



November 3, 2010

Mr. Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Larsen:

Thank you for the opportunity to comment on the "Proposed Amendment to Rules Governing the Environmental Review Program, Minnesota Rules, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, With Respect to Greenhouse Gas Emissions" that was published in the October 4, 2010 EQB Monitor.

We are writing on behalf of the members of the Minnesota Asphalt Pavement Association (MAPA) and the Aggregate & Ready Mix Association of Minnesota (ARM). These trade associations represent members who are involved in construction activities related to the mining and production of aggregate materials and the production and placement of hot-mix asphalt (HMA) and the production of ready mix concrete. As a group, we represent over 250 companies affiliated with our industries.

Minnesota Rules Chapter 4410 state that among other things the purpose of the environmental documents prepared under the Environmental Review Program are to be used as guides when governmental units are issuing, amending or denying permits or carrying out other responsibilities. To our knowledge, governmental agencies are not significantly involved in regulating facilities that generate between 250 tons and 75,000 tons of greenhouse gases (GHG). We understand that the Minnesota Pollution Control Agency will be issuing permits for facilities that, depending on certain factors, emit between 75,000 tons and 100,000 of GHGs. We believe that the majority if not all of the facilities emitting these amounts of GHGs are already required to undergo mandatory environmental review. Therefore MAPA and ARM support the option to explicitly exclude GHGs from application of the air pollution category by defining the term "air pollutant" in a manner that excludes GHGs.

If this option (explicitly excluding GHGs from application of the air pollution category by defining the term "air pollutant" in a manner that excludes GHGs ) is not chosen, then we would support the option to subdivide the Air Pollution category into two items: one item applying to air pollutants other than GHGs as the existing category; and a new item B that

would apply specifically to GHGs, with an appropriate threshold higher than 100,000 tons per year of carbon dioxide equivalent emissions. The Statement of Need and Reasonableness for the Environmental Review Program Rules (MN Rules, Chapter 4410) authorized December 15, 2005 states on page 34[1] that a "threshold of 250 tons would coincide with the federal threshold for the Prevention of Significant Deterioration permitting review." To maintain consistency with this basis for selecting the threshold, we suggest that the EQB consider a threshold of 100,000 tons per year level or greater.

We understand that the EQB is considering this amendment in response to the U.S. Supreme Court ruling in a lawsuit in 2007 that prompted the U.S. Environmental Protection Agency (EPA) to recently issue a regulation under which GHG emissions will be covered by Clean Air Act permits under certain circumstances beginning January 2011.

The EPA has certified that the GHG Tailoring Rule will not have a significant economic impact upon a substantial number of small entities. For this rule, the agency stated

> *"EPA has not conducted a Regulatory Flexibility Analysis or a SBREFA SBAR Panel for the proposed rule because we are proposing to certify that the rule would not have a significant economic impact on a substantial number of small entities."*[2]
>
> *"I certify that this rule will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities ... We believe that this proposed action will relieve the regulatory burden associated with the major PSD* [preconstruction permits program] *and title V operating permits program for new or modified major sources that emit GHGs, including small businesses ... As a result, the program changes provided in the proposed rule are not expected to result in any increases in expenditure by any small entity."*[3]

Applying incredibly low limits such as 250 tons per year of GHG are unreasonable for the following reasons:

- It would result in an extraordinary amount of sites being affected that are potentially very small GHG sources,
- It would require an unnecessary amount of environmental documentation without a benefit to the taxpayers of MN,
- It would overwhelm state agencies that are already lacking resources and trained personnel to process and enforce large volumes of extra environmental documentation,
- It falls outside the purpose of environmental review program, and
- It would be against the intent of the EPA.

Thank you for your consideration.

Sincerely,

Richard O. Wolters

Richard O. Wolters, P.E.
Executive Director MAPA

Fred J. Corrigan
Executive Director ARM

**References/Sources**

1. http://www.eqb.state.mn.us/documents/18343/SONAR.RulemakingAuthorization.2005_12.pdf
2. 74 Fed. Reg. 49,629 (September 28, 2009).
3. 74 Fed. Reg. 55,349 (October 27, 2009).
4. "Mandatory Reporting of Greenhouse Gases" 74 Fed. Reg. 56,260 (October 30, 2009).

Minnesota Asphalt Pavement Association

AGGREGATE & READY MIX

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November 2, 2010

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**Subject:** Proposed Amendment to Rules Governing the Environmental Review Program, Minnesota Rules, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, With Respect to Greenhouse Gas Emissions

Dear Mr. Larsen:

**Comments of CenterPoint Energy**

**Introduction**

The Environmental Quality Board ("EQB") has recently published a Request for Comments (see EQB Monitor, dated October 4, 2010) stating that the EQB is considering amending the existing rules governing the Environmental Review program to clarify how greenhouse gases ("GHGs") are to be treated under the Air Pollution mandatory EAW category, at part 4410.4300, subpart 15. As stated in the Request for Comments, this subpart requires preparation of an Environmental Assessment Worksheet ("EAW") for construction of a stationary source facility that generates 250 tons or more per year, or modification of a facility that increases generation by 250 tons or more per year, of any single air pollutant. The Minnesota Pollution Control Agency ("MPCA") is responsible for preparing the EAWs.

Recently, in response to a U.S. Supreme Court ruling, the U.S. Environmental Protection Agency ("EPA") has issued a regulation under which GHG emissions will be covered by Clean Air Act permits beginning in January 2011. In practice, the MPCA has required EAWs for the emission of substances permitted as air pollutants under the federal Clean Air Act. For Minnesota, the Clean Air Act permits, issued by the MPCA, will cover GHG emissions of at least 75,000 tons per year or 100,000 tons per year, depending on other factors. These levels are much higher than the permitting thresholds that apply to other air pollutants, which are 100 or 250 tons per year, and are intended to cover only the largest types of GHG emitting facilities, such as power plants and refineries.

CenterPoint Energy, headquartered in Houston, Texas, is a domestic energy delivery company that includes electric transmission and distribution, natural gas distribution, competitive natural gas sales and services, interstate pipelines and field services operations. The company serves more than 3 million natural gas customers in six states, including Minnesota. It is the largest natural gas utility in Minnesota, serving about 800,000 residential, commercial, and industrial customers in 260 communities. While natural gas is an affordable, abundant, domestic, and environmentally friendly fuel used for space and water heating, as well as in industrial processes, its use by our customers does produce GHGs and therefore CenterPoint Energy has an interest in these issues. We appreciate this opportunity to provide comments.

**Issues Being Considered**

As stated in the EQB Request for Comments, the new EPA regulation raises the question of whether GHG emissions will also be subject to the State's mandatory EAW category for air pollutants, and if so, whether the existing 250 tons per year threshold is appropriate for GHG emissions. To date, the EQB staff have identified the following possible options for amending the rules with respect to these issues:

- Explicitly exclude GHGs from application of the Air Pollution category by defining the term "air pollutant" in a manner that excludes GHGs.
- Explicitly include GHGs under the category by defining the term "air pollutant" in a manner that includes GHGs.
- Subdivide the Air Pollution category into two items: one item applying to air pollutants other that GHGs, with same threshold as the existing category (250 tons per year); and a new item B that would apply specifically to GHGs, with an appropriate threshold which would be higher than the existing 250 tons per year threshold. The threshold specific to GHGs would likely be chosen to correspond to one of the permitting thresholds in the EPA regulations mentioned above, e.g., 75,000 or 100,000 tons per year.

