius & Holllister LLp

The ‘public safety’ issues have been ongoing for decades at the site. The GSA and historical TCAPP documents have been documented. When the property was sold Maplewood Development did not continue to maintain the fence or locks on the site. Nor did the work on requested mitigation to fix fences or locks. In fact Ramsey County Sheriff’s department requested remote surveillance and to date this has not been undertaken.

I myself personally have called in incursions and specifically requested Ramsey County Sheriffs increased surveillance. Including prior to 4th of July as there is historically incursions on the site. Unfortunately this year it resulted in a death. This death was exacerbated by the fact Lake Johanna Fire Department was never notified (as well as possible Ramsey County Sheriff’s Department) by Arden Hills as the RGU or Maplewood Development that this was now “private” party. The rescue of the now deceased party was delayed because needed equipment had to be requested as no plans were set forth for this highly complex location. The Ramsey County Sheriff Department is now acting as a private security agency at taxpayers expense. These Deputies were surprised to find out it is hazardous/contaminated and under the National Guard and TCAAP considered a “no go” area due contamination and possible unexploded ordinances…. In fact the military never even drove let alone drove in the Primer Tracer area. In fact some of the heavy equipment training is done on County Road I and PT testing and

training is done at Shamrock Park, with the 1 mile course being perimeter roads/trail around Shamrock Park due to the TCAAP environmental issues

Arden Hills as RGU and Maplewood Development has willfully not included the most affected residents in this process. Both on the ongoing hazards, planning and development.

Shoreview requested all residents to the North of this development be notified. In fact I personal. Have caught Arden Hills not sending out open meeting required notices (this is why we have a roundabout as Arden Hills as RDU for Rice Creek Commons did not know our children ***walk to Pinewood Elementary along County Road I and ride bikes through this corridor to Edgewood Middle School***). The very route 100-200 trucks a day will exit onto County Road I as well as all the remediation and construction equipment. This is also where all the contaminated materials will have to traverse. Not to mention environmental exposure in this process with both the remediation and the 1 million square feet of a heavy industrial warehouse or transfer operation. Imagine the road that Fort Snelling State Park has with this type of proposed development and 100-200 trucks sharing the road in a park, recreational wildlife corridor and only one way onto the highway. Currently I cannot even exit off County I going North as the traffic is a parking lot after about 2:30-3:00pm necessitating exiting onto County H from 35W north then using Thumb Road/Old 8 now Rice Creek Boulevard to connect via the roundabout at County Road I. A month ago a traffic enforcement was performed by Ramsey County Sheriff's department and in 1 week 300 stops and 90+ citations were given in this short corridor. This didn't even touch on the Speed and road issues of County Road I north of the Arsenal.

Arden Hills as RGU and Maplewood Development have also minimized the contaminants as "only some asbestos and creosote timber. When in fact the RAB (Restoration Advisory Board) meetings and documents clearly indicate that the residences to the North of the TCAAP site are the most at risk for Vapor Intrusions not limited to the following: 1,4 dioxane; TCE (trichloroethylene); ethylene dichloride; 1,2 dichloroethane VOC's as well as impact water quality for shallow water, drinking water for Arden Hills and New Brighton(and other communities), run off into both the aquifer, Rice Creek

that flows in to Long Lake (that is still currently deficient) which also flows into to the Mississippi Water Shed.

Shifts in the past from site A with no construction caused shifts in the contaminated ground water plume necessitated e additional mitigation wells (via virtual meeting RAB20210420190217)

Also, with the Rice Creek Commons tenant Micron Controls the neighborhood to the North experienced power loss, power surges and brown out notices(on days that temps were below 80 degrees). At least 5 transformers were ultimately replaced. Arden Hills as RDU for Rice Creek Commons again is deficient in accounting for the needs of the residences to the North of TCAAP/County Road I. Even the SGRS (Source Ground Water Recovery System) was impacted as this is actively handling in ongoing hazard mitigation on the TCAAP sites.

Already a home on the corner of Shutta and County Road I whose property tax value in 2026 was $367,000 and is currently listed for $334,000 with no potential buyers due to Maplewood Development and Arden Hill as RGU (in multiple RGU) as well as National Guard/Army projects that are using the Park parcel (parcel C) with no EIS/EAW/Scoping/environmental considerations.

	Minnesota Environmental Quality Board (EQB) denies a construction or procedural variance from environmental review rules if the request fails to meet the specific criteria outlined in Minnesota Rules Part 4410.3100. [1, 2] In summary, this variance in my opinion needs to be denied. But also in fact Stayed for all the above reasons.
Katie Christensen	Dear Mr. Krzenski and Members of the Environmental Quality Board, I am writing to express my strong opposition to the pre-demolition variance requested by Maplewood Development, Inc. for the Hillview Business Park project in Arden Hills. The applicant is seeking to bypass Minnesota Rules to begin demolishing abandoned structures on this **62-acre Superfund site** before a comprehensive Environmental Impact Statement (EIS) is finished. As a resident of the Shamrock Park neighborhood, I urge the EQB to deny this variance. The request fails to meet the strict legal thresholds required under state rules, presents severe public health risks to nearby residents, and contains glaring discrepancies regarding subterranean demolition. **1. Failure to Meet Legal Thresholds for a Variance (Minnesota Rules 4410.3100)** The developer is attempting to use a public safety issue as a corporate development shortcut to bypass state environmental law. This request must be denied based on two clear components of Minnesota Rules: • **Foreseeable, Self-Imposed Hardship (Subpart 6B):** Under Minnesota Rules 4410.3100, Subpart 6B, a variance cannot legally be granted to relieve a hardship caused by a proposer's own action or inaction if that hardship was reasonably foreseeable. Maplewood Development knowingly purchased a property with pre-existing structural hazards and assumed that risk as a condition of their investment. Their failure to properly secure the site cannot now be used as a legal backdoor to escape environmental review. Public safety goals can—and should—be achieved immediately through standard municipal code enforcement, high-security fencing, and property lockdowns, rather than bypassing state law. • **Elimination of Alternative Mitigation Options (Subpart 6D):** Under Subpart 6D, a variance cannot eliminate alternative options from the EIS. Demolishing and filling structures drastically alters the baseline site topography and soil conditions before the EIS can measure them. This destroys the ability of the EIS to study alternative mitigation measures required to protect **Rice Creek** and our surrounding neighborhood. **2. Discrepancies in Subgrade Work and Documented Vapor Intrusion Risks** There is a direct discrepancy between the developer's public narrative and the explicit text of their variance application. In Arden Hills City Council meetings, this request was framed as a safety measure to knock down visible, above-ground structures to deter trespassing. However, the scope of the developer's requested variance specifically extends to including any partially buried bunkers and any below ground foundations. Altering underground infrastructure before the EIS establishes environmental boundaries directly intersects with documented subsurface contamination data tracked by the Twin Cities Army Ammunition Plant (TCAAP) Virtual Restoration Advisory Board (RAB):

Active Shifting Plume: There is an active, migrating shallow groundwater plume at Site A presenting a Vapor Intrusion (VI) risk to the residential neighborhood directly north of the property boundary.

The 12.3-acre Site A parcel sits immediately adjacent to the northern boundary of the Primer Tracer property. Because temporary data proved the groundwater plume moved outside its historical footprint, the U.S. Army finalized delineation data and installed permanent groundwater monitoring wells at Site A.

As you may know, vapor intrusion occurs when volatile organic compounds (VOCs) migrate from contaminated soil or groundwater through the vadose zone and accumulate inside indoor air spaces via openings and foundation cracks. The specific contaminants of concern tracked at this site are Trichloroethylene (TCE) and 1,2-Dichloroethane (ethylene dichloride).

3. Demands for Accountability, Communication, and Public Health Protection

Our community refuses to be the next Minnesota public health disaster. We have watched the devastating, multi-generational impacts of chemical mismanagement with 3M and Water Gremlin. We demand absolute transparency regarding who is safeguarding our air and water, how often it is being checked, and how that information reaches us.

Before any physical disruptions are permitted on this site, the following standards must be codified:

- **Testing Authority & Frequency:** The public requires independent verification regarding which agency—whether the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Health (MDH), or the U.S. Army—is legally responsible for testing these permanent wells. Furthermore, given the actively migrating front of this TCE plume, testing must occur on a strict, multi-season schedule (including peak winter heating months and non-heating months) to catch vapor spikes before they reach our basements.
- **Direct Community Communication:** Environmental data must not be buried in dense, hard-to-access government registries. We demand a proactive, localized communication plan, including public-facing online dashboards, mailings to Shamrock Park residents, and regular, transparent public forums whenever new well data is finalized.
- **Prioritizing Human Health:** The health and safety of nearby families must take absolute priority over a private developer's timeline. If well data shows any elevation in VOC migration or vapor intrusion risks, there must be a legally binding mechanism to halt all site activities immediately.

5. Formal Questions for the Record

Before the EQB can legally grant a variance that compromises the site's footprint, the public demands clear answers to the following questions:

1. Which regulatory entity will be solely responsible for executing the ongoing testing of the permanent Site A wells, how frequently will they be sampled, and where will that data be published for the public?
2. How will the EQB guarantee that filling "subgrade structures" will not alter the local hydrology, shift subsurface pressure, or open new migration pathways for the plume toward residential neighborhoods?
3. How will the EQB ensure that heavy demolition equipment and subgrade filling will not disturb, damage, or block access to the permanent Site A groundwater monitoring wells?

	4. How will the EQB guarantee that filling these subgrade formations will not trap volatile vapor pockets or permanently bury contaminated soil before the full EIS is published? **Conclusion** Local taxpayers should not be stripped of our right to a complete environmental review before heavy industrial demolition begins on a toxic site. I urge the EQB to protect residential air quality, defend public health, and maintain the legal integrity of the environmental review process by denying this variance.
S. Sentieri	I've done a little research since attending the council meeting. 1. 1 million square feet, sounds like a data center 2. Ramsey County's No Net Loss contingent should stop this 3. If the City Council has truly signed NDA agreements, the whole constituency should be frightened, not just us.

RESOLUTION NO. 2026-038

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARDEN HILLS CONSENTING TO A VARIANCE FROM MINNESOTA RULES PART 4410.3100, SUBPART 1 FOR MAPLEWOOD DEVELOPMENT, INC.

