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MINNESOTA ENVIRONMENTAL QUALITY BOARD

Wednesday, May 21, 2014

Meeting Location: MPCA Board Room

St. Paul, Minnesota

1:00 p.m. – 4:00 p.m

AGENDA

- I.** *Adoption of Consent Agenda
 Proposed Agenda for May 21, 2014 Board Meeting
 March Meeting Minutes
- II.** Introductions
- III.** Chair's Report
- IV.** Executive Director's Report
- V.** **Minnesota Sands multi-site EIS
- VI.** Minnesota River Basin Integrated Study Update
- VII.** Overview of EQB statutory water responsibilities
- VIII.** Water Governance Evaluation
- IX.** Adjourn

Note: Items on the agenda are preliminary until the agenda is approved by the board.

This agenda and schedule may be made available in other formats, such as Braille, large type or audiotape, upon request. People with disabilities should contact Elizabeth Tegdesch, Board Administrator, as soon as possible to request an accommodation (e.g., sign language interpreter) to participate in these meetings.



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MINNESOTA ENVIRONMENTAL QUALITY BOARD

Wednesday, May 21, 2014

Meeting Location: MPCA Board Room

St. Paul, Minnesota

1:00 p.m. – 4:00 p.m.

ANNOTATED AGENDA

General

This month's meeting will take place in the MPCA Board Room at 520 Lafayette Road in St. Paul. The meeting will begin at 1:00 p.m. Staff will be available for briefing and questions at 12:30 p.m.

I. ***Adoption of Consent Agenda**

Proposed Agenda for, May 21, 2014 Board Meeting
March Meeting Minutes

II. **Introductions**

III. **Chair's Report**

IV. **Executive Director's Report**

V. ****Whether the Michelle and Tracie Erickson 19.11 acre mine site is a phased action to the Minnesota Sands multi-site EIS project.**

Presenter: Kate Frantz, EQB Staff
651-757-2370

Materials enclosed:

- May 21, 2014 EQB Resolution, Findings of Fact, Conclusion and Order for Erickson
- March 20, 2013 EQB Findings of Fact
- March 5, 2013 letter from Houston County to EQB requesting RGU designation
- October 31, 2013 email from EQB to Erickson representative.
- November 13, 2013 email from EQB to Minnesota Sands, LLC consultant.
- November 19, 2013 letter from EQB to County Commissioners.
- November 20, 2013 email from MN Sands, LLC representative to EQB
- March 25, 2014 letter from EQB to Houston County
- March 25, 2014 letter from EQB to MN Sands, LLC
- March 27, 2014 email received from Mr. Williams with attachments

* Items requiring discussion may be removed from the Consent Agenda

**Denotes a Decision Item

- April 5, 2014 letter received from MN Sands, with attached Dissolution of Contract Agreement
- April 17, 2014 email received from Ms. Stanage with attachments.
- April 21, 2014 letter received from Houston County
- April 28, 2014 email received from Houston County Commissioner Kjome
- April 29, 2014 letter from EQB to Houston County, and to Houston County Commissioner Kjome.
- April 29, 2014 email received from Houston County
- May 1, 2014 letter from EQB to interested parties.
- May 2, 2014 letter received from Mr. David Williams.
- May 7, 2014 email received from Houston County with attached Operation and Reclamation Plan

Issue before the Board: Whether the Michelle and Tracie Erickson 19.11 acre site is a phased action to the Minnesota Sands multi-site EIS project.