**Position of CenterPoint Energy**

As stated earlier, the existing air pollution permitting requirements for air pollutants other than GHGs are intended to cover the largest types of facilities, such as power plants, refineries, and other large industrial facilities. With respect to GHGs, an entirely new threshold is necessary to avoid including extremely small commercial and industrial facilities in the mandatory permitting process. For example, when natural gas is combusted, it emits approximately 18.4 pounds of CO2 for every million Btu's ("MMBtu") or Dekatherms of gas consumed. Thus, the 250 tons of GHGs threshold equates to approximately 4600 Dekatherms of natural gas used per year. On CenterPoint Energy's gas utility system in Minnesota alone, approximately 1900 commercial and industrial customers currently exceed this threshold, with many of these customers being small commercial buildings, grocery stores, schools, and apartment buildings. These are not the types

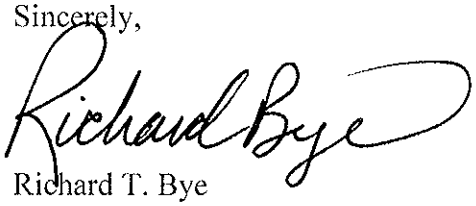
of facilities that the Clean Air Act was designed to cover and that is why the EPA has, in its "tailoring" rule, dramatically increased the threshold for any requirements that apply to GHGs. Essentially, the EPA has found that applying the 250 tons per year threshold to GHGs would produce "absurd results"[1] which cannot be supported.

Thus, CenterPoint Energy has a two-part position on this matter. First, we have no objection to the first identified option, that GHGs be excluded from the definition of "air pollutant" for purposes of requiring a mandatory EAW.

Second, if the EQB ultimately decides to include GHGs within the definition of "air pollutant" for purposes of requiring mandatory EAWs, CenterPoint Energy strongly supports the third identified option, that of subdividing the Air Pollution category into two items. Specifically, a new item B should be created that would apply to GHGs, with a threshold of 100,000 tons per year. EPA, in administering the Clean Air Act, requires GHGs be considered for facilities emitting between 75,000 and 100,000 TPY only if they meet the threshold level for another criteria pollutant – therefore these facilities will already require an EAW under existing rules. Based on the 100,000 tons per year threshold level, CenterPoint Energy can confirm that the regulations would apply almost exclusively to large industrial customers, such as power plants and refineries.

CenterPoint Energy appreciates this opportunity to comment on the EQB's proposed amendment to the subject rules and requests that we be kept apprised of any further developments on this matter.

Sincerely,



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[1] 40 CFR Parts 51, 52, 70, et al. "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule", EPA-HQ-OAR-2009-0517

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October 15, 2010

Jon Larsen
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**Re: Proposed Amendment to Rules Governing The Environmental Review Program, *Minnesota Rules*, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, with Respect to Greenhouse Gas Emissions**

Dear Mr. Larsen,

Cliffs Natural Resources Inc. (Cliffs) is a mining and natural resources company. Its North American business unit operations in the U.S. include three iron ore mines owned or managed in Minnesota. These are large industrial facilities, and periodic facility modifications are required to ensure the mining and ore processing operations remain competitive. Such modifications typically require air permit modifications and could easily result in increases in greenhouse gas (GHG) emissions in excess of 250 tons per year, the threshold for a mandatory Environmental Assessment Worksheet (EAW). As a result a mandatory EAW could be required for virtually every facility modification project that resulted in an increase in production or possibly increased fuel use associated with installation of other emission controls. For this reason Cliffs has a vested interest in this rulemaking.

The October 4, 2010 State Register notice on this possible rulemaking listed three options for amending the EQB rules to address the need for EAWs for increased GHG emissions. In the event the EQB chooses to pursue this rulemaking, Cliffs urges the EQB to adopt the third option, which states:

> "Subdivide the Air Pollution category into two items: one item applying to air pollutants other than GHGs, with the same threshold (250 tons per year) as the existing category; and a new item B that would apply specifically to GHGs, with an appropriate threshold (or multiple thresholds) which would be higher than the existing 250 tons per year threshold. The threshold(s) specific to GHGs would likely be chosen to correspond to

one of the permitting threshold(s) in the EPA regulations as mentioned above, e.g., 75,000 or 100,000 tons per year of carbon dioxide equivalent emissions, but could be set at some other number."

Cliffs is concerned that changing the definitions in the environmental rules is unwise because other definitions in state statutes (e.g. MN Statutes 116.06, Subd. 4 (definition of air pollutant) and in other state rules (e.g. MN Rules 7007.0100, Subp. 19 (definition of regulated air pollutant)) would remain and create unnecessary conflict. As the regulation of GHGs at the federal level evolves it is likely that a separate definition and applicability for GHGs will be developed that would resolve any potential issues related to environmental review in Minnesota without creating conflict with other state and federal definitions of air pollutants.

Cliffs urges the EQB to adopt GHG thresholds that are identical to or reference the permitting threshold(s) in the EPA regulations. Having different thresholds for state and federal permitting requirements for environmental review will only serve to confuse the public, permittees, and project developers and could result in unnecessary environmental review for projects with only minor GHG emission increases. Such a scenario would result in a significant burden to permittees and agencies administering EAWs with little if any environmental benefit. It would likely also dampen economic development in Minnesota.

Thank you for your consideration of Cliffs' position on this matter. Should you have any questions, please feel free to contact me at 218-279-6128.

Sincerely,

David Z. Skolasinski

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District Manager-Environmental

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November 3, 2010

via e-mail: jon.larsen@state.mn.us

Mr. Jon Larsen
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**RE:** Proposed Amendment to Rules Governing the Environmental Review Program, *Minnesota Rules*, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, With Respect to Greenhouse Gas Emissions

Dear Mr. Larsen:

Xcel Energy is pleased to have the opportunity to submit comments on the Environmental Quality Board's ("EQB") proposal to establish a greenhouse gas ("GHG") emission threshold for triggering the environmental review provisions of Minnesota Rules 4410. We believe it is imperative for 4410 to be amended to address the emission threshold complexities that are presented by GHG emissions.

Xcel Energy is a major United States natural gas and electricity company. Based in Minneapolis, Minnesota, Xcel Energy operates in eight western and mid-western states including Colorado, Michigan, Minnesota, New Mexico, North and South Dakota, Texas and Wisconsin. Xcel Energy provides a comprehensive portfolio of energy-related products and services to 3.4 million electricity customers and 1.9 million natural gas customers through its regulated operating companies. Xcel Energy's generating units are capable of producing 16,400 megawatts of electricity, using a variety of fuel sources including coal, natural gas and oil, nuclear, renewable fuels and hydropower.

Xcel Energy agrees with EQB staff option number 1, which proposes to explicitly exclude GHG emissions from application of the Air Pollution category by defining the term "air pollutant" in a manner that excludes GHGs. This action would eliminate subjecting numerous, small projects to environmental review because their potential GHG emissions exceed 100/250 tons per year. Clearly, the Minnesota Pollution Control Agency (MPCA) does not have sufficient staff and resources to react to such an influx of projects.

If the EQB determines that GHG emissions alone should trigger environmental review under 4410, Xcel Energy agrees with EQB staff option number 3, which proposes to:

> " Subdivide the Air Pollution category into two items: one item applying to air pollutants other than GHGs, with the same threshold (250 tons per year) as the existing category; and a new item B that would apply specifically to GHGs, with an appropriate threshold (or multiple thresholds) which would be higher than the existing 250 tons per year threshold. The threshold(s) specific to GHGs would likely be chosen to correspond to one of the permitting threshold(s) in the EPA regulations as mentioned above, e.g., 75,000 or 100,000 tons per year of carbon dioxide equivalent emissions, but could be set at some other number."