WHEREAS, Maplewood Development, Inc. ("Proposer") proposes a 62-acre, 972,200 square foot warehouse/distribution/office park development ("Project") near the corner of County Road I and Fairview Avenue, on property formerly associated with the Twin Cities Army Ammunition Plant (TCAAP) operations, in Arden Hills, Minnesota ("Property"); and

WHEREAS, an Environmental Impact Study (EIS) scoping Environmental Assessment Worksheet (EAW) is required by Minnesota Rules, part 4410.4400, subpart 11 for the Project; and

WHEREAS, the City of Arden Hills, Minnesota ("City") is the responsible governmental unit (RGU) for the EIS; and

WHEREAS, Minnesota Rules, part 4410.3100, subpart 1 states that if an EIS or EAW is required for a government action, then a project may not be started and a final governmental decision may not be made to grant a permit until: a petition for an EAW is dismissed, a negative declaration on the need for an EIS is issued, an EIS is determined adequate, or a variance is granted under Minnesota Rules, part 4410.3100, subparts 3 to 7; and

WHEREAS, under Minnesota Rules, part 4410.3100, subpart 4, a variance for certain governmental approvals to be granted prior to the completion of the environmental review process may be requested at any time to the Minnesota Environmental Quality Board (EQB) by a proposer after the commencement of the 30-day review period following the filing of an EAW or scoping document; and

WHEREAS, the 30-day review period for the EIS for the Project commenced on June 16, 2026; and

WHEREAS, under Minnesota Rules, part 4410.3100, subpart 6, a variance may not be granted by the EQB without the consent of the RGU; and

WHEREAS, the Proposer has requested the City's consent as RGU to apply for a variance from Minnesota Rules, part 4410.3100, subpart 1 because unauthorized persons and trespassers have gained access to vacant buildings on the Property; and

WHEREAS, on July 5, 2026, there was a fatal accident on the Property, so the City considers the Project to have dangerous conditions that are likely to attract unauthorized people; and

WHEREAS, the City has determined that it would be in the best interest of public health, safety, and welfare to allow the Proposer to seek a permit to demolish the above ground structures on the Property prior to the completion of the EIS so that the structures are neither useable or useful for any type of shelter nor are attractive for gatherings of people who are not authorized to be on the Property.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Arden Hills hereby consents to a variance from Minnesota Rules, part 4410.3100, subpart 1 requested by the Proposer with the following conditions:

1. The Proposer may apply for a demolition permit from the City to demolish or knock down the above ground structures on the Property.
2. The Proposer must provide erosion control required by the City before, during, and after the demolition.
3. The Proposer may remove demolished materials, install a fence to deter unauthorized access to the Property, and fill in subgrade structures.
4. The Proposer must not remove or damage significant trees or wildlife.
5. The Proposer must not perform any site preparation work beyond demolishing the structures, perform subgrade excavation work, bring fill into grade the Property, or any grading.

BE IT FURTHER RESOLVED, that the City Council of the City of Arden Hills hereby authorizes the City Administrator to transmit this resolution to the Proposer or the EQB as deemed necessary.

ADOPTED this 10th day of August, 2026.

David Grant

David Grant, Mayor

Attest:

Julie Hanson

Julie Hanson, City Clerk

Attachment 3: Copy of Email from City of Arden Hills, September 9, 2026

Note: EQB staff are providing a copy of the contents of this email for accessibility purposes. The original can be made available on request.

From: Jake Reilly

To: Krzenski, Jesse W (EQB)

Subject: RE: Variance request

Date: Tuesday, September 8, 2026 4:06:42 PM

Jesse,
I am sorry for the delayed response. Catching up from a week away has been intense.

Security at the site:

The site itself has had a fence around the entire perimeter for many years. I am not aware who put it up, although I suspect it is safe to say, based on a scan of historic aerials for the property dating back to 1940, that the fence around the so-called "Primer Tracer" site was installed by the federal government around the same time that the site was established as a munitions factory during World War II. Aerial photos from 1940 pre-date the construction of the bunkers and other structures on the site. Additional aerial photography from 1953 through 2024 indicate a fence around the entire perimeter of the site extant. Further, the entire remaining TCAAP facility is fenced off, as it is private property owned and maintained by the federal government. Despite commentary to the contrary, the entire site known as TCAAP is owned and managed by the federal government and is not public land for public use.

The applicant for the variance, Maplewood Development, has installed and replaced locks multiple times at the gated entrance to the property at least since becoming the owner in the first part of this year. I believe the locked gate at the entrance to the property has been in existence for decades prior to the purchase by Maplewood Development. I do know that the lock on the gate today is owned by Maplewood Development and its associated business entities. An additional fence and gate were installed by the federal government in August of this year to further minimize trespassing on the site and on the bulk of the federal government's TCAAP property.

The City of Arden Hills contracts with the Ramsey County Sheriff office and the Lake Johanna Fire Department to provide emergency services throughout the city, including on this site and the property owned by the federal government. The City of Arden Hills has a property maintenance section of its code. The City of Arden Hills responds to code and/or property maintenance violations on a complaint-driven basis. I don't have access to the complaint database but if you're interested in that I can get it downloaded. Regarding calls to the Fire Department or RCSO: only calls that come in following a person dialing 911 are registered as official calls/complaints and I am aware that, generally speaking, people have not called 911 to register complaints of any nature up there, so the record might not be complete.

I hope this answers your question. If you have other questions, please let me know how I can help.

-Jake

Please Note: City hall is observing summer hours through Friday, September 4th. Hours are Monday through Thursday from 7:30 AM to 5:00 PM and Friday from 7:30 AM to 11:30 AM.

Jake Reilly, AICP, EDFP

Community Development Director

City of Arden Hills

1245 West Highway 96

Arden Hills, MN 55112

Cell Phone: (763) 204 -0107

Office Phone: (651) 792-7824

jreilly@cityofardenhills.org

Confidentiality Notice:

This email and any files transmitted with it are solely for the use of the intended recipient or entity and may contain confidential or privileged information. If you received this email by mistake, please notify the sender and delete it from your system. Thank you.

From: Krzenski, Jesse W (EQB) <Jesse.Krzenski@state.mn.us>
Sent: Tuesday, September 1, 2026 8:03 AM
To: Jake Reilly <jreilly@cityofardenhills.org>
Subject: RE: Variance request

Jake,

Would you be able to provide me any details about what is currently in place for security at this site? Are there any specifics that are required by the City?

Jesse Krzenski *(he/his)* | Environmental Review Program Director

Minnesota Environmental Quality Board (EQB)

520 Lafayette Road N | Saint Paul, MN | 55155

651-757-2223

jesse.krzenski@state.mn.us |eqb.state.mn.us

MINNESOTA ENVIRONMENTAL QUALITY BOARD

Taft/

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taftlaw.com

Patrick J. Lindmark
612.977.8573
PLindmark@Taftlaw.com

August 6, 2026

VIA E-MAIL

Chair Nancy Daubenberger
Minnesota Environmental Quality Board
info.EQB@state.mn.us

Re: Application for Variance by Maplewood Development and Construction, Inc. acting as developer for SPQR Arden Hills, LLC ("Proposer") at Proposed Hillview Business Park.

Dear Ms. Daubenberger:

This office represents the above-named Proposer. Pursuant to Minnesota Administrative Rules 4410.3100, Subpart 4, the Proposer submits this letter as its Application for a Variance to commence certain construction activity related to demolition of various structures and other hazards currently located with the proposed Hillview Business Park, which is located on a 62-acre site in Sections 9-10, Township 30N, Range 23W (45.103039, -93.172274) in the City of Arden Hills, Ramsey County, Minnesota (the "**Project Site**). In May 2026, the City of Arden Hills, acting as the Responsible Governmental Unit ("**RGU**") prepared a Draft Scoping Decision Document ("**SDD**") detailing the proposed project and addressing certain environmental concerns at the Project Site.

The Proposer is requesting to construct a business park at the Project Site consisting of approximately one million (1,000,000) square feet on an undeveloped site previously owned by the federal government and used by the Minnesota National Guard for the Arden Hills Army Training Site ("**AHATS**"). The property, sometimes referred to as the 135 Primer Tracer Area, was formerly used by the United States Department of the Army as the Twin Cities Army Ammunition Plant ("**TCAAP**") for the purpose of manufacturing component primers and tracing compounds, and testing ammunition for World War II, the Korean Conflict, and the Vietnam War.

A. Detailed Explanation of the Construction Proposed to be Undertaken.

The Project Site is currently improved with buildings, roads, and specialized infrastructure that was constructed in the 1940s and 1950s and is currently in various stages of disrepair. The decommissioning of TCAAP started in the late 1970s and plans to transfer and redevelop portions of the property have been ongoing since the 1980s. No current operations are located on the Project Site which is vacant. There are approximately 60 buildings or structures on the site, most under 1,000 square feet. The main building is located in the center portion of the site and is approximately 62,000 square feet. The Proposer is seeking a variance to demolish the existing vacant buildings, none of which are currently being used by the United States Government or Minnesota National Guard, as well as cap certain manholes and other hazards to public safety. A detailed site overview is attached as Exhibit 1.

The debris from the demolition will be either stockpiled on-site or removed and disposed of in an appropriate manner based on the type and volume of materials in accordance with an already approved Response Action Plan from the MPCA (MPCA Site ID 258984). None of the existing underground utilities would be removed and no mass grading would take place at the Project Site. Construction activities would be limited only to demolition of the existing above-ground buildings (including any partially buried bunkers) and any below ground foundations.

B. Anticipated Environmental Effects of Undertaking the Proposed Construction.

The Proposer does not anticipate any significant environmental effects from undertaking the proposed construction. The Proposer has already received a Notice of Decision from the Rice Creek Watershed District related to the wetland delineation conducted by the Proposer, which did not identify any wetlands in the areas of proposed construction under the variance application. The Proposer would take all necessary steps to protect against runoff and other impacts to the adjacent wetlands during all proposed construction activities. The Notice of Decision is attached hereto as Exhibit 2.

The Minnesota Department of Natural Resources ("**DNR**") has also conducted a Natural Heritage Review of the Project Site and identified any ecologically significant areas as well as any State-listed Species that might be affected by the proposed project, which may possibly be impacted by the proposed construction. The DNR Natural Heritage Review findings are attached as Exhibit 3. As part of the construction activities requested under the variance, the Proposer would follow standard and approved avoidance plans to address any potential concerns regarding these areas of potential habitat during all construction activities.

C. Reversibility of the Anticipated Environmental Effects.

Because the Proposer does not anticipate any significant environmental effects from the demolition of the buildings, there should not be any significant environmental effects that would need to be reversed. The demolition work will follow all required avoidance plans and take the necessary precautions related to any wetland impacts or other runoff into adjacent ponds, streams, or other ecological areas of concern. No grading or other underground utilities work will be conducted as part of the proposed work, and any materials removed from the Project Site will be properly disposed of under Minnesota law. The Proposer is not aware of any of the structures being utilized as habitat for any of the species identified by the DNR as possibly existing within the Project Site.