Background:

- On March 5, 2013, the Houston County Board of Commissioners submitted a letter to the EQB, requesting the EQB reconsider the RGU for the multiple Minnesota Sands projects both in Houston County and in neighboring counties.
- On March 20, 2013, the EQB reconsidered the RGU for the multiple Minnesota Sands, LLC projects. 11 sites were identified as phased actions of the Minnesota Sands, LLC multi-site project that exceeded the threshold for a mandatory EIS. One of the phased actions included in the Minnesota Sands, LLC multi-site project was a 19.11 acre site owned by Tracie and Michelle Erickson.
- According to recent communications from the project proposer (Minnesota Sands), the Ericksons, and Houston County Zoning staff, the Ericksons have terminated their contract with Minnesota Sands, LLC for Minnesota Sands, LLC to mine at the 19.11 acre site. A “Dissolution of Contract” was submitted to EQB staff as evidence in this matter.
- The Erickson site is seeking a conditional use permit renewal from Houston County.

Discussion: At this time, the EQB has not yet received payment for scoping, a signed cost agreement, or a project description from Minnesota Sands, LLC.

EQB staff has fielded numerous inquiries from the project proposer, the Erickson property, Houston County, and the general public, about the status of the Erickson site; specifically, whether or not it can be removed as a phased action from the multi-site EIS based on the attached agreement that purportedly terminates the contract between the parties. The question before the EQB is whether or not, given the information available at this time, the Erickson site is a phased action of the multi-site Minnesota Sands, LLC EIS as defined in March 2013. All parties have been put on notice to provide background information and have been invited to this meeting to field questions so the Board may consider this resolution.

Staff Recommendation: There is no staff recommendation on this decision item, as a full project description has yet to be submitted at the time this agenda was circulated, and scoping has therefore not yet begun. As in any decision, findings have been drafted and illustrate the changes that have occurred since the March 2013 decision. Should the Board determine the Resolution is not appropriate, no findings and no resolution will apply.

VI. Minnesota River Basin Integrated Study Update

Presenter: Kate Frantz, EQB Staff
651-757-2370
Jason Smith, PE, Army Corps of Engineers
309-794-5690

Materials enclosed:

- Minnesota River Basin Integrated Study Fact Sheet
- Decision Support System Work Group Fact Sheet
- Technical Modeling Work Group Fact Sheet
- Environmental Work Group Fact Sheet
- Communications and Public Involvement Fact Sheet

Issue before the Board: Staff will provide an update on the Minnesota River Integrated Watershed Study.

Background: As has been presented to the Board in prior updates, the study is a federal watershed planning project for the Minnesota River Basin begun in 2008. The goal of the study is to develop a decision support system (DSS) and watershed plan to assist water resource efforts in the Minnesota River Basin. The study is being conducted by the Army Corps of Engineers (Corps) in collaboration with state and federal partners. The EQB, as the “non-federal co-sponsor,” is responsible for co-leading the collaborative effort, coordinating state agency involvement, and managing the State share of the project study. The Corps and EQB coordinate and receive input from an Interagency Study Team comprised of state agencies, federal participants, tribal interests, the Metropolitan Council, the University of Minnesota and Minnesota State University at Mankato, and the Minnesota River Board.

Staff will provide an update on recent activities of the project, including recent workgroup efforts and upcoming public engagement efforts.

VII. Overview of EQB statutory water responsibilities

Presenter: Erik Cedarleaf Dahl, EQB Staff
651-757-2364
Kate Frantz, EQB Staff
651-757-2370

Materials enclosed: None

Issue before the Board: Staff will present an overview of EQB statutory responsibilities associated with water; GICD recommendations; Minnesota Water Plan summaries; and other report recommendations.

Background: In 2013, one of the several recommendations identified through the Environmental Congress and the Governors’ Institute on Community Design (GICD) planning process was for the EQB to prioritize water management within its strategic and long-range planning program. Specifically, the GICD report identified an interest in having EQB member agencies report to the EQB about their efforts related to water management and their efforts related to the MPCA’s Water Governance Evaluation recommendations. This is the first of several presentations that staff are planning to provide an overview and status update of signature interagency water management programs and projects.