Xcel Energy proposes that the US EPA's Tailoring Rule emission thresholds are the appropriate level for triggering environmental review under 4410. The Tailoring Rule has undergone comment and review by states, industry and business, environmental groups, and the general public. As a result of the comment and review process, the US EPA determined that costs to the project and burdens on states would not be overly oppressive with thresholds codified at 40 CFR 52.21 and 40 CFR 70.2 (essentially 100,000 tons CO2e/yr for new sources and 75,000 tons CO2e/yr for modifications to existing major sources).

It is notable that the US EPA had proposed lower threshold of 10,000 and 25,000 tons CO2e/year (74 FR 55292). In the final rule, however, EPA raised the thresholds to 75,000 and 100,000 tons CO2e/year on the basis that any lower levels would produce "absurd results."

Thank you for the opportunity to provide comments on the proposed transport rule. Please feel free to contact me if you have any questions at 612.330.7879 or Richard.A.Rosvold@xcelenergy.com.

Sincerely,

Richard A. Rosvold

Richard A. Rosvold
Air Quality Manager, Environmental Services
Xcel Energy Inc.

cc: Dean Metcalf
Jim Turnure

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**VIA EMAIL AND U.S. MAIL**

November 3, 2010

Mr. Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

RE: "Proposed Amendment to Rules Governing the Environmental Review Program, *Minnesota Rules*, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, With Respect to Greenhouse Gas Emissions"

Dear Mr. Larsen:

Great River Energy is pleased to have the opportunity to submit comments on the Environmental Quality Board's potential amendment to the environmental review program to clarify how greenhouse gases ("GHG") are to be treated for purposes of the air pollution mandatory Environmental Assessment Worksheet ("EAW") category at Minn. R. 4410.4300, Subpart 15.

Great River Energy is a not-for-profit generation and transmission cooperative. We generate electricity and transmit it to our 28 member distribution cooperatives. Those member cooperatives provide retail electric services to approximately 1.7 million people covering 60 percent of the geographic area of Minnesota and a small portion of Wisconsin.

**A. Great River Energy supports the first of the EQB staff's three possible options for amending the rules, i.e., explicitly excluding GHGs from application of the air pollution category by defining the term "air pollutant" in a manner that excludes GHGs.**

1. GHG emissions should not trigger environmental review under Minn. R. Chapter 4410 and such emissions should be expressly exempt from definition as an air pollutant from Minn. R. 4410.4300, Subp. 15.

As a result of recent findings and rulemaking by the U.S. Environmental Protection Agency ("EPA"), the regulation of GHG emissions under the Clean Air Act becomes effective beginning January 2, 2011. The Minnesota Pollution Control Agency ("MPCA") will administer the New Source Review/Prevention of Significant Deterioration and the Part 70 permitting programs for GHGs. EPA's GHG Tailoring Rule will require every project proposer to estimate its GHG emissions to determine the applicability of the rule to its project. If the project's potential emissions exceed the thresholds specified in the Tailoring Rule, the MPCA will conduct a thorough analysis of those emissions and determine what level of mitigation is necessary for the GHG emissions. Because the MPCA will already be required to analyze, mitigate and regulate large sources of GHGs, requiring analysis under Chapter 4410 is redundant and unnecessary. It is important to note that the MPCA is both the responsible governmental unit ("RGU") for purposes of environmental review and the regulating authority for purposes of GHG permitting.

In addition to the unnecessary redundancy of review through these dual processes, there is a significant concern about the amount of time and delay in project approval. Historically, the MPCA has not allowed concurrent public notice of the EAW and the permit. Consequently, project review and approval spans a significant amount of time. In 2009 the Minnesota Legislature directed the MPCA to prepare a report on streamlining Minnesota's environmental review process to "**include options that will reduce the time required to complete environmental review and the cost of the process to responsible governmental units and project proposers** while maintaining or improving air, land, and water quality standards." [emphasis added]

Great River Energy proposes that the EQB amend Chapter 4410 to specifically exclude GHG emissions from the definition of air pollutants under Minn R. 4410.4300, Subp. 15. To help ensure that projects do not slip through the cracks, a question could be added to the EAW that requires a project proposer to estimate the potential GHG emissions and refers the proposer to the MPCA's GHG permitting process to determine the appropriate level of any mitigation. Alternatively, a statement could be added to Minn R. 4410.4300, Subp. 15 that references the MPCA's GHG permitting process.

2. Unlike conventional air pollutants, GHGs are not appropriately suited to the purpose of Minnesota's environmental review program.

Unlike conventional air pollutants that may have a localized effect on environmental quality, the impact of GHGs is of a global nature. Since the purpose of an EAW is to assess local and regional impacts and determine need for and appropriateness of mitigation measures, a global pollutant, like GHGs, is not appropriate for such a local evaluation.

**B. If the EQB determines that "air pollutant" should be defined in a manner that includes GHGs, EQB should amend the rules consistent with Clean Air Act regulation.**

1. EPA's Tailoring Rule sets the appropriate GHG emission levels for triggering Chapter 4410.

In the absence of excluding GHG emissions from triggering environmental review, Great River Energy believes that EPA's Tailoring Rule emission thresholds are the appropriate level for triggering environmental review under Chapter 4410. The Tailoring Rule has undergone comment and review by states, industry and business, environmental groups, and the general public. As a result of the comment and review process, EPA determined that costs to the project and burdens on states would not be overly oppressive with the thresholds codified at 40 CFR §52.21 and 40 CFR §70.2 (essentially, 100,000 tons $CO_2e$/year for new sources and 75,000 tons $CO_2e$/year for modifications to existing major sources).

It is notable that EPA had proposed lower thresholds of 10,000 and 25,000 tons $CO_2e$/year (74 Fed. Reg. 55292). In the final rule, however, EPA raised the thresholds to 75,000 and 100,000 tons $CO_2e$/year on the basis that any lower levels would produce "absurd results."

2. The definition of GHG thresholds that trigger environmental review should refer to 40 C.F.R. §52.21(b)(49)(v).

GHG emission thresholds that trigger review under Chapter 4410 should be expressed exactly as they are in the Tailoring Rule at 40 C.F.R. §52.21(b)(49)(v). This is the "Step 2" definition that becomes effective on July 1, 2011.

EPA's Prevention of Significant Deterioration ("PSD") requirements are complicated. Any attempt to deviate from or modify this definition in Chapter 4410 could subject some projects to an analysis similar to the extensive analysis process of the PSD program that would not otherwise be subject to such a review. As noted in our preceding comment, EPA attempted to reduce the number of projects subject to the Tailoring Rule under the premise that broadening the number of affected facilities would produce absurd, costly and burdensome results.

The Step 2 thresholds are appropriate for Chapter 4410 because it is unlikely that the state would be able to finalize and implement the rule changes by the Step 1 effective date of January 2, 2011. Including only the Step 2 definition will also result in a simpler

rule. Lastly, projects that meet the Step 1 definition will still undergo thorough review by the MPCA as part of its permitting process.

Great River Energy appreciates the opportunity to comment on EQB's potential amendment.

Respectfully submitted,

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# METROPOLITAN AIRPORTS COMMISSION

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2 November 2010

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Re: Request for Comments on Proposed Amendments to Minn. R. Ch. 4410.4300, Subpart 15 (Addressing Greenhouse Gas Emissions)

Dear Mr. Larsen:

This letter is written to offer the perspective of the Metropolitan Airports Commission on the above-referenced request for comments on proposed adjustments to the Mandatory Environmental Assessment Worksheet category for Air Pollution (Minn. R. 4410.4300, Subp. 15).