D. Reasons Necessitating the Variance.

The variance is necessitated by public safety. Despite the efforts of the Proposer to keep the public out of the Project Site, including installing locked gates, fencing, and other security measures (all of which have been destroyed or removed) various urban explorers and other trespassers continue to access the site to explore, vandalize, and utilize the various structures and bunkers. There have been numerous instances of vandalism, fires, and parties that result in the necessity for emergency responders to intervene. The emergency responders have difficulty accessing many of these more remote areas with the necessary equipment and vehicles due to lack of roads and other infrastructure. This results in emergency situations that cannot be adequately addressed on a timely basis and lead to further escalation of the problem.

The limited activities proposed to be conducted at the site will remove these structures, which will in turn help reduce the attractiveness to urban explorers and teenagers to break into the Project Site and climb these structures. If all that is left are rubble piles, the allure of trespassing should subside and with it the need for City, County, and State emergency resources addressing the continuing problems that arise at the Project Site.

E. How Would the Approval Affect Subsequent Approvals Needed for the Project and the Affect Approval would have on the Purpose of the Environmental Review.

Due to the limited proposed construction activities the Proposer does not anticipate that approval of the requested variance will have any effect on subsequent approvals for the project. The structures will need to be demolished as part of the overall proposed project, the variance simply jumpstarts that process. In the event that the project is not approved, the impact on the overall site is minimal and the structures are all things that should be removed or demolished regardless.

Sincerely,

Taft Stettinius & Hollister LLP

/s/ Patrick J. Lindmark

Patrick J. Lindmark

PJL
Enclosures
cc: SPQR Arden Hills, LLC (via email only)

Exhibit 1

LEGEND

LEGEND

SCHEDULE B, PART II EXCEPTIONS

The following are survey related exceptions set forth in Schedule B, Part II of the herein referenced Title Commitment:

Item No. 12:
Terms, conditions, restrictions, obligations and provisions thereof, as contained in the Quit Claim Deed, dated May 29, 2018, recorded May 29, 2018, as Document No. 4750626. Subject this property as shown on this survey.

Note: Affects Parcel 2 of this Land.

Item No. 13:
Terms, conditions, obligations and Limitations of Environmental Covenant and Easement, dated May 22, 2018, recorded May 29, 2018, as Document No. 4750627.

As affected by the Amended and Restated Agreement and Restrictive Covenant, dated August 13, 2019, recorded September 11, 2019, as Document No. 4775272. Subject this property as shown on this survey.

Note: Affects Parcel 2 of this Land.

Item No. 14:
Nonexclusive Easement for public access and utility purposes granted to Department of the Army, Easement for Park Access, Public Roads, Utilities, Right-of-Way, dated August 13, 2019, recorded September 23, 2019, as Document No. 4775500, and designated as Easement No. DACA45-1-19-6017.

As amended by Department of the Army Supplemental Amendment No. 1 to Easement No. DACA45-1-19-6017 Located on Arden Hills Army National Guard Training Site Ramsey County, Minnesota, last recorded February 19, 2026, recorded March 17, 2026, as Document No. A2026947. Disputed as this survey and geodetic exhibit to County Road I is a public way. Physical improvements within this easement that would encroach this property by County Road I are inconspicuous.

Item No. 15:
Terms, conditions, obligations and restrictions of:

a. Environmental Covenant and Easement, dated (Blanket) February 5, 2026, recorded March 5, 2026, as Document No. A2026170. Blanket over subject property.

b. Quitclaim Deed, dated February 20, 2026, recorded March 5, 2026, as Document No. A2026177. Blanket over subject property.

PROPERTY DESCRIPTION

Parcel 1:

That part of the Northwest Quarter of Section 9, and the Southwest Quarter of the Northwest Quarter of Section 10 All in Township 30 North, Range 23 West, Ramsey County, Minnesota, described as follows:

Commencing at a point on the North line of the Northwest Quarter of said Section 9, a distance of 50.00 feet Westerly of the Northeast corner of the Northwest Quarter of said Section 9; thence South 00 degrees 40 minutes 50 seconds East, along a line parallel with the East line of said Northwest Quarter, a distance of 1,320.00 feet; thence North 89 degrees 49 minutes 50 seconds East, a distance of 200.02 feet to the East line of the west 450.00 feet of said Northwest Quarter of Section 9 and the point of beginning of the land to be described; thence continuing North 89 degrees 49 minutes 50 seconds East a distance of 2650.06 feet; thence South 00 degrees 50 minutes 50 seconds West, a distance of 600.00 feet; thence South 89 degrees 13 minutes 10 seconds West, a distance of 156.00 feet; thence North 00 degrees 37 minutes 20 seconds West, a distance of 1,003.00 feet; thence South 89 degrees 26 minutes 30 seconds West, a distance of 177.00 feet; thence South 37 degrees 27 minutes 20 seconds West, a distance of 770.00 feet; thence North 00 degrees 50 minutes 50 seconds West, a distance of 30.40 feet; thence North 89 degrees 04 minutes 04 seconds West, a distance of 852.40 feet to said East line of the West 450.00 feet; thence North 00 degrees 40 minutes 50 seconds West, along said East line, a distance of 845.20 feet to the point of beginning.

(Subject Property)

Parcel 2:

Nonexclusive Easement for public access and utility purposes granted to Department of the Army, Easement for Park Access, Public Roads, Utilities, Right-of-Way, dated August 13, 2019, recorded September 23, 2019, as Document No. 4775500 and designated as Easement No. DACA45-1-19-6017.

As amended by Department of the Army Supplemental Amendment No. 1 to Easement No. DACA45-1-19-6017 Located on Arden Hills Army National Guard Training Site Ramsey County, Minnesota, last recorded February 19, 2026, recorded March 17, 2026, as Document No. A2026947.

(Subject Property)

TABLE A ITEMS

1. Monuments placed (or a differential monument or witness to the corner) at all major corners of the boundary of the property, unless existing monument or witness used by existing monuments or witnesses to the corner are shown hereon.
2. Per Ramsey County GIS, subject is unassigned.
3. The property lies within Zone X (unshaded = Areas determined to be outside the 0.2% annual chance floodplain) of Flood Insurance Rate Map (FIRM) Flood Insurance Community Panel No. 27123C0030G, effective June 4, 2010.
4. The area of Parcel 1 of the above described property is 2,711,400 square feet or 62.240 acres.
5(a). Zoning information was not provided by the client.
7(a). Exterior dimensions of all buildings are shown at ground level.
8. Suitable for National Geodetic Survey (NGS) use.
9. There are no striped parking stalls on this site.
11(a). The location of building corners on or along this property are depicted hereon on City Ink Shop One Call Ticket No. 20261118, available maps, records and observed evidence (surface, utility connection, underground utility locations) may not be depicted. Verify utilities before prior to construction or design.
13. Names of adjoining owners are depicted hereon per Ramsey County GIS Information.
14. The distance to the nearest intersecting street is approximately 1375 feet to the intersection Lexington County Road I NW and Rice Street N.
15. There was no observed evidence of earth moving work or building construction at the time of our field work.
17. We are not aware of any proposed changes in street right of way lines or observable evidence of recent street or sidewalk construction or repairs.
19. Plottable offsite easements disclosed in Schedule B, Part II Exceptions of the title commitment are depicted hereon.

NOTES

1. This survey and the property description shown hereon are based upon information found in the commitment for title insurance prepared by First American Title Insurance Company, file no. NCS-1196666-MPLS, dated February 27, 2026.
2. The basis of bearings is Ramsey County Coordinate System NAD83(96 adj.).
3. All distances are in feet.
4. The property has vehicular access to County Road I, a public right of way.
5. This survey was performed in ground level. No attempt was made to verify any underground conditions.

CERTIFICATION

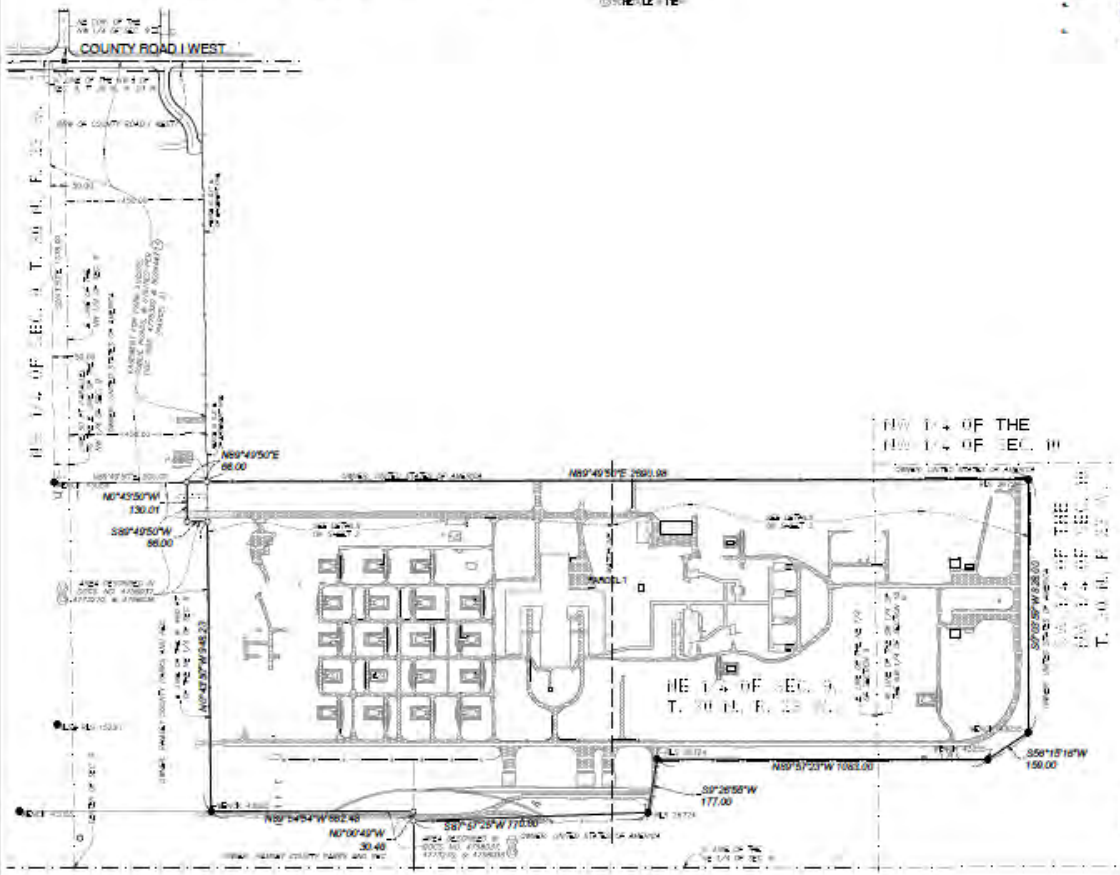
To ADHPG Arden Hills I Owner, LLC, a Delaware limited liability company, and First American Title Insurance Company:

This is to certify that this map or plat and this survey on which it is based were made in accordance with the 2026 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 5(a), 7(a), 8, 9, 11(a), 13, 14, 15, 17, and 19 of Table A thereof. This field work was completed on April 28, 2026.