Discussion: The 2013 GICD report identified as a priority the need for management across various regulations and competing priorities to have more effective and efficient management of water resources. In an effort to fulfill this recommendation, EQB staff has engaged member agencies in an attempt to highlight signature interagency water management initiatives and facilitate a dialogue with the Board and the public on the status and opportunities contained in these initiatives. As a starting point, staff will provide an overview of statutory responsibilities that have been assumed over the past four decades and will provide an inventory of interagency water management efforts. This inventory is incomplete and will be updated over time. The Water Governance Evaluation will provide an update on the implementation of some of these key initiatives. Over the next few meetings, member agency staff will make presentations on various ongoing interagency efforts related to water management.

VIII. Water Governance Evaluation: 2014 Update and Future Directions

Presenter: Suzanne Rhees, Floodplain & Land Use Planner, DNR
Division of Ecological and Water Resources (and Project Coordinator for Report)

Materials enclosed:

- Appendix B-legislative timeline from the 2013 report
- 2014 Water Governance Update (link also provided):
<http://www.pca.state.mn.us/index.php/view-document.html?gid=20951>
- Link to the original full report: <http://www.pca.state.mn.us/index.php/view-document.html?gid=18927>
 - Link to Appendix D, Literature Survey (these documents are all on the same webpage):
<http://www.pca.state.mn.us/index.php/water/water-permits-and-rules/water-rulemaking/the-water-governance-evaluation-project.html>

Issue before the Board: Review the 2014 Update of the Water Governance Evaluation (2013) and discuss potential role of EQB and other agencies going forward.

Background: The primary report was directed by the Legislature in 2011 and published in January 2013. Since then, the interagency work group that contributed to the report has continued to meet and discuss implementation of various initiatives and recommendations. This 2014 update captures the major implementation actions now taking place, and suggests some new areas for research.

Discussion: The Governors' Institute on Community Design's Final Report to the EQB (June 2013) recommended that coordination of state water management should be a priority for the EQB, and referenced the Water Governance Evaluation. This presentation may provide an opportunity for the Board to discuss this recommendation and potential roles and responsibilities.

IX. Adjourn

MINNESOTA ENVIRONMENTAL QUALITY BOARD MEETING MINUTES

Wednesday, March 19, 2014
Council Chambers/Boardroom
151 4th Street
Rochester, MN 55904

EQB Members Present: Dave Frederickson, Mike Rothman, John Saxhaug, Charlie Zelle, Kristen Eide-Tollefson, Tom Landwehr, Julie Goehring, Brian Napstad, John Linc Stine,

EQB Members Absent: Kate Knuth, Erik Tomlinson, Katie Clark-Sieben, Spencer Cronk, Dr. Ed Ehlinger, Sandy Rummel (Met Council)

Staff Present: Will Seuffert (EQB), Jeff Smyser (EQB), Kate Frantz (EQB), Megan Eischen (EQB), Caroline Magnuson (EQB), Erik Dahl (EQB), Anna Henderson (EQB), Leah Hedman, Attorney General's Office

Chair Dave Frederickson called the meeting to order.

I. Adoption of Consent Agenda and Minutes

A motion to adopt the Consent Agenda and approve the February 19, 2014, meeting minutes was made and seconded.

II. Introductions

III. Chair's Report

Chair Dave Frederickson shared how the meeting will proceed. The Environmental Quality Board (EQB) will present their findings for the "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects", Model Standards and Criteria. This is a requirement put to the Board by the Legislature.

IV. Executive Director's Report

Executive Director, Will Seuffert, informed the audience that there are a limited number of hard copies available, but it is available online at the EQB website: <http://www.eqb.state.mn.us/>. He thanked those who will be participating in the dialogue; your commitment is appreciated. This document does not address all issues brought up; developing this document is just one part.

Note to members: The April meeting has been moved to April 24th.

V. Approving "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects", Model Standards and Criteria

Presenter: Jeff Smyser, EQB Policy Programs Lead

Minnesota Statutes §116C.99, Subd. 2 requires that the EQB must develop model standards and criteria for mining, processing, and transporting silica sand. The standards and criteria are intended to be useable by local units of government in developing local ordinances and are to be different for different geographic areas of the state: specifically, southeastern Minnesota and the Minnesota Valley. The statute also includes a list of standards and criteria to be addressed.