The Metropolitan Airports Commission (MAC) was created by state law in 1943. A public corporation, the Commission was designed to provide for coordinated aviation services throughout the Twin Cities metropolitan area. Today, the MAC operates one of the largest aviation systems in the nation, consisting of Minneapolis-St. Paul International (MSP) and six reliever airports. A board of commissioners, appointed by Minnesota's governor and the mayors of Minneapolis and St. Paul, sets and interprets the Commission's policies. Those policies are implemented by the Commission's Executive Director and staff.

The MAC is familiar with Environmental Review requirements as contained in the Minnesota Environmental Policy Act (MEPA) and the National Environmental Policy Act (NEPA), as well as Minnesota Pollution Control Agency (MPCA) air permitting programs and federal Greenhouse Gas (GHG) requirements.

The MAC respectfully offers the following comments for consideration as Environmental Quality Board (EQB) staff draft preliminary rules on the above-referenced subject.

## The EAW Rules Should Not Be Expanded to be Triggered by GHG Emissions Alone

The MAC believes a national program is more appropriate for addressing GHG emissions, such as the US Environmental Protection Agency's (USEPA) Mandatory Reporting Rule and the Tailoring Rule. The MAC believes that state-level programs such as the EQB's Environmental Review rules would be a less-effective avenue for addressing the effects of a global issue such as climate change.

While GHGs are already addressed in Environmental Assessment Worksheets (EAW) and Environmental Impact Statements (EIS), expanding the applicability thresholds of these rules so that one or both documents could be triggered on a GHG threshold alone is not likely to yield any more significant additional information than would be required under existing federal rules. For example, the USEPA's Mandatory Reporting Rule already requires inventories for 25,000+ ton/yr stationary emission sources of GHGs, and the new USEPA GHG Tailoring Rule specifies thresholds for triggering Prevention of Significant Deterioration or Title V air permitting from large GHG sources.

For other air pollutants that typically trigger EAWs, certain additional analyses are typically specified by the MPCA for analysis of such emissions in the context of an EAW. Dispersion modeling is generally required in order to predict ambient concentration of the EAW-affected pollutant. Often, an Air Emissions Risk Analysis is also specified for a project undergoing an EAW, so that human health risks from a proposed project can be more fully evaluated before a decision is made on the need for further Environmental Review. GHG emissions, on the other hand, have potential national or global significance but changes in stationary source emissions of GHGs can not yet be meaningfully evaluated by either dispersion modeling or human health risk assessment. Because of the near-field limits of the tools normally used to assess other air pollutants in the context of an EAW, an EAW triggered for GHG emissions alone would not likely provide any meaningful information beyond the inventory and permitting requirements noted above.

For these reasons, the MAC recommends that the EQB modify the language at Minn. R. 4410.4300, Subp. 15 so as to explicitly exclude GHG emissions as a triggering pollutant. This would remove ambiguity about whether or not EAW threshold evaluations are meant to include GHGs.

Should EQB Elect to Include GHGs as a Triggering Air Pollutant Under Minn. R. 4410.4300, Subp. 15, then a Separate Threshold Should be Established that Reflects Federal Permitting Regulations

If the EQB is not open to explicitly excluding GHGs from EAW or EIS threshold determinations, then the MAC believes it is necessary for a separate threshold to be set for GHG emissions. The Minn. R. 4410.4300, Subpart 15 threshold of 250 tons/yr is not workable for any GHG regulatory evaluation; it is significantly too low. A nominal 500,000 Btu/Hr natural gas-fired makeup air heater in one of the MAC's maintenance facilities would have the potential to emit approximately 250 tons/yr (using the calculation methodology specified by the USEPA for other air pollutants). The EAW program would be overwhelmed if the program was opened up to include applicability via GHGs alone, but a separate threshold was not established for these pollutants.

The October 4, 2010 *EQB Monitor* notice states that the EQB is considering one of the two USEPA GHG thresholds (e.g., 75,000 tons/yr or 100,000 tons/yr GHGs) as a possible threshold for EAW purposes. These two thresholds are taken from the USEPA's GHG Tailoring Rule, which set separate thresholds for GHGs under the Prevention of Significant Deterioration and Title V permitting programs. The 75,000 tons/yr threshold pertains to Step 2 of the rule, and is used as a major "modification" threshold for projects at existing sources. This 75,000 tons/yr threshold is analogous to the various major modification thresholds for criteria pollutants from changes at existing major sources under PSD, such as 15 tons/yr for $PM_{10}$ and 40 tons/yr for $SO_2$, $NO_x$ or VOCs. The 100,000 tons/yr GHG threshold in the Tailoring Rule is set to establish the

level at which an entire facility would be major for PSD or Title V permitting purposes. The corresponding PSD major source levels are either 100 tons/yr for certain listed source categories, or 250 tons/yr for all other source categories.

In its January 7, 2006 Statement of Need and Reasonableness (SONAR) on then-proposed changes to Minn. R. Ch. 4410, the EQB noted that it was changing the Subpart 15 EAW threshold from 100 tons/yr to 250 tons/yr to *"coincide with the federal threshold for the Prevention of Significant Deterioration permitting review."* Given the manner in which the final Tailoring Rule thresholds were set, the MAC recommends the appropriate threshold for consideration here is 100,000 tons/yr, not 75,000 tons/yr. Using a 100,000 tons/yr GHG threshold for an EAW trigger would be consistent with how the current 250 tons/yr threshold was set in Minn. R. 4410.4300 Subp. 15 for non-GHG air pollutants.

Lastly, the MAC is aware that the Tailoring Rule has not been without controversy as to whether the USEPA has authority to adjust the thresholds set by Congress in the Clean Air Act (CAA). What if the Tailoring Rule is ultimately vacated, or if Congress sets a different threshold via amendments to the CAA? The MAC suggests that the EQB consider adding language to any new Subpart 15.B such as "or any higher threshold set by an Act of Congress."

Closing Comments

The MAC is prepared to offer other comments on the concept of addressing GHGs under Environmental Review, such as the allowable sources of GHG emissions data or the scope of emission-generating activities to be included in the evaluation of a proposed project (e.g., stationary sources only and not mobile sources related to a project). However, the need to address such comments depends on whether the EQB intends to explicitly exclude GHGs from consideration under Minn. R. 4410.4300 Subp. 15.

The MAC noted that the October 4, 2010 *EQB Monitor* notice included the possibility of appointing an advisory group for this proposed rule change. The MAC is not requesting an advisory group to be formed. However, if the EQB intends to appoint such a group, the MAC requests an opportunity to participate.

Thank you for the opportunity to offer comments on the proposed rulemaking. If you have any questions about any of the comments submitted by the MAC, please contact me at 612.726.8134.

Sincerely,

Roy Fuhrmann
Director of Environment

Minnesota Center for
Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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November 3, 2010

**VIA EMAIL AND U.S. MAIL**

Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

*RE: Proposed Rule Amendment Regarding Minn. R. 4410.4300, subp. 15.*

Dear Mr. Larsen:

I write on behalf of the Minnesota Center for Environmental Advocacy (MCEA) in response to the Environmental Quality Board's (EQB's) request for comments on proposed changes to Minnesota Rules 4410.4300, subpart 15. MCEA is a Minnesota-based non-profit environmental organization whose mission is to use law, science, and research to preserve and protect Minnesota's natural resources, wildlife, and the health of its people. MCEA has state-wide membership. MCEA's members live, work, and recreate in the State. They are concerned with environmental impacts from air emissions, particularly greenhouse gas (GHG) emissions, and are likewise interested in seeing that environmental review in Minnesota address these impacts.