Date of Plat or Map: _____

REVIEW COPY

Daniel Sonn, Professional Land Surveyor
Minnesota License No. 57388
email: dsonn@alliant-inc.com



ALLIANT

CLIENT: MAPLEWOOD DEVELOPMENT

PROPERTY ADDRESS: PRIMER TRACER SITE ARDEN HILLS, MN

DOCUMENT: ALTA/NSPS LAND TITLE SURVEY

DESCRIPTION	DATE
DRAFT TITLE/ED	4/29/26

JOB NO.	DRAWN BY:	DATE
100000	RB	4/29/26
SCALE:	CHECKED BY:	
1" = 20'	DS	
FIELD DATE:	FIELD CREW:	
04/28/26	DRAFT/SURV:	

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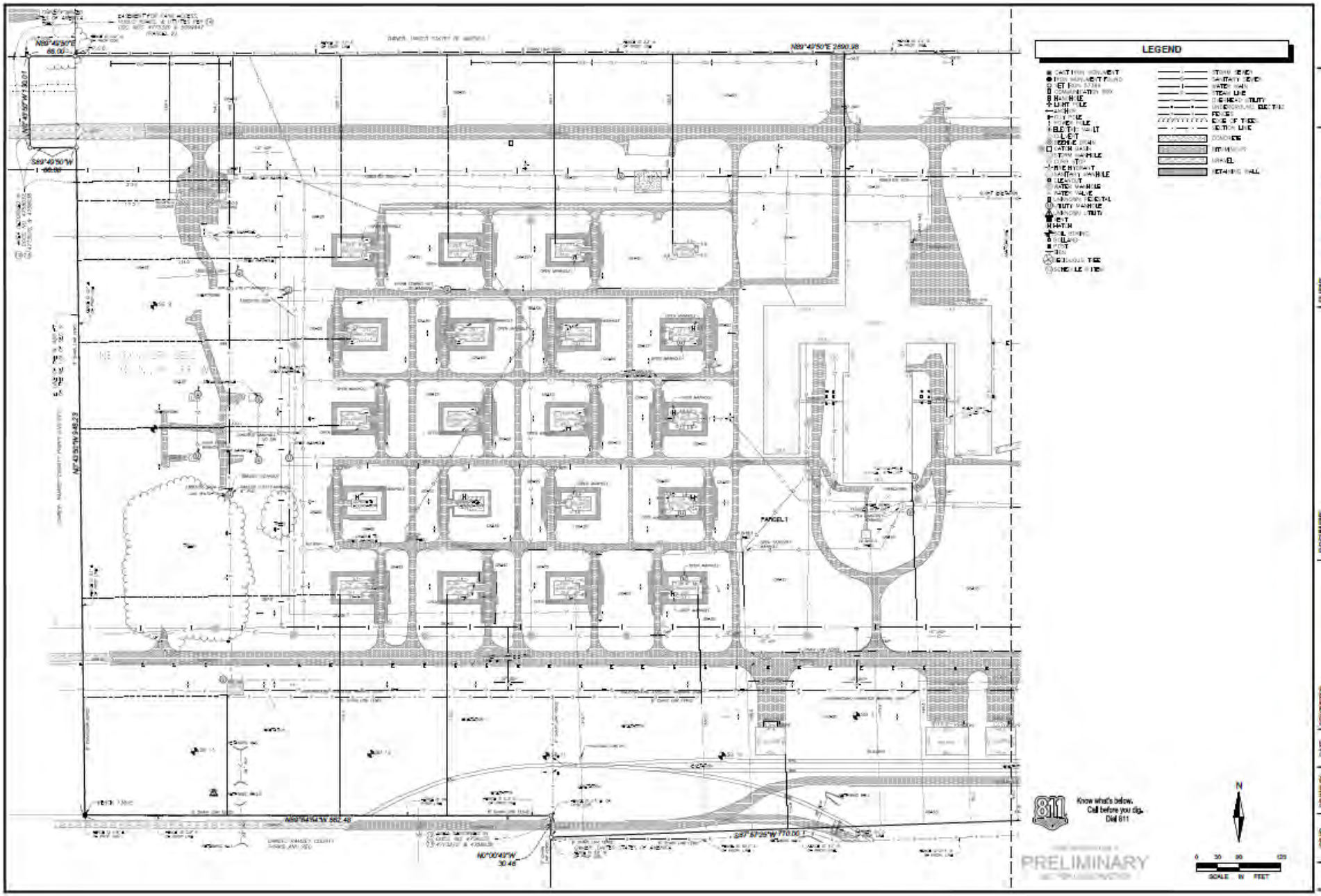
1 of 1


LEGEND
ALLIANT
CLIENT
MAPLEWOOD DEVELOPMENT
PROPERTY ADDRESS
PRIMER TRACER SITE
ARDEN HILLS, MN
DOCUMENT
ALTA/NSPS LAND TITLE SURVEY
Know what's below. Call before you dig. Dial 811
PRELIMINARY
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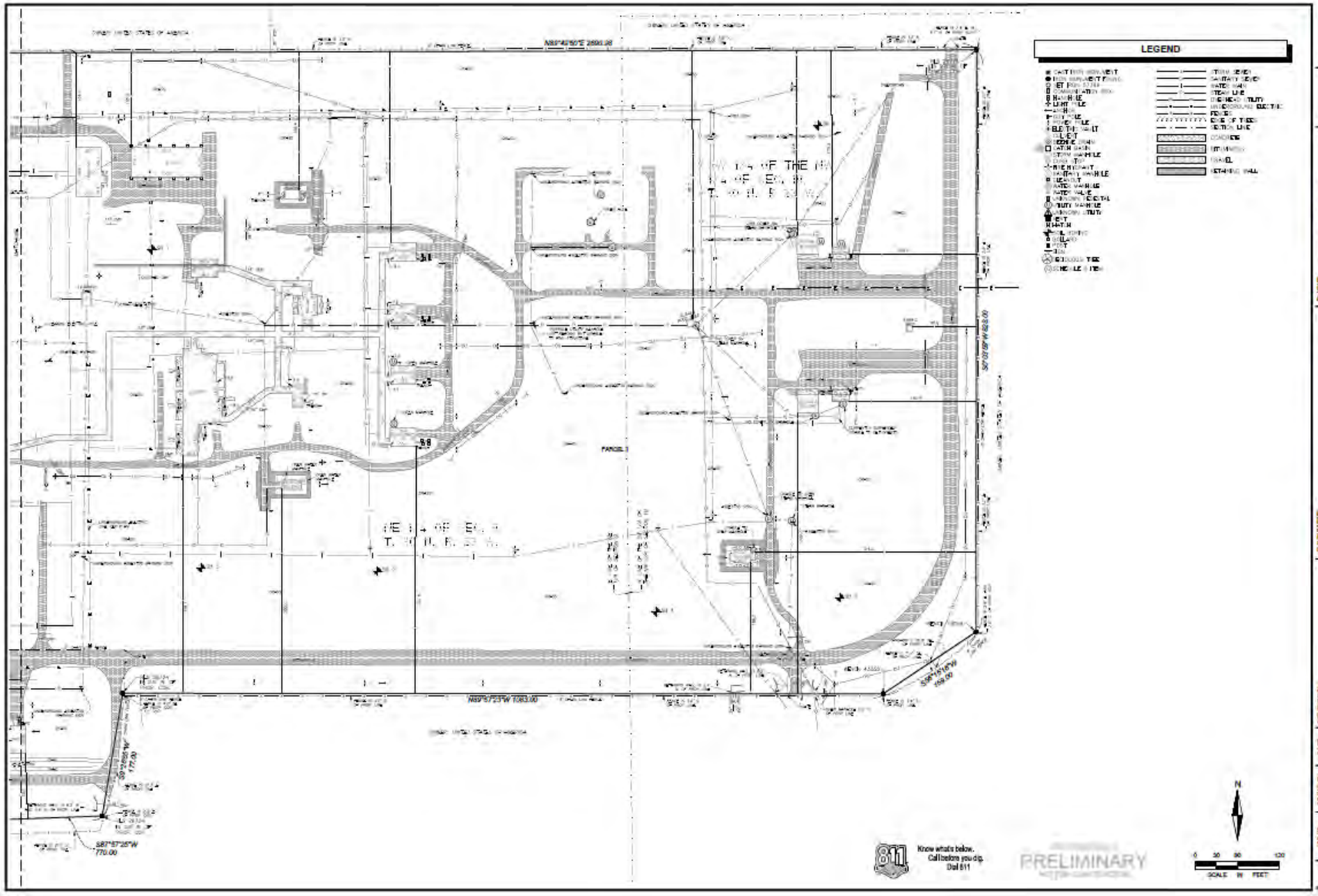
N89°49'50"E 2690.98
N89°54'54"W 562.48
N0°00'49"W 30.46
S87°57'25"W 770.00
N43°50'50"W 948.23
PARCEL 1


LEGEND
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ARDEN HILLS, MN
DOCUMENT
ALTA/NSPS LAND TITLE SURVEY
PARCEL 1
N89°57'23"W 1083.00
S87°57'25"W 770.00
S88°15'18"W 159.00
Know what's below. Call before you dig. Dial 811
PRELIMINARY
SCALE IN FEET
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Exhibit 2

Docusign Envelope ID: 10753D81-4F69-8F01-804B-8CAA40EA9F08

Minnesota Wetland Conservation Act
NOTICE OF DECISION

Date this Notice was sent:	**7/24/2026**
Local Government Unit:	Rice Creek Watershed District
County:	Ramsey
Applicant:	SPQR Arden Hills, LLC/Maplewood Development, Inc. (Attn: Mario Cocchiarella)
Project Name/Number:	Hillview Business Park/RCWD permit #26-117R
Type of Decision (check all that apply): **Note:** Boundary/type, sequencing, replacement plan, and bank plan decisions require an associated notice of application prior to the decision being made.	☒ Boundary/Type ☐ Sequencing (submitted separately from a replacement plan) ☐ Replacement Plan ☐ Bank Plan ☐ Exemption Identify which exemption by Rule or Statute Citation: ☐ No-Loss Identify which provision by Rule or Statute Citation:
Decision: **Note:** All replacement plan approvals are conditional upon confirmation from BWSR of withdrawal of specified credits and/or financial assurance received for project-specific replacement.	☐ Denied ☒ Approved. Valid for ☒ 5 yrs (default); ☐ Other. Specify: ☐ Approved with Conditions List Conditions: Valid for ☐ 5 yrs (default); ☐ Other. Specify:
LGU Representative Name & Signature:	Signed by: Patrick Hughes A0QAD8874C70438... Patrick Hughes, Regulatory Manager

Decision Timeline

An LGU must approve or deny a request within 60 days of receiving a complete application per MINN. STAT. § 15.99.