The document is organized into sections, or chapters, based on specific topics: air quality, water quantity and quality, transportation, operations, and setback considerations. Staff from the agencies who prepared the document will provide summaries of the topic sections by agency staff:

Introduction:	Jeff Smyser, EQB
Air Quality:	Jeff Hedman, MPCA
Water Quantity/ Water Quality:	Theresa Haugen, MPCA
Transportation:	Dave Christianson, MnDOT
Operations:	Heather Arends, DNR
Setback	
Considerations:	Melissa Doperalski, DNR Bob Patton, MDA

Discussion followed.

The following people provided testimony:

1. Ken Tschumper, LaCrescent, MN
2. Fred Corrigan, Aggregate and Ready Mix Association of Minnesota
3. Amy Nelson, Red Wing, MN
4. Peder Larson, Minnesota Silica Sand Council
5. Kirsten Pauly, Sunde Engineering, Minnesota Sand Council
6. Brett Skilbred, Jordan Sands/MISC
7. Matt Bryan, Bryan Rock and Merriam Junction Sands
8. Keith Fossen, Red Wing, MN
9. Johanna Rupprecht, Land Stewardship Project
10. John Herman, Unimin Corp.
11. Alan Muller
12. Carol Overland
13. John Lenezewski, Minnesota Trout Unlimited
14. Kelley Stanage, Houston, MN

Commissioner Landwehr made a brief comment with respect to what is meant by designated trout streams. Referenced Rule 6264 listing which includes Class 2A and fens and streams if they are tributaries.

Citizen member Kristin Eide Tollefson commented on concerns regarding a ban and suggested that it could be addressed on the website.

Commissioner Stine had concerns regarding enclosed processing equipment, and indicated that best practices are to enclose. He suggested edits to Page 35 under "Processing", in the last paragraph insert "enclosing" after "mined" and before "all", and remove "enclosed" at the end of the sentence replacing it with "evaluated". In the third sentence replace the word "the" with "any", after "from" and before "enclosed". Page 39 under "Temporary Storage", insert "evaluating where" after "rather" and before "these", and insert "is recommended." after "enclosed" and remove "an controlled in the manner described in the 'processing' section above." Commissioner Stine made a motion to amend. Vice-chair Brian Napstad seconded the motion. All in favor, motion carries.

Chair Frederickson asked Executive Director Will Seuffert to take a roll call to vote on the document as amended. All board members present voted aye. The document is approved. Commissioner Stine made a motion to adjourn.

**RESOLUTION OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

Adopting the Document “Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects”

BE IT RESOLVED, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order In the Matter of Adopting the Document “Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects”; and

BE IT FURTHER RESOLVED, that David J. Frederickson, Chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order.

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

In the Matter of Adopting the Document
“Tools to Assist Local Governments in
Planning for and Regulating Silica Sand
Projects”

FINDINGS OF FACT,
CONCLUSIONS
AND ORDER

The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a regular meeting on March 19, 2014 pursuant to Minnesota Statutes 116C.991.