**1. Greenhouse gases are pollutants.**

MCEA opposes any rule amendment that would "define the term 'air pollutant' in a manner that excludes GHGs." Indeed, MCEA believes that such a re-definition of the term would be outside the authority of the EQB.

The U. S. Supreme Court has already determined that GHGs *are* air pollutants and the EQB does not have the authority to re-define this term of art in its rules. In *Massachusetts v. E.P.A.*
the Court addressed the specific question of whether GHGs were "air pollutants" under the Clean Air Act. 549 U.S. 497, 529 (2007). The Court determined that GHGs are "without a doubt" air pollutants as the term is defined in the Act. *Id.*

The Clean Air Act employs cooperative federalism, with states playing a significant role in administering the Act and its regulations. 42 U.S.C. § 7661a(d)(1). States are allowed to have *more restrictive* but not *less restrictive*

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rules in place for the reduction or elimination of air pollution. 42 U.S.C. § 7661e(a). As a result, the U.S. Supreme Court's decision that GHGs are air pollutants is binding on Minnesota.

The Minnesota Legislature supplied a broad definition of "air pollution" in granting the Minnesota Pollution Control Agency the authority and duty to regulate harmful air emissions. Minn. Stat. § 116.06, subd. 4. Like the "sweeping definition" contained in the Clean Air Act, *Massachusetts*, at 528-29, the state definition forecloses any argument that GHGs are not pollutants. It includes "*any* air contaminant or combination thereof in such quantity, of such nature and duration, or under such conditions as would be injurious to human health or welfare, to animal or plant life, ..." Minn. Stat. § 116.06, subd. 4 (emphasis added). It is beyond dispute that GHG emissions are causing climate disruption which is and will be injurious to human health and welfare as well as the environment.

The Minnesota Legislature has referred to GHGs as "air pollutants" in statute. *See* Minn. Stat. § 216H.02, subd. 5(b). Moreover, the MPCA has indicated to EPA that it has authority to implement the Clean Air Act's requirement for GHG regulation, an indication that the MPCA interprets the state definition of air pollution as consistent with the federal definition and the U.S. Supreme Court's holding in *Massachusetts*.

In sum, the terms air pollutant and air pollution are terms of art used consistently in federal and state law and have been found by the highest court in the country to include GHGs. There is neither statutory authority nor a rational basis for the EQB to adopt a definition that "excludes" GHGs from air pollutants, rendering the proposed EQB rule inconsistent with all other state and federal law.

**2. The EAW threshold should be set to implement MEPA's purpose.**

MEPA's purposes, as expressed in the statute, include to "prevent or eliminate damage to the environment and biosphere" and to "enrich the understanding of the ecological systems and natural resources important to the state ..." Minn. Stat. § 116D.091.

When the Minnesota Supreme Court first interpreted the Minnesota Environmental Rights Act, MEPA's enforcement counterpart, it quoted Aldo Leopold's concept of a "land ethic" and noted that these environmental laws changed the legal relationship between citizens and their environment: "In the Environmental Rights Act, our state legislature has given this land ethic the force of law. Our construction of the Act gives effect to this broad remedial purpose." *Freeborn County by Tuveson v. Bryson*, 309 Minn. 178, 243 N.W.2d 316 (1976).

The EQB's approach to environmental review triggered by GHG emissions should reflect the broad purposes the Legislature intended in enacting MEPA. The proposed rule change presents EQB with an opportunity to assist project proponents in understanding the effect their projects have on climate change and global warming, and encourage project designs that reduce GHG emissions and mitigate climate impacts.

Minnesota law already recognizes the devastating effect increasing concentrations of GHGs in the atmosphere will have on the State's resources and welfare. In 2007 the Legislature set goals for steep *reductions* in GHG emissions: 15% below 2005 levels by 2015, 30% below 2005 levels by 2025, and 80% below 2005 levels by 2050. Minn. Stat. § 216H.02. These goals were set based on reductions in emissions needed to stabilize atmospheric carbon dioxide ($CO_2$) at 450 parts per million. Now, however, NASA's leading climate scientist James Hansen argues that to avoid *dangerous* climate change, $CO_2$ must be stabilized at 350 ppm. Hansen et al., "Target atmospheric $CO_2$: Where should humanity aim?" (available at http://arxiv.org/abs/0804.1126).

The overwhelming scientific consensus and adopted State policy both clearly state the need to achieve steep reductions in GHG emissions in order to avoid dangerous changes to our climate that will adversely affect Minnesota's resources and welfare. It follows that *any new increase* in GHG emissions contributes to the significant environmental effects on Minnesota's environment.

The broad remedial purpose of MEPA would not be served if the GHG threshold for triggering preparation in Minnesota of an EAW were simply borrowed from EPA regulations governing certain Clean Air Act permits, i.e., 75,000 or 100,000 tons per year of carbon dioxide equivalent emissions. EPA selected its Clean Air Act threshold simply to eliminate specific federal permitting requirements for certain industry groups and to mitigate the corresponding administrative burden on government agencies. MEPA's purpose that must guide the EQB when it adopts environmental review regulations, however, is to prevent and eliminate damage to the State's environment.

The Minnesota Legislature has already identified a much lower threshold of GHG emissions as cause for environmental concern in the State than that currently contained in EPA regulations. State law establishes 10,000 metric tons of carbon dioxide equivalent emissions as the level that triggers GHG reporting requirements to PCA. Minn. Stat. § 216H.11, subd. 2. If EQB were to change the quantity of air pollution that triggers the obligation to prepare environmental review documents for GHGs, the agency should be guided by enacted state law such as Minn. Stat. §216H.11.

Thank you for considering MCEA's comments in this matter,

Sincerely,

/s/Kevin Reuther

Kevin Reuther

MINNESOTA CHAMBER of COMMERCE 100 business unified.

November 3, 2010

Mr. Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

**Re: Proposed Amendment to Rules Governing The Environmental Review Program, *Minnesota Rules*, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, with Respect to Greenhouse Gas Emissions.**

Dear Mr. Larsen:

The Minnesota Chamber of Commerce (Minnesota Chamber) submits these comments on the proposed rule amendment on behalf of our members, many of whom have the potential to trigger environmental review with respect to greenhouse gas (GHG) emissions.

The Minnesota Chamber of Commerce is the state's largest business advocacy organization. As the statewide voice of business, the Chamber represents more than 2,600 businesses of all types and sizes across Minnesota. The Minnesota Chamber is committed to advancing public policy and job growth strategies that create an environment for businesses statewide to prosper.

**The Minnesota Chamber believes that the rule should be amended to insure that projects are not included in the mandatory EAW category solely on the basis of GHG emissions.** The US Environmental Protection Agency's (EPA) recent GHG Tailoring Rule will require every project proposer to estimate its GHG emissions to determine the applicability of the rule to its project. If the project's potential emissions exceed the thresholds specified in the Tailoring Rule, the MPCA will conduct a thorough analysis of those emissions and determine what level of mitigation is necessary for the GHG emissions. Because the MPCA will already be required to analyze, mitigate and regulate large sources of GHG, requiring analysis under 4410 is redundant and unnecessary.