Date Complete Application Received:	06/17/2026
Date of Decision:	07/24/2026
If applicable, date of *written extension* to 60-day decision timeline & number of days extended: **Reason for Extension (check one):**	**[insert]** ☐ Other process or decision required to occur before WCA decision. Describe: **[insert]** ☐ Additional information and/or revision to application submitted. ☐ Applicant request. ☐ Other. Describe: **[insert]**

Docusign Envelope ID: 10753D81-4F69-8F01-804B-8CAA40EA9F08

Date & number of days extended for any *additional written extensions* agreed to by the applicant:	**[insert]**

Decision Summary

Technical Evaluation Panel Recommendation (check one):	☐ No recommendation ☒ Approval or approval with conditions A joint application for wetland boundary and incidental determination was provided by Alliant Engineering on 6/17/2026. The application included an assessment of mapped soils and aerial images requesting incidental determination for all delineated features. No formal comments were provided. ☐ Denial (attach recommendation)
LGU Findings (check all that apply):	☐ Findings attached ☒ Findings: The LGU finds the wetland boundaries illustrated in the attached figure titled: Figure 4 Wetland Delineation by Alliant dated 6/16/2026 (RCWD received 6/17/2026) accurate and supported by the submitted wetland delineation for the LGU administration of the WCA. The LGU also finds that Wetlands C1 and C2 and all wet ditches to be incidental under 8420.0105 Subpart 2.D. This decision is not intended to define boundaries of MN DNR jurisdiction or regulate activities under the jurisdiction of the MN DNR, except to the extent that MN DNR finds the decision consistent with their requirements. The local government unit decision is valid for five years. However, the decision will cease to be valid before then, if the Technical Evaluation Panel determines that the wetland boundary or type has changed due to natural or artificial changes to the hydrology, vegetation, or soils of the area. ☒ Other attachments. Specify: • Figure 1 Study Area • Figure 4 Wetland Delineation by Alliant dated 6/16/2026 (RCWD received 6/17/2026)
For Replacement Plan Decisions *Only*:	Total wetland impacts requiring replacement (acres): Type of wetland replacement (check all that apply): ☐ Project-Specific. Number of Credits: ☐ Banking. Number of Credits by Bank Account #:

Notice Distribution

Notice Recipients (check all that apply):	☒ SWCD TEP Member (if different from LGU): Phoebe Brown ☒ BWSR TEP Member: Ben Meyer ☒ DNR Representative: Eric Sanft ☐ Watershed District or WMO (if applicable): ☐ bank.administrator.bwsr@state.mn.us (Bank Plan Decisions Only)

Docusign Envelope ID: 10753D81-4F69-8F01-804B-8CAA40EA9F08

	☒ Applicant: Mario Cocchiarella (SPQR Arden Hills, LLC/Maplewood Development, Inc.) ☐ Applicant's Representative (if applicable): Keara Fehr (Alliant Engineering) ☒ Members of the Public Requesting Notices (if applicable): Jessica Jagoe (City of Arden Hills) ☐ Others:

Appeal Process

Appeal Process (check one):	☒ Local Appeal Process (if established). Specify How to Appeal: RCWD has a local appeal process adopted under RCWD Board of Managers Resolution 2019-13. This Resolution is available upon request. ☐ Board of Water & Soil Resources (see instructions below)
If there is no established Local Appeal Process indicated above, an appeal of this decision may be made to BWSR per the instructions to the right. **Note:** Decisions are not final until the 30-day appeal window ends.	Mail or email written request to appeal sent to BWSR within 30 days of date this notice was sent. Include copy of this notice, name and contact information of appellant(s) and their representative(s) (if applicable), a statement clarifying intent to appeal, and supporting information as to why the decision is in error. Mail check payable to MN Board of Water & Soil Resources for $500. Send to: Appeals & Regulatory Compliance Coordinator Minnesota Board of Water & Soil Resources 520 Lafayette Road North St. Paul, MN 55155 travis.germundson@state.mn.us.

Docusign Envelope ID: 10753D81-4F69-8F01-804B-8CAA40EA9F08

Hillview Business Park

ALLIANT

Legend

Study Area

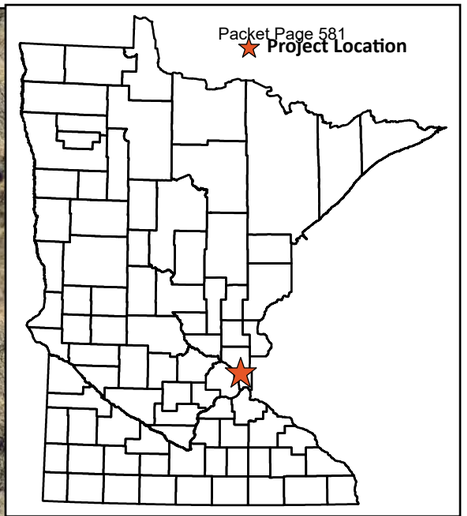
Figure 1

Study Area

N 0 175 350 US Feet

Date Exported: 6/15/2026

Docusign Envelope ID: 10753D81-4F69-8F01-804B-8CAA40EA9F08



Legend

- Study Area
- LiDAR Contours
- Sample Point

Wetland Delineation

- Wetland
- Wet Ditch

Hillview Business Park

Figure 4

Wetland Delineation

N

0 100 200

US Feet

Source: Ramsey County Aerial 2024

ALLIANT

Date Exported: 6/16/2026

Exhibit 3

DEPARTMENT OF NATURAL RESOURCES

Minnesota Department of Natural Resources
Division of Ecological & Water Resources
500 Lafayette Road, Box 25
St. Paul, MN 55155-4025

July 8, 2026

Jennifer Haskamp
Swanson Haskamp Consulting, LLC.

RE: Natural Heritage Review of the proposed Hillview Business Park: Clone Of 2025-00360,
T30N R23W Sections 9-10; Ramsey County

Dear Jennifer Haskamp,

For all correspondence regarding the Natural Heritage Review of this project please include the project ID **MCE-2025-00360-02** in the email subject line.

As requested, the Minnesota Natural Heritage Information System has been reviewed to determine if the proposed project has the potential to impact any rare species or other significant natural features. Based on the project details provided with the request, the following rare features may be impacted by the proposed project:

Ecologically Significant Areas

- The proposed project is within the **AHATS-Rice Creek Important Bird Area (IBA).** Important Birds Areas, identified by Audubon Minnesota in partnership with the DNR, are part of an international conservation effort aimed at conserving critical bird habitats. They are voluntary and non-regulatory, but the designation does demonstrate the biological value of this surrounding area. To learn more about AHATS-Rice Creek IBA use the IBA Explorer. **Please consider the recommendations for minimizing or avoiding avian mortality outlined in Bird Collision Reduction Toolkits | U.S. Fish & Wildlife Service.**

State-listed Species

- Henslow's sparrow (*Centronyx henslowii*), a state-listed endangered bird species, has been documented in the immediate vicinity of the proposed project. Suitable nesting habitat for this species includes uncultivated and unmowed grasslands and old fields with standing, dead vegetation, and a substantial litter layer. As such, **disturbance in areas that contain suitable nesting habitat should not occur during their breeding season, between May 15 and July 15.**

  Please contact Review.NHIS@state.mn.us to confirm that the above avoidance measure will be implemented or to inform us that avoidance is not feasible. **If avoidance during the breeding season is not feasible, areas that will be disturbed that contain suitable nesting habitat will need to be surveyed for active nests prior to any disturbance.** Requirements for surveys and lists of DNR certified surveyors can be found at the Natural Heritage Review website.

- Blanding's turtles (*Emydoidea blandingii*), a state-listed threatened species, have been documented in the direct vicinity of the proposed project. Blanding's turtles use upland areas up to and over a mile distant from wetlands, waterbodies, and watercourses. Uplands are used for nesting, basking, periods of dormancy, and traveling between wetlands. Factors believed to contribute to the decline of this species include collisions with vehicles, wetland drainage and degradation, and the development of upland habitat. Any added mortality can be detrimental to populations of Blanding's turtles, as these turtles have a low reproduction rate that depends upon a high survival rate to maintain population levels.

  This project has the potential to impact this rare turtle through direct fatalities and habitat disturbance/destruction due to construction activities associated with the project. The proposed project area is within an area of importance for Blanding's turtles. Minnesota's Endangered Species Statute (Minnesota Statutes, section 84.0895) and associated Rules (Minnesota Rules, part 6212.1800 to 6212.2300 and 6134) prohibit the take of threatened or endangered species without a permit. **Given the project details and the potential for a take of a Blanding's turtle, an avoidance plan is required.** Submit the avoidance plan to the Reports.NHIS@state.mn.us.

  We do not currently have a template for avoidance plans. The plan needs to:
  - Provide a description of the project activities and construction methods.
  - Identify measures that will be taken to avoid take and minimize disturbance to the species.
  - Include a map of disturbance areas. This can include a map of potential Blanding's turtle summer, winter, and nesting habitat overlayed with timing of project impacts.

  Measures to avoid or minimize disturbance include, but are not limited to, the following:
  - Avoidance of suitable habitat.
  - Timing the impacts to avoid incidental take.
  - The recommendations listed in the Blanding's turtle fact sheet (both lists).
  - Training for construction crew.
  - Provide details on how/when the construction areas will be monitored for turtles.
  - How and when to contact the DNR:
    - Report all sightings using the DNR Plant and Animal Observation Form within 24 hours.
    - Sightings of nesting, injured, or dead turtles require notifying the DNR Endangered Species Consultant, Bridget Henning-Randa (EndangeredSpeciesPermits.DNR@state.mn.us or 651-259-5073) immediately.