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

VI. FINDINGS OF FACT

1. The Minnesota Legislature amended Minnesota Statutes §116C with the adoption of Laws 2013, chapter 114.
2. Minn. Stat. §116C.99, Subd. 2 requires that by October 1, 2013, the Environmental Quality Board (EQB), in consultation with local units of government, shall develop model standards and criteria for mining, processing, and transporting silica sand. These standards and criteria may be used by local units of government in developing local ordinances. The standards and criteria shall be different for different geographic areas of the state. The unique karst conditions and landforms of southeastern Minnesota shall be considered unique when compared with the flat scoured river terraces and uniform hydrology of the Minnesota Valley. The standards and criteria developed shall reflect those differences in varying regions of the state. The statute also includes a list of standards and criteria to be included.
3. The EQB heard public testimony on the project at its meeting on September 18, 2013.
4. The EQB opened a 25-day public comment period from October 18 through November 12, 2013.
5. The EQB held public meetings in Mankato on October 25 and in St. Charles and Wabasha on October 29.
6. On October 22, 2013, the EQB sent out a survey to local governments requesting information the ordinance requirements they had adopted for a variety of topics relevant to regulating silica sand activities.
7. The EQB considered the public comments and the survey responses it received from local governments and prepared a draft document. The document was released for a 30-day public review on December 13, 2014.
8. At its meeting on December 18, 2013, the Silica Sand Subcommittee of the EQB recommended that the public comment period be extended to January 27, 2014. Notices of the extension were distributed to the public by electronic mail and by posting on the EQB website.

9. The EQB considered the public comments it received and revised the draft document, dated March 7, 2014.
10. The document includes standards and criteria that are different for different geographic areas of the state. The standards and criteria in the document reflect the differences between the unique karst conditions and landforms of southeastern Minnesota and the hydrology of the Minnesota Valley.
11. The model standards and criteria in the document can be used by local units of government in developing local ordinances.

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

CONCLUSIONS

1. Any of the foregoing Findings more properly designated as Conclusions are hereby adopted as such.
2. The revised document, “Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects”, dated March 7, 2014, fulfills the statutory requirements of Minn. Stat. §116C.99, Subd. 2.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

ORDER

The EQB hereby approves the document titled “Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects”, dated March 7, 2014, with amendments to pages 35, 39, and 40 approved by the Board.

Approved and adopted this 19th day of March, 2014.

David J. Frederickson, Chair
Minnesota Environmental Quality Board

VII. Meeting adjourned.

**RESOLUTION OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

Removal of a site from the proposed Minnesota Sands, LLC, multi-site Environmental Impact Statement (EIS) ordered on March 20, 2013.

BE IT RESOLVED, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order identifying the 19.11 acre Erickson proposed project as an action which is not phased and effectively removing it from the mines included in the Minnesota Sands, LLC, Environmental Impact Statement (EIS); and

BE IT FURTHER RESOLVED, that David J. Frederickson, Chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order.

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

In the Matter of requests to determine
whether the Erickson 19.11 acre mine site
in Houston County is a phased action
of the Minnesota Sands, LLC
Multi-site Environmental Impact Statement.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a regular meeting on May 21, 2014, pursuant to a request for clarification by Houston County.

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

FINDINGS OF FACT

1. The September 3, 2012, *EQB Monitor* published a notice that Houston County, acting as Responsible Governmental Unit (RGU), granted an Environmental Assessment Worksheet (EAW) for the Erickson Quarry Project in response to a citizen petition.
2. On March 5, 2013, the Houston County Board of Commissioners submitted a letter to the EQB, requesting the EQB reconsider the RGU for the multiple Minnesota Sands projects both in Houston County and in neighboring counties.
3. On March 20, 2013, the EQB reconsidered and renamed itself the RGU for the multi-site Minnesota Sands, LLC project.
4. In the EQB's Findings, Conclusions, and Order, the EQB found that the mining sites listed, including the Erickson 19.11 acre mine site, were phased actions of the Minnesota Sands, LLC multi-site project as defined by Minnesota Rules 4410.0200 Subp. 60.
5. Per Minnesota Rules 4410.2000 Subp. 4, phased actions must be considered in total for environmental review.
6. On March 25, 2014, EQB staff sent a letter to Minnesota Sands, LLC, requesting an update on the status of the Minnesota Sands, LLC projects, as well as clarification of the relationship between the Erickson site and Minnesota Sands, LLC. Specifically, the letter requested, "any past, current, or anticipated future association and include, but not be limited to, a partnership, ownership, shareholder, buyer, seller, processor, transporter, or relationship of any kind."
7. The EQB received a response on April 5, 2014, from Minnesota Sands, LLC that included a *Dissolution of Contract*, incorporated to these findings by reference.