As you may know, one of the Minnesota Chamber's highest priority issues is to advocate for policies that streamline the environmental review and permitting process. During the 2010 session of the legislature, we supported amendments to the environmental review statute that seek to avoid duplication between environmental review and the permitting process. The Omnibus Environment and Natural Resources Appropriation Bill, 2010 Session Laws, Chapter

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361, Article 4, Sec. 65, included the following amendment to M.S. 116D.04, Subd. 2a (g): "The responsible governmental unit shall, to the extent practicable, **avoid duplication** and ensure coordination between state and federal environmental review and **between environmental review and environmental permitting.**" (emphasis added)

Consistent with this new statutory direction to avoid duplication between environmental review and environmental permitting, the Minnesota Chamber supports the first option identified in the EQB Monitor notice dated October 4, 2010: "Explicitly exclude GHGs from application of the Air Pollution category by defining the term 'air pollutant' in a manner that excludes GHGs."

The Minnesota Chamber believes the second option, including GHGs under the current definition of "air pollutant", is unacceptable. It would require review for numerous small projects with emissions of 100/250 tons per year. If the exclusion option is not selected, the only other reasonable alternative would be to subdivide the Air Pollution category into two items, as described in the third listed option. We believe that the EPA Tailoring Rule thresholds of 75,000 tons per year for existing sources and 100,000 tons per year for new sources would be the appropriate trigger for review under this option. Having any different thresholds would only confuse the public and Chamber members.

Thank you for your consideration of our views on this issue. Should you or your staff have any questions, please feel free to contact me at 651-260-1610.

Sincerely,

Mike Robertson

Mike Robertson
Environment & Natural Resources Policy Committee
Minnesota Chamber of Commerce

Cc: Air Quality Subcommittee
ENRPC

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November 3, 2010

Jon Larsen
Environmental Quality Board
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St. Paul, MN 55155

**RE: REQUEST FOR COMMENTS on Proposed Amendment to Rules Governing the Environmental Review Program, Minnesota Rules, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, With Respect to Greenhouse Gas Emissions**

Dear Mr. Larsen:

These comments are submitted on behalf of the Minnesota Resource Recovery Association (MRRA) which represents 10 waste to energy facilities in Minnesota that process about 1,200,000 tons of municipal solid waste every year (20% of the total municipal solid waste generated) and create renewable energy. The waste is converted into a usable form of energy at all facilities including electrical generation as well as process steam for numerous local industries. In addition, both nationally and internationally, waste to energy facilities are recognized as net greenhouse gas reducers.

Since EPA has determined that GHG emissions will be covered by the Clean Air Act, the MRRA recommends that the EQB modify its rules related to what triggers an EAW to avoid any ambiguity that might be created in terms of "air pollutants" and the mandatory EAW category for air pollutants of 250 tons per year.

The MRRA recommends that the threshold should be at least 100,000 tons/yr CO2 equivalents, to be consistent with how the 250 tons/yr threshold in Subpart 15 was set in order to mirror the PSD major source threshold. Furthermore, the threshold should be applied consistent with other pollutants by using an emissions test identical to that for criteria pollutants, namely a change in potential emissions test. When calculating the threshold, the following is appropriate:

a) Only fossil based GHG should be measured (biogenic GHG should be excluded); and
b) Mobile source emissions at potentially-affected Stationary sources (such as front end loaders, employee traffic, raw material receiving, product shipping, etc.) should not be included in the calculation as little can be done to reduce total GHG from these types of sources.

Thank you for allowing comment on the EQB's consideration to amend administrative rules governing Minnesota's environmental review program.

If you have any questions, please do not hesitate to contact me at 651-222-7227.

Sincerely,

Trudy J. Richter
Executive Director
MRRA

**Minnesota**
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October 29, 2010

Jon Larson
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

RE: Proposed amendments to classify GHG as air pollutant

Dear Mr. Larson:

By way of introduction, the Minnesota Rural Electric Association represents 44 member-owned electric cooperatives and 6 generation and transmission cooperatives serving some 1.7 million Minnesotans. Responding to the EQB's invitation to select an option for the Board's carbon regulation options prompts MREA to recommends the EQB **exclude** the consideration of GHGs as an air pollutant. Here's why:

1. Minnesota's Next Generation Act passed in 2007 addresses carbon emissions. It set aggressive goals to reduce greenhouse gas emissions within the state, created a moratorium on new coal plants and their sale of electricity into Minnesota, established among the nation's most forceful conservation standards for the state's utilities and mandated an aggressive renewable standard. Subsequently, Minnesota's carbon emissions have decreased more than 15% based on the 2005 baseline. Adding regulation to statutory directives serves no useful purpose except to increase costs.

2. That same Act directs Minnesota to join its neighboring states to develop a regional approach to carbon mitigation. To date, no other Midwest state has done so. To unilaterally impose carbon emission regulation on Minnesota's energy industry would economically disadvantage this state's energy producers and, ultimately, Minnesota's economy. And for what? Any action taken by Minnesota would quickly be offset by carbon emissions produced world-wide.

3. EQB's official notice also included contemplation to regulate "modified" stationary source facilities. Inclusion of that uncertain standard may well prompt stationary sources to delay, if not postpone, upgrades and/or maintenance to avoid regulation given the expense to reduce carbon.

4. To that, there is no practical method to capture carbon short of Basin Electric's capture of 48 percent of the carbon produced by its North Dakota synfuels plant. The retrofitting of existing coal power plants with CCS technology has been delayed because CCS systems are unproven and the parasitic load is so great. Additionally, a number of lawsuits have been filed to halt CCS efforts in California and elsewhere.

5. Already, this state's energy industry is bracing for U.S. Environmental Protection Agency's regulation of carbon emissions. That's in addition to the EPA's new $SO_2$ monitoring regulation, and the so-called RICE rule which will effectively end the use of many stand-by turbines used to control peak loads. The ability to control peak loads in turn has enabled Minnesota utilities to avoid building new power plants. An EQB rule on carbon emissions serve to either layer more regulations and/or provide conflicting guidelines.

6. The Clean Air Act requires regulation of 250 tons despite EPA's avowal to regulate carbon at 75,000 tons. You can be certain any number of enterprising groups will "sue out" to enforce the 250 ton standard. That threshold could invoke regulation of nearly every school, business, farm and office building located in Minnesota. These proposed EQB guidelines would inevitably invite that level of overview.

7. Practically, imposition of this rule would chill any contemplation of business expansion or location in Minnesota.

8. This rule also invites fuel switching, including natural gas, the current energy favorite, given its ~50% carbon emission reduction v. coal. Nonetheless, natural gas still emits carbon emissions. There are no alternatives (that haven't been banned in Minnesota) that do not emit carbon emissions short of the intermittent wind resources. We are unaware of any business that would countenance a 65% interruption of its electric service.

9. Finally, how would the EQB measure carbon emissions? Wind turbines, for example, require 27 cubic meters of concrete (Portland cement produces one ton of carbon for every ton of concrete produced) and 3.3 tons of steel (whose production per ton produces ~2 tons of $CO_2$). When compared to a natgas fired turbine, wind turbines consume about 32 times as much concrete and 139 times as much steel (according to author Robert Bryce's book entitled "*Power Hungry*" page 90). The EQB's proposed carbon is silent on who gets tagged under those (and other) circumstances.

For these reasons MREA again urges the EQB to "explicitly exclude GHGs from application of the Air Pollution category by defining the term "air pollutant" in a manner that excludes GHGs".