  Resources to help create the avoidance plan:
  - Blanding's Turtle Fact Sheet (state.mn.us)
  - Blanding's Turtle Flyer (state.mn.us)
  - Emydoidea blandingii : Blanding's Turtle | Rare Species Guide | Minnesota DNR (state.mn.us)
  - Wildlife Friendly Erosion Control (state.mn.us)
  - Helping Turtles Across the Road | Minnesota DNR (state.mn.us)
  - Best Practices Manual | Minnesota DNR
    - Chapter 1: Species Protection

- Ghost tiger beetle (*Cicindela lepida*), a state-listed threatened species, has been recently documented in the vicinity of the proposed project. Minnesota's Endangered Species Statute (Minnesota Statutes, section 84.0895) and associated Rules (Minnesota Rules, part 6212.1800 to 6212.2300 and 6134) prohibit the take of endangered or threatened plants or animals, including their parts or seeds, without a permit. The Twin Cities Army Ammunition Plant (TCAAP) and the Arden Hills Army Training Site (AHATS) contain the last known population of ghost tiger beetle in Minnesota. **Given the rarity of this species an avoidance plan is required.** Submit the avoidance plan to Reports.NHIS@state.mn.us.

  We do not currently have a template for avoidance plans. The plan needs to:
  - Provide a description of the project activities and construction methods.
  - Identify potential impacts of night lighting on adjacent populations.
  - Identify measures that will be taken to avoid take and minimize disturbance to the species.
  - Include a map of disturbance areas.

  Measures to avoid or minimize disturbance include, but are not limited to, the following:
  - Assessment and avoidance of suitable habitat.
  - Timing the impacts to avoid incidental take.
  - If suitable habitat is present and cannot be avoided, conducting surveys in areas to be impacted.

- Several state-listed threatened plant species have been documented in the vicinity of the proposed project. Minnesota's Endangered Species Statute (Minnesota Statutes, section 84.0895) and associated Rules (Minnesota Rules, part 6212.1800 to 6212.2300 and 6134) prohibit the take of endangered or threatened plants or animals, including their parts or seeds, without a permit. **To demonstrate avoidance, a qualified surveyor will need to determine if suitable habitat exists within the activity impact area and, if so, conduct a survey prior to any project activities.**

  - Black huckleberry (*Gaylussacia baccata*) is found in well-drained sandy soil within fire-dependent forests.
  - Swamp blackberry (*Rubus semisetosus)* populations usually grow in moist sand along the margins of groundwater-fed swales or marshes (PDF) but also in surface-dry uplands that are just above the water table. It does best in direct sunlight or partial shade.
  - Clinton's Bulrush (*Trichophorum clintonii*) occurs in a variety of habitats, with few obvious features in common. Conditions are usually sunny or partially shaded and range from dry to moist.

  Surveys must be conducted by a qualified surveyor and follow the standards contained in the Rare Species Survey Process and Rare Plant Guidance. Visit the Natural Heritage Review page for a list of certified surveyors and more information on this process. Survey proposals should be submitted to Reports.NHIS@state.mn.us prior to initiating survey work. Project planning should take into account that any botanical survey needs to be conducted during the appropriate time of the year, which may be limited. Please consult Review.NHIS@state.mn.us if you have any questions regarding this process.

- Little brown myotis (*Myotis lucifugus*) and big brown bat (*Eptesicus fuscus*), both state-listed as species of special concern, have been documented frequently in the vicinity of the proposed project. During the winter these bats hibernate in caves and mines. During the active season (approximately April-November) they roost underneath bark, in cavities, or in crevices of both live and dead trees; and in human structures such as buildings and bridges. Tree removal can negatively impact bats by destroying roosting habitat, especially during the pup rearing season when females are forming maternity roosting colonies and the pups cannot yet fly. To minimize these impacts, **the DNR recommends that tree and building removal be avoided from June 1 through August 15.** If greater protection for bats is desired, avoid tree removal during the entire bat active season (April-November).

- Lark sparrow (*Chondestes grammacus*), a state-listed species of special concern, has been documented in the vicinity of the proposed project. This bird species is found in open, dry grassland areas with scattered trees and shrubs. They build their nest on the ground, in a shrub or a small tree. Given the presence of this rare species, **the DNR recommends avoiding disturbance to grassland areas and tree/shrub removal from May 15 through August 15 to avoid disturbance of nesting birds.**

- Trumpeter swans (*Cygnus buccinator*), a state-listed species of special concern, have been documented nesting in the vicinity of the proposed project. These rare birds are found in wetlands with a mixture of emergent vegetation and open water. Potential concerns include construction disturbance during the breeding season, loss or degradation of habitat, and collisions overhead transmission lines. Actions to minimize impacts to these rare birds may include, but are not limited to, the following recommendations:
    - Avoid construction activities during the nesting season, from late April through August, near suitable nesting habitat.
    - Retain a buffer between proposed activities and suitable habitat to avoid negative impacts such as human disturbance, water level fluctuation, chemical contamination.
    - Install bird diverters on overhead lines, if any, near lakes and rivers, or other areas that may attract large concentrations of waterfowl.

- Plains pocket mouse (*Perognathus flavescens*), a state-listed species of special concern, has been documented in the immediate vicinity of the proposed project and was documented within the Twin Cities Army Ammunition Plant (TCAAP) in the 1990's. This population is the largest known plains pocket mouse population in the state. In Minnesota, this species is restricted to open, well-drained areas, typically on sandy soils with sparse, grassy, or brushy vegetation. Threats to the plains pocket mouse include habitat destruction and natural succession. Given the presence of this rare species, **the DNR recommends that the use of erosion control mesh, if any, be limited to wildlife-friendly materials.**

- Regal fritillary (*Argynnis idalia*), leadplant flower moth (*Schinia lucens*), and Whitney's underwing (*Catocala whitneyi*), state-listed species of special concern, have been documented in the vicinity of the proposed project. Prairie-obligate species' populations have declined historically due to widespread conversion of native prairie for agriculture and other uses. Less than 1% of Minnesota's native prairie remains and the remaining prairie mostly consists of widely scattered small fragments surrounded by agriculture and development. **To protect these prairie-obligate species, avoiding disturbance to native prairie is recommended.**

- The area of interest overlaps with a U.S Fish and Wildlife Service (USFWS) Rusty Patched Bumble Bee High Potential Zone. The rusty patched bumble bee *(Bombus affinis)* is federally listed as endangered and is anticipated to be listed as an endangered species in Minnesota in 2026. This species is likely to be present in suitable habitat (shrub/tree cover and the surrounding 100 feet of vegetation) within High Potential Zones and may be impacted by a variety of land management activities including, but not limited to, prescribed fire, tree-removal, haying, grazing, herbicide use, pesticide use, land-clearing, soil disturbance or compaction, or use of non-native bees. Minnesota's Endangered Species Statute (Minnesota Statutes, section 84.0895) and associated Rules (Minnesota Rules, part 6212.1800 to 6212.2300 and 6134) prohibit the take of threatened or endangered species without a permit. **If the project will impact more than two acres of suitable habitat within the high potential zone, avoidance measures or a permit to take may be needed when the endangered status becomes effective.** Updates to the status of this species will be posted at Endangered and Threatened Species Permits.

- Please visit the DNR Rare Species Guide for more information on the habitat use of state-listed species and recommended measures to avoid or minimize impacts.

- Please report incidental sightings of state-listed species via the DNR Plant and Animal Observation Form.

Federally Protected Species

- To ensure compliance with federal law, conduct a federal regulatory review using the U.S. Fish and Wildlife Service's (USFWS) online Information for Planning and Consultation (IPaC) tool. Note, the rusty patched bumblebee is federally listed as endangered.

Environmental Review and Permitting

- The Environmental Impact Statement (EIS) should address whether the proposed project has the potential to adversely affect the above rare features and, if so, it should identify specific measures that will be taken to avoid or minimize disturbance. Sufficient information should be provided so the DNR can determine whether a permit to take will be needed for any of the above protected species.

- Please include a copy of this letter and the MCE-generated Final Project Report in any state or local license or permit application. Please note that measures to avoid or minimize disturbance to the above rare features may be included as restrictions or conditions in any required permits or licenses.

The Natural Heritage Information System (NHIS), a collection of databases that contains information about Minnesota's rare natural features, is maintained by the Division of Ecological and Water Resources, Department of Natural Resources. The NHIS is continually updated as new information becomes available and is the most complete source of data on Minnesota's native plant communities, rare species, and other rare features. However, the NHIS is not an exhaustive inventory and does not contain the locations of all rare features in the state. Therefore, ecologically significant features for which we have no records may exist within the project area. If additional information becomes available regarding rare features in the vicinity of the project, further review may be necessary.

For environmental review purposes, the results of this Natural Heritage Review are valid for one year; the results are only valid for the project location and project description provided with the request. **If project details change or the project has not occurred within one year, please resubmit the project for review within one year of initiating project activities.** Resubmit by selecting *Clone Project as Draft* on the project page in MCE.

The Natural Heritage Review does not constitute project approval by the Department of Natural Resources. Instead, it identifies issues regarding known occurrences of rare features and potential impacts to these rare features. Visit Natural Heritage Review for additional information regarding this process, survey guidance, and other related information. For information on the environmental review process or other natural resource concerns, please contact your DNR Regional Environmental Assessment Ecologist.

Thank you for consulting us and for your interest in the conservation of Minnesota's rare natural resources.