Sincerely,

Mark Glaess, Manager

POPE/DOUGLAS SOLID WASTE MANAGEMENT

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November 3, 2010

Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

**RE: REQUEST FOR COMMENTS ON Proposed Amendment to Rules Governing the Environmental Review Program, Minnesota Rules, chapter 4410: Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution, With Respect to Greenhouse Gas Emissions**

Dear Mr. Larsen:

These comments are submitted on behalf of Pope/Douglas Solid Waste Management (PDSWM), a waste to energy facility located in Alexandria, Minnesota.

PDSWM receives the MSW of five counties in central Minnesota. We process the waste through a material recycling facility with the remaining residue being burned in our waste combustor facility for energy reclamation. The steam energy we produce is utilized by three entities: a 3M Abrasive Division, the Douglas County Hospital and the Alexandria Technical and Community College. Excess steam energy that is available is run through a turbine generator set for production of electricity. In addition, both nationally and internationally, waste to energy facilities are recognized as net greenhouse gas reducers.

Since the EPA has determined that GHG emissions will be covered by the Clean Air Act, PDSWM recommends that the EQB modify its rules related to what triggers an EAW to avoid any ambiguity that might be created in terms of "air pollutants" and the mandatory EAW category for air pollutants of 250 tons per year.

PDSWM recommends that the threshold should be at least 100,000 tons/yr CO2 equivalents, to be consistent with how the 250 tons/yr threshold in Subpart 15 was set in order to mirror the PSD major source threshold. Furthermore, the threshold should be applied consistent with other pollutants by using an emissions test identical to that for criteria pollutants, namely a change in potential emissions test. When calculating the threshold, the following is appropriate:
a)Only fossil based GHG should be measured (biogenic GHG should be excluded); and
b)Mobile source emissions at potentially –affected Stationary sources (such as front end loaders, employee traffic, raw material receiving, product shipping, etc.) should not be included in the calculation as little can be done to reduce total GHG from these types of sources.

Thank you for allowing comment on the EQB's consideration to amend administrative rules governing Minnesota's environmental review program.

If you have any questions, please do not hesitate to contact me at 320/763-9340.

Sincerely,

Peter A. Olmscheid, Executive Director
Pope/Douglas Solid Waste Management

PAO/dp

rpu
we pledge, we deliver

November 1, 2010

Mr. Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Re: September 28, 2010 Request for Comments on Proposed Amendments to Minn. R. Ch. 4410.4300, Subpart 15 (Addressing Greenhouse Gas Emissions)

Dear Mr. Larsen;

This letter is written to provide comments from Rochester Public Utilities (RPU) on the above referenced proposed amendments to the Mandatory EAW category for Air Pollution (Minn. R. 4410.4300, Subp. 15).

RPU is a division of the City of Rochester, MN and is the largest municipal utility in the state of Minnesota. RPU owns and operates power generating, transmission and distribution facilities serving over 47,000 electric customers and water distribution facilities that serve over 35,000 water customers, mostly within the city of Rochester, MN. Our electric generating stations include a coal-fired power plant containing four boiler units with a combined capacity of 100 MW, a hydroelectric station with an approximate capacity of 2.6 MW, and two combustion turbine-powered generators with a combined capacity of 84 MW.

RPU has developed a few projects in recent years that have triggered either Environmental Assessment Worksheets (EAWs) or Site/Route Permitting. We have worked with various Responsible Governmental Units (RGUs), including the Environmental Quality Board (EQB), Minnesota Pollution Control Agency (MPCA) and the Energy Facilities Permitting group at the Department of Commerce. RPU is well-experienced with the applicability of Minnesota's Environmental Review rules, specifically with how these rules inform and/or draw from information developed under MPCA/USEPA air permitting programs.

From this background, RPU respectfully offers the following suggestions for consideration as EQB staff draft preliminary rules on this subject.

<u>Environmental Review Should Not Include a Triggering Threshold for GHG Emissions</u>

RPU would be supportive of a coordinated, national program to address greenhouse gas (GHG) emissions, if enacted by Congress. There are already some Executive branch programs that address GHGs, such as USEPA's Mandatory Reporting Rule (MRR) and the Tailoring Rule. State-level programs such as EQB's Environmental Review rules are

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a less-effective avenue for addressing the effects of a global issue such as climate change.

If GHGs were to be allowed as a triggering mechanism for EQB's Environmental Review rules, an EAW or EIS triggered on the basis of GHG emissions alone would not provide any further insight into the issue of climate change beyond what would be already required for inventories under the MRR or PSD/Title V permitting requirements under the Tailoring Rule. Contrary to other air pollutants that typically trigger EAWs under Subp. 15, GHG emissions are not candidates for dispersion modeling of near-field emissions, nor are they appropriate for evaluation under an Air Emissions Risk Analysis. In short, we do not believe that completing an EAW or EIS for GHG emissions would provide any meaningful information that would not otherwise be disclosed or addressed by existing federal regulatory programs.

For these reasons, we recommend that EQB take action to amend Minn. R. 4410.4300, Subp. 15 in such a manner as to explicitly exclude GHG emissions. This would remove ambiguity about whether EAW threshold evaluations are specifically intended to include GHG impacts.

<u>If EQB Intends to Include GHGs Under Minn. R. 4410.4300, Subp. 15, Then a Separate Threshold Should be Established that Mirrors Federal Permitting Requirements</u>

If EQB is not amenable to explicitly excluding GHGs from EAW or EIS threshold determinations, then we believe it is imperative that a separate threshold be established for GHG emissions. The current Subpart 15 threshold of 250 tons/yr is far too low for GHGs. For example, a typical 500,000 Btu/Hr natural gas fired unit heater in a maintenance garage has potential $CO_2$ emissions of roughly 250 tons/yr using the calculation methodology specified by USEPA for other air pollutants. The EAW program would be quickly overwhelmed – with EAWs triggered for even the very smallest changes at stationary source facilities – if the program was opened up to include GHGs and a separate threshold was not established.

The October 4, 2010 EQB Monitor notice notes that EQB is considering one of the two EPA GHG thresholds (e.g., 75,000 tons/yr or 100,000 tons/yr GHGs) as a possible threshold for EAW purposes. These two thresholds are taken from USEPA's GHG Tailoring Rule, which set separate thresholds for GHGs under the Prevention of Significant Deterioration (PSD) and Title V permitting programs. The 75,000 tons/yr threshold pertains to "Step 2" of the rule, and is used as a major 'modification' threshold for projects at existing sources. This 75,000 tons/yr threshold is analogous to the various major modification thresholds for criteria pollutants from <u>changes at existing major sources</u> under PSD, such as 15 tons/yr for $PM_{10}$ and 40 tons/yr for $SO_2$, $NO_x$ or VOCs. The 100,000 tons/yr GHG threshold in the Tailoring Rule is set to establish the level at which an <u>entire facility</u> would be major for PSD or Title V permitting purposes. The corresponding PSD major source levels are either 100 tons/yr for certain listed source categories, or 250 tons/yr for all other source categories.

In its January 7, 2006 Statement of Need and Reasonableness (SONAR) on then-proposed changes to Minn. R. Ch. 4410, EQB noted that it was changing the Subpart 15 EAW threshold from 100 tons/yr to 250 tons/yr to *"coincide with the federal threshold for the Prevention of Significant Deterioration permitting review."* Given the manner in which the final Tailoring Rule thresholds were set, we believe the appropriate threshold for consideration here is 100,000 tons/yr and not 75,000 tons/yr. Using a 100,000 tons/yr GHG threshold for an EAW trigger would be consistent with how the current 250 tons/yr threshold was set in Minn. R. 4410.4300 Subp. 15 for non-GHG air pollutants.

Lastly, we note that the Tailoring Rule has not been without controversy along the lines of whether EPA has authority to adjust the thresholds set by Congress in the Clean Air Act (CAA). RPU is not presently tracking those challenges, but it seems prudent for EQB to do so. For example, what if the Tailoring Rule is ultimately vacated or if Congress sets a different threshold via amendments to the CAA? EQB might consider adding language to a new Subpart 15.B to include something like "or any higher threshold set by an Act of Congress."

We have other comments on the concept of addressing GHGs under Environmental Review, such as the source of data (e.g., emission factor sources, Global Warming Potentials, etc.) to be used, or the scope of emission-generating activities to be included in the evaluation of a proposed project (e.g., stationary sources only and not mobile sources related to a project). However, the need to address such comments depends on whether EQB intends to explicitly exclude GHGs from consideration under Minn. R. 4410.4300 Subp. 15.

We note that the October 4, 2010 EQB Monitor notice included the possibility of appointing an advisory group for this proposed rule change. While we are not requesting an advisory group to be formed, if EQB intends to appoint such a group, we would be pleased to recommend our consultant, Ed Hoefs of Wenck Associates, Inc., as a member. Mr. Hoefs assisted RPU with assembly of these comments and has in-depth knowledge of both MPCA and Federal air permitting programs as well as EQB's Environmental Review program. An alternative would be Joe Hensel, RPU Director responsible for environment and regulatory affairs at RPU.

Thank you for the opportunity to offer comments on your proposed rulemaking. If you have any questions about RPU's comments, please contact Mr. Hensel at (507) 280-1556 or email jhensel@rpu.org.

Sincerely,

Larry Koshire

ROCHESTER PUBLIC UTILITIES
Larry J. Koshire, General Manager

cc: Mayor Ardell Brede
Gary Neumann, Assistant City Administrator

SOUTHEASTERN MINNESOTANS for ENVIRONMENTAL PROTECTION
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November 1, 2010

Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155
Fax: 651-296-3698
Email: jon.larsen@state.mn.us

Dear Mr. Larsen:

I am writing on behalf of Southeastern Minnesotans for Environmental Protection (SEMEP). SEMEP is a non-profit environmental advocacy organization working to protect Southeastern Minnesota's people, natural assets and environment.

We are writing to provide you with our comments on the proposed EQB rulemaking governing the environmental review program in the mandatory category of air pollution with respect to greenhouse gas emissions (GHGs).

We are familiar with air pollution issues. SEMEP was founded in year 2002 to challenge a proposed stationary source project that would have caused severe air pollution to southeastern Minnesota. The proposed Heartland Energy tire-burning project, if permitted, would have generated severe toxic air emissions causing adverse public health problems for people in our community. SEMEP has advocated against several proposed industrial projects that would have caused substantial adverse air pollution to our region. SEMEP is an active collaborative partner in Minnesota Environmental Partnership (MEP) to advocate on behalf of statewide environmental and conservation policies.

GHGs as Air Pollution. There is no question that GHGs are a type of "air pollution". The United States Supreme Court[1] in its 2007 decision on whether the EPA had legal authority to regulate GHGs under the Clean Air Act as an air pollutant, stated:

> *The Clean Air Act's sweeping definition of "air pollutant" includes "any air pollution agent or combination of such agents, including any physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air ... ." §7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word "any." Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical ... substance[s] which [are] emitted into ... the ambient air." The statute is unambiguous.*

[1] Massachusetts v. EPA, 549 U.S. 497 (2007).

The State of Minnesota cannot avoid the issue of whether GHGs are a source of air pollution. They are. The GHGs that should be regulated include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. The Center for Climate Strategies (CCS), in its 2008 inventory report to the Minnesota Climate Change Advisory Group (MCCAG) of the Office of the Governor of Minnesota, stated that emissions associated with electricity generation and imports to meet in-state demand are projected to be the largest contributor to future emissions growth in Minnesota. We believe stationary source facilities emitting GHGs should be reviewed, permitted and regulated by the State of Minnesota.

**EPA "Tailoring Rule".** As you are aware, the federal Environmental Protection Agency (EPA) has adopted a 'tailoring rule' under the Clean Air Act, that will allow the EPA to require review and permitting of stationary source facilities that emit at least 75,000 tons per year of GHGs, beginning in January 2011. Beginning in July 2011, the threshold for GHG emitters will be at least 100,000 tons per year for those stationary source facilities that do not exceed any other pollutant threshold.

Realistically, the EPA admits that attempting to regulate lower levels of GHGs at 250 tons per year would not be feasible. The EPA recognizes that state permitting agencies like the MPCA would be overwhelmed and unable to manage air quality if required to permit and regulate stationary sources for GHGs at lower levels such as 250 tons per year. That is why the EPA does not recommend permitting or regulating stationary source facilities for GHGs emitting less than 50,000 tons per year.

The MPCA arguably does not have legislative authority to permit and regulate stationary source GHGs under state statutes. The MPCA can only inventory GHG sources under current Minnesota law. In 2008, the Minnesota Legislature approved a scheme to inventory and report on stationary source GHGs in the approved range of 10,000 to 25,000 tons per year. That legislative scheme did not include environmental review and permitting.

**SEMEP Recommendation.** The MPCA can permit and regulate stationary source facilities for GHG emissions under the Clean Air Act. **Therefore, we recommend that the EQB propose and adopt rules, comparable to the federal 'tailoring rule', using a two tier system with GHGs being reviewed, permitted and regulated at higher thresholds. Stationary sources should be reviewed, permitted and regulated at thresholds of at least 75,000 tons per year for newly-built and substantially modified facilities.**

The State of Minnesota cannot declare that it will not participate with the EPA to review and regulate GHGs under the Clean Air Act and EPA rules. The Clean Air Act obligates the State of Minnesota to review and regulate air pollution. The US Supreme Court rejected the Bush Administration EPA's attempt to avoid regulating GHGs under the Clean Air Act, when it declared:

> *Nor can EPA avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate at this time. See 68 Fed. Reg. 52930-52931. If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming, EPA must say so. That EPA would prefer not to regulate greenhouse gases because of some residual uncertainty--which, contrary to Justice Scalia's apparent belief, post, at 5-8, is in fact all that it said, see 68 Fed. Reg. 52929 ("We do not believe . . . that it would be either effective or appropriate for EPA to establish [greenhouse gas] standards for motor vehicles at this time" (emphasis added))--is irrelevant. The statutory question is whether sufficient information exists to make an endangerment finding.*

> *In short, EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its action was therefore "arbitrary, capricious, ... or otherwise not in accordance with law." 42 U. S. C. §7607(d)(9)(A).*[2]

The US Supreme Court rejected the argument that the Bush Administration EPA had the right to not regulate GHGs. The Court firmly declared that the EPA had a responsibility to regulate GHGs if there was any finding of public endangerment, and could not avoid regulating GHGs for all of the specious reasons EPA had offered. The same reasoning applies to the State of Minnesota.

Since the EPA in its "tailoring rule" has clearly determined there is a public endangerment from GHGs, we believe the State of Minnesota is obligated to review, permit and regulate stationary source facilities emitting GHGs, under the Clean Air Act. The EQB and the MPCA must enact rules compatible with the EPA's recent "tailoring rule". We urge the EQB to develop and adopt its GHG rule expeditiously.

If you have any questions regarding our position or comments, please contact us.

Respectfully,

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[2] Massachusetts v. EPA, 549 U.S. 497 (2007).