Sincerely,

James Drake

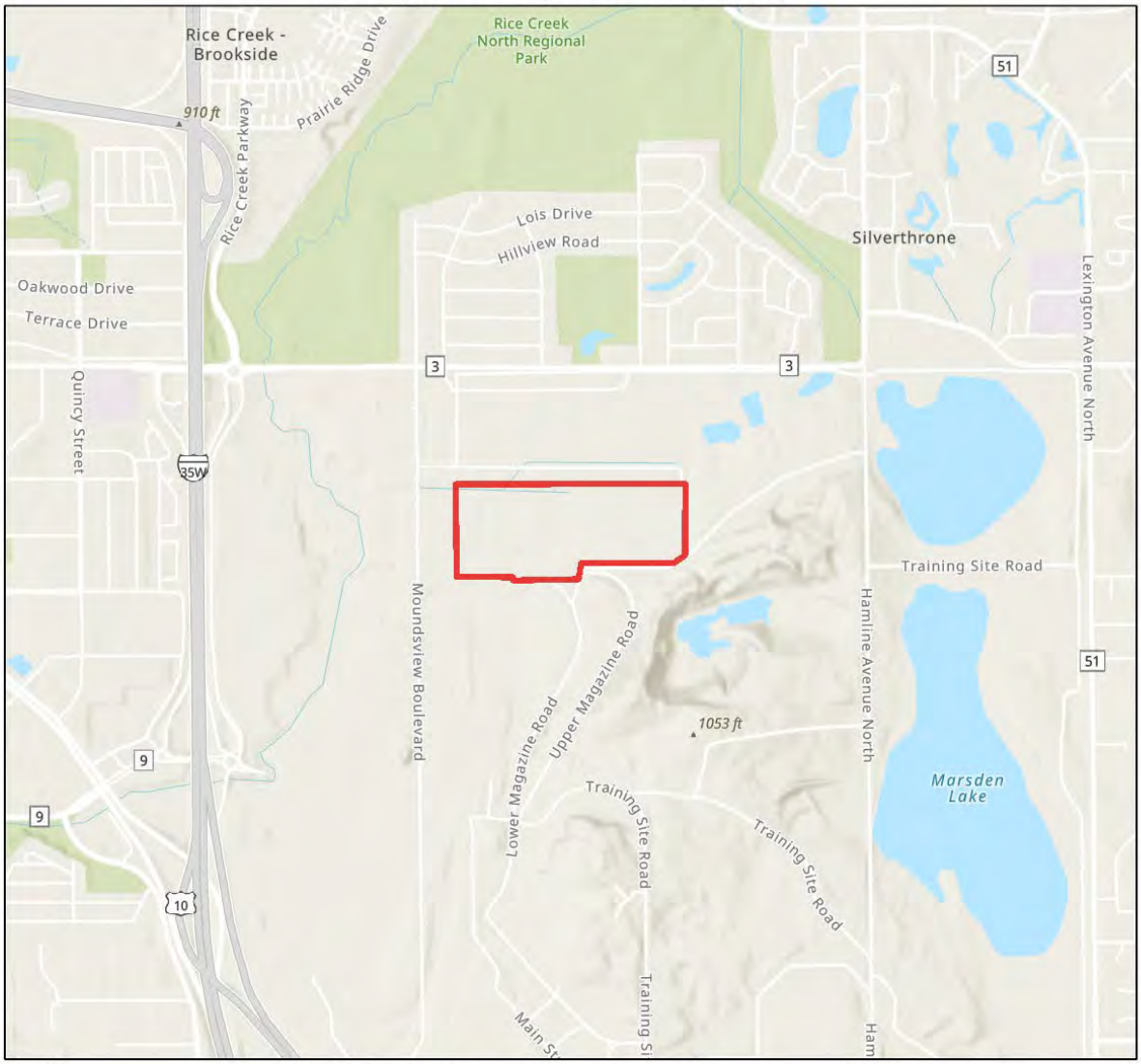
Natural Heritage Review Specialist
james.f.drake@state.mn.us

Cc: Melissa Collins

For more project details, see the MCE-generated Final Project Report, available on the MCE project page.

Hillview Business Park: Clone Of 2025-00360

USA Topo Basemap With Locator Map



N
W E
S

0 0.130.25 0.5 0.75 1 Miles

Project Boundary

Project Type: Development, Commercial/Institutional/Industrial

Project Size (acres): 62.82

County(s): Ramsey

TRS: T30 R23 S10, T30 R23 S9

Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS
Esri, NASA, NGA, USGS, FEMA
Metropolitan Council, MetroGIS, MN Dept Natural Resources, Esri, TomTom,

Hillview Business Park EIS
DNR Natural Heritage Review (MCE-2025-00360-02) letter dated July 8, 2026

Required
Recommended

Henslow's Sparrow
Typical habitat: uncultivated and unmowed grasslands, old fields with standing dead vegetation and a substantial litter layer.
Disturbance in areas that contain suitable nesting habitat should not occur during their breeding season, between May 15 and July 15.
Contact Review.NHIS@state.mn.us to confirm below avoidance measure will be implemented or to inform that avoidance is not feasible.
If avoidance during breeding season is not feasible, areas that contain suitable nesting habitat will need to be surveyed for active nests prior to any disturbance.

January	February	March	April	May	June	July	August	September	October	November	December
				X	X	X	X				

Blanding's Turtle
Typical habitat: upland areas to up to and over a mile distant from wetlands, waterbodies, and watercourses. Uplands are used for nesting, basking, periods of dormancy, and traveling between wetlands.
Due to project details and the potential for take of a Blanding's turtle, an avoidance plan is required. Submit avoidance plan to Reports.NHIS@state.mn.us.

Ghost Tiger Beetle
Typical habitat: steep, open, blowing sand dunes.
Given the rarity of this species, an avoidance plan is required. Submit avoidance plan to Reports.NHIS@state.mn.us.

State-Listed Threatened Plant Species (black huckleberry, swamp blackberry, Clinton's Bulrush)
To demonstrate avoidance, a qualified surveyor will need to determine if suitable habitat exists within the activity impact area and, if so, conduct a survey prior to any project activities

Rusty Patched Bumble Bee
Project site overlaps the RPBB high potential zone
Federally listed as endangered and is anticipated to be listed as an endangered species in Minnesota in 2026.
Typical habitat: April - November uses underground nests in upland grasslands, shrublands, and forest edges, and forages where nectar and pollen are available.
October - April overwinters under tree litter in upland forests and woodlands.
If the project will impact more than two acres of suitable habitat within the high potential zone, avoidance measures or a permit to take may be needed when the endangered status becomes effective.
IPaC indicates project may affect this species based on project description and overlap with high potential zone.

Little Brown Bat & Big Brown Bat
Typical habitat: live and dead trees.
DNR recommends that tree and building removal be avoided from June 1 through August 15.

January	February	March	April	May	June	July	August	September	October	November	December
					Avoid						

IPaC indicates project may affect the tricolored bat

Lark Sparrow
Typical habitat: open, dry grassland areas with scattered trees and shrubs.
DNR recommends avoiding disturbance to grassland areas and tree/shrub removal from May 15 through August 15 to avoid disturbance of nesting birds.

January	February	March	April	May	June	July	August	September	October	November	December
				Avoid							

Trumpeter Swan
Typical habitat: wetlands with a mixture of emergent vegetation and open water.
Avoid construction activities during the nesting season from late April through August.

Plains Pocket Mouse
Typical habitat: open, well-drained areas, typically on sandy soils with sparse, grassy, or brushy vegetation.
Limit erosion control mesh to wildlife-friendly materials.

Regal Fritillary & Leadplant Flower Moth
Typical habitat: native prairie
Avoid disturbance to native prairie is recommended.

IPaC indicates no effect on monarch butterfly, whooping crane
IPaC indicates may affect salamander mussel

The EQB staff has some questions regarding the variance application and would appreciate your response or supplementation of your application in advance of the EQB Monitor publication date.

- If the variance is granted, when does your client anticipate that it would commence and complete the demolition work? Are detailed plans for this work available?
    - **If the variance is granted, we anticipate commencing the demolition work as soon as possible, subject to any required approvals, coordination with the City of Arden Hills, and the availability of construction assets and crews. Our goal would be to complete the work promptly and efficiently. We can provide detailed plans for the demolition work as they are finalized and coordinated with the appropriate parties.**

- You have requested the variance on grounds of public safety (trespass on the site). The application however provided no supporting detail, do you have additional details that would support the text of the application noted various instances?
    - **At least 30 individuals documented in the incident reports, with additional juveniles involved in the incidents. Additional incident specific information may be available from the local police and sheriff departments.**
- You propose to leave piles of rubble on the site until the EIS is completed.
    - **No**
- Will the piles of rubble continue to attract trespassers, i.e., people seeking to use the piles for climbing, biking, camping, parties, fires? Would disposal of the piles of rubble under the variance reduce the potential for further incidents?
    - **Yes. We would like to remove the rubble piles as soon as possible, as they continue to attract trespassers and unauthorized activities such as climbing, biking, camping, parties, and fires. Allowing the piles to be properly removed under the variance would significantly reduce these safety and security concerns, discourage further trespassing, and improve the overall condition and appearance of the property while the EIS is completed.**

- At the public meeting on the scope held July 8, 2026, was the public informed that a variance would be requested? Does the Responsible Governmental Unit (Arden Hills) support the variance?
    - **August 10th, 2026 – City Council of the City of Arden Hills, (PASSED) the hereby consents to a variance from Minnesota Rules, part 4410.3100, subpart 1 requested by the Proposer. (Please see attached)**
    - **This matter was noted on council agenda.**

- Are there any other permits that would be needed for the demolition to be conducted as you propose?
    - **All permits required from Arden Hills, Rice Creek Watershed District or other regulating agencies will be obtained prior to any site demolition or disturbance.**

- Can you provide any detail regarding how your client will manage the concerns identified by the DNR?
    - **We are in communication with a protected species consultant to conduct the suitable habitat on the site prior to project activities.**

RESOLUTION NO. 2026-038

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARDEN HILLS CONSENTING TO A VARIANCE FROM MINNESOTA RULES PART 4410.3100, SUBPART 1 FOR MAPLEWOOD DEVELOPMENT, INC.

WHEREAS, Maplewood Development, Inc. ("Proposer") proposes a 62-acre, 972,200 square foot warehouse/distribution/office park development ("Project") near the corner of County Road I and Fairview Avenue, on property formerly associated with the Twin Cities Army Ammunition Plant (TCAAP) operations, in Arden Hills, Minnesota ("Property"); and

WHEREAS, an Environmental Impact Study (EIS) scoping Environmental Assessment Worksheet (EAW) is required by Minnesota Rules, part 4410.4400, subpart 11 for the Project; and

WHEREAS, the City of Arden Hills, Minnesota ("City") is the responsible governmental unit (RGU) for the EIS; and

WHEREAS, Minnesota Rules, part 4410.3100, subpart 1 states that if an EIS or EAW is required for a government action, then a project may not be started and a final governmental decision may not be made to grant a permit until: a petition for an EAW is dismissed, a negative declaration on the need for an EIS is issued, an EIS is determined adequate, or a variance is granted under Minnesota Rules, part 4410.3100, subparts 3 to 7; and

WHEREAS, under Minnesota Rules, part 4410.3100, subpart 4, a variance for certain governmental approvals to be granted prior to the completion of the environmental review process may be requested at any time to the Minnesota Environmental Quality Board (EQB) by a proposer after the commencement of the 30-day review period following the filing of an EAW or scoping document; and

WHEREAS, the 30-day review period for the EIS for the Project commenced on June 16, 2026; and

WHEREAS, under Minnesota Rules, part 4410.3100, subpart 6, a variance may not be granted by the EQB without the consent of the RGU; and

WHEREAS, the Proposer has requested the City's consent as RGU to apply for a variance from Minnesota Rules, part 4410.3100, subpart 1 because unauthorized persons and trespassers have gained access to vacant buildings on the Property; and

WHEREAS, on July 5, 2026, there was a fatal accident on the Property, so the City considers the Project to have dangerous conditions that are likely to attract unauthorized people; and

WHEREAS, the City has determined that it would be in the best interest of public health, safety, and welfare to allow the Proposer to seek a permit to demolish the above ground structures on the Property prior to the completion of the EIS so that the structures are neither useable or useful for any type of shelter nor are attractive for gatherings of people who are not authorized to be on the Property.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Arden Hills hereby consents to a variance from Minnesota Rules, part 4410.3100, subpart 1 requested by the Proposer with the following conditions:

1. The Proposer may apply for a demolition permit from the City to demolish or knock down the above ground structures on the Property.
2. The Proposer must provide erosion control required by the City before, during, and after the demolition.
3. The Proposer may remove demolished materials, install a fence to deter unauthorized access to the Property, and fill in subgrade structures.
4. The Proposer must not remove or damage significant trees or wildlife.
5. The Proposer must not perform any site preparation work beyond demolishing the structures, perform subgrade excavation work, bring fill into grade the Property, or any grading.

BE IT FURTHER RESOLVED, that the City Council of the City of Arden Hills hereby authorizes the City Administrator to transmit this resolution to the Proposer or the EQB as deemed necessary.

ADOPTED this 10th day of August, 2026.

David Grant

David Grant, Mayor

Attest:

Julie Hanson

Julie Hanson, City Clerk

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September 28, 2026

Environmental Quality Board
520 Lafayette Road North
St. Paul, Minnesota 55155
By email:

Re: Grand Portage Band of Lake Superior Chippewa's and Bois Forte Band of Chippewa's Request for Initiation of a Generic Environmental Impact Statement Regarding Impacts of Mining Operations Within the 1854 Ceded Territory.

Dear Members of the Minnesota Environmental Quality Board,

As the Bois Forte Band of Chippewa and Grand Portage Band of Lake Superior Chippewa announced last week, we hereby request that the Minnesota Environmental Quality Board ("EQB") order a comprehensive Generic Environmental Impact Statement ("GEIS") to evaluate direct and cumulative impacts of mining and other extractive industries on the quality of water, air, and land necessary to support meaningful treaty harvest in the1854 Ceded Territory.[1] A more formal petition will follow, but we wish to begin discussions with the EQB as soon as possible.

The 1854 Treaty Ceded Territory covers about 5.5 million acres encompassing all of Cook and Lake Counties, most of St. Louis and Carlton Counties, and small portions of northern Pine and east-central Aitkin Counties.[2] Under the 1854 Treaty of LaPointe, the Grand Portage, Bois Forte and Fond du Lac Bands reserved rights to hunt, fish and gather throughout the ceded lands. [3]

As shown on the following maps, the Iron Range significantly overlaps with the 1854 Ceded Territory.[4] Mining activities result in massive discharge of pollutants. There is likewise no question that this industry has, for many years, profoundly and negatively impacted the Band's ability to hunt, fish, and gather.

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[1] *See* Minnesota Rule 4410.3800, Generic EIS.
[2] 1854 Treaty Authority, General Map, https://www.1854treatyauthority.org/treaty-harvest
[3] *See* Treaty with the Chippewa, 1854, 10 Stat. 1109 (Sept. 30, 1854); *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 184 (1999) (noting "the 1854 Treaty established new hunting and fishing rights in the territory ceded by the Treaty"); *Grand Portage Band of Chippewas, et al. v. State of Minnesota, et al*., Civ. No. 4-85-1090 (settling suit to enforce 1854 Treaty as to Grand Portage and Bois Forte Bands against state as reflected in Minn. Stat. § 97A.157). The Fond du Lac Band and the State in 2017 likewise settled and filed an MOU with the D.Minn.
[4] DNR Mesabi Range Map, https://files.dnr.state.mn.us/lands_minerals/mesabi_iron_range_map.pdf.

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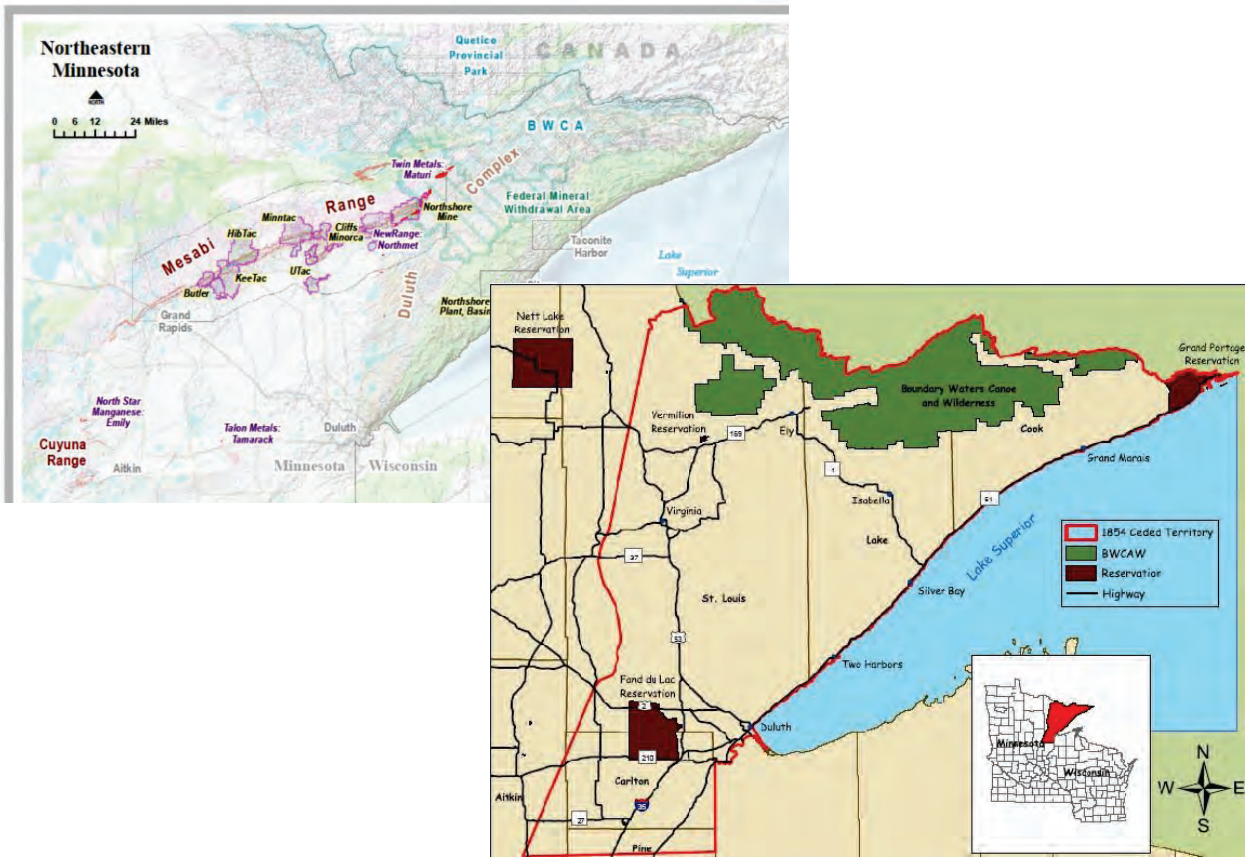

Minnesota created the GEIS process specifically for environmental questions that cannot be adequately understood on a project-by-project basis. A GEIS would establish existing environmental conditions and examine the combined effects of past extraction, existing operations, proposed projects, and reasonably foreseeable future developments on irreplaceable treaty resources. It would also include an examination of sulfate, mercury and methylmercury, wetlands, surface- and groundwater hydrology, mine dewatering, tailings and waste rock, air deposition, habitat alteration, and the long-term sustainability of treaty resources, among other criteria.

Our forthcoming petition will address in detail the criteria the EQB must consider in determining the need for a generic EIS under Minnesota Rules, part 4410.3800, subpart 2, but we note now that this request aligns squarely with each of those criteria. The combined effects of mining within the 1854 Ceded Territory can be better evaluated through a generic EIS than through project-specific review, and the potential for significant environmental effects from the cumulative impacts of these projects is well documented. The effects of copper-nickel mining and other extraction on water quality, mercury methylation, and treaty resources involve substantial scientific uncertainty and unique risks, and the impacts at issue are of regional and statewide significance that cannot be adequately addressed on a project-by-project basis. State policies promoting mineral development directly affect the number and location of these projects, and thus the potential for significant environmental effects from multiple projects.

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As Minnesota considers a flood of new extraction applications, the need for a GEIS is heightened by the prospect of an entirely new extractive industry taking hold within the 1854 Ceded Territory. At least three copper-nickel mines are proposed or advancing toward development in the Territory, including NewRange Copper Nickel, Twin Metals Minnesota, and Green Bridge Metals. Other companies hold mineral rights within the Territory that could yield additional projects. Copper-nickel mining in sulfide-bearing rock poses risks of acid mine drainage and metals leaching that are categorically different from those of Minnesota's existing iron mining industry, and this type of mining has a well-documented record of water contamination wherever it has been undertaken. Introducing a new and potentially dangerous industry of at least three mines onto a landscape already burdened by more than a century of extraction is precisely the circumstance the generic EIS process was designed to address.

Meaningful project-by-project review of these proposals is impossible without a baseline. More than a century of extraction has already altered the region's waters, wetlands, air, and habitats, yet no comprehensive accounting exists of the present condition of these resources or their remaining capacity to absorb additional impacts. Absent that baseline, no project-specific review can honestly evaluate the incremental and cumulative effects of a single new mine, much less three or more. Assembling this basic research—information that decision makers, Tribal Nations, and the public need for governmental and public planning—is critical for all stakeholders. A GEIS is likewise needed to explore issues that go beyond the scope of any individual project review: the long-term past, present, and future effects of mining on the economy, environment, and way of life of the residents of the state, including the ability of the Bands' members to exercise the rights reserved to them under the 1854 Treaty.

Thank you for your consideration of this request. We look forward to submitting a more detailed petition for EQB review.

Respectfully submitted,

Signed by:
38A0C1B3E2714E3...

Carlos Hernandez, Chairman,
Bois Forte Band of Chippewa

Robert Deschampe

Robert Deschampe, Chairman
Grand Portage Band of Lake Superior Chippewa