8. According to the terms of the *Dissolution of Contract*, Mr. Richard Frick of Minnesota Sands, LLC and Tracie and Michelle Erickson are no longer under contract for Minnesota Sands, LLC to mine at the Erickson 19.11 acre mine site.

9. Minnesota Rule 4410.0200, Subp. 60 reads:

“Phased action” means two or more projects to be undertaken by the same proposer that a RGU determines:

A. will have environmental effects on the same geographic area; and

B. are substantially certain to be undertaken sequentially over a limited period of time.

Minn. R. 4410.0200, Subp. 60 (2011).

10. The Minnesota Sands, LLC multi-site project and the Erickson mine site are not proposed by the same project proposer.

11. Pursuant to MN Rules 4410.4300 Subp 9, a mandatory Environmental Impact Statement is required for non-metallic mineral mining projects, “For development of a facility of the extraction of mining of sand, gravel, stone or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence.”

12. The remaining sites identified should move forward to scoping.

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

CONCLUSIONS

1. Any of the foregoing Findings more properly designated as Conclusions are hereby adopted as such.
2. The Environmental Quality Board has jurisdiction over the subject matter of this proceeding pursuant to Minnesota Statutes chapter 116D and Minnesota Rules, 4410.
3. The Erickson 19.11 acre mine is not a phased action to the Minnesota Sands, LLC multi-site project pursuant to Minn Rule 4410.0200 Subp. 60.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

ORDER

The EQB orders a EIS for the Minnesota Sands, LLC multi-site project, without inclusion of the Erickson 19.11 acre mine site, as it is not a phased action.

Approved and adopted this 21st day of May, 2014.

David J. Frederickson, Chair
Minnesota Environmental Quality Board

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

In the Matter of Requests to Designate a
Different Responsible Governmental Unit For
Environmental Review of Multiple Silica
Sand Projects Proposed by Minnesota Sands,
LLC, in Fillmore, Houston, and Winona
Counties

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a special meeting on March 20, 2013, pursuant to requests from Fillmore and Houston Counties to designate a different responsible governmental unit (RGU) for silica sand mines proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties.

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

FINDINGS OF FACT

1. The EQB received a letter from Fillmore County dated February 28, 2013, stating that Minnesota Sands, LLC “proposes to operate [silica sand] mines in at least the following: Fillmore County at the Boyum, Dabelstein, Kesler, and Wadewitz sites; Houston County at the Erickson site; and Winona County at the Dabelstein and Yoder sites.”
2. The February 28, 2013 Fillmore County letter states that “Fillmore County understands the need to complete and Environmental Impact Statement (EIS) because the sites are located in close proximity, span across the three counties, and concern the same developer.”
3. The February 28, 2013 Fillmore County letter states, “[i]n Fillmore County, Minnesota Sands planned to complete separate EAWs for the Boyum, Dabelstein, and Kesler sites, but has voluntarily agreed to complete an EIS for their proposed projects spanning Fillmore, Houston, and Winona Counties. Fillmore County agrees one comprehensive EIS is appropriate for the Minnesota Sands projects located in all three counties.”
4. The February 28, 2013 Fillmore County letter states. “Fillmore County requests the Environmental Quality Board to designate a State agency to act as the regulatory government unit (RGU) to prepare an EIS for the Minnesota Sands projects...”
5. The EQB received a letter from Houston County dated March 5, 2013, stating, “...Houston County requests the Environmental Quality Board to designate a State

agency to act as the regulatory governmental unit (RGU) to prepare an EIS for the proposed frac sand mines [concerning Minnesota Sands, LLC].”

6. The EQB received a letter from Winona County, dated March 13, stating “... the Winona County Board has also requested that the EQB consider the State serving as the Responsible Government Unit for this EIS preparation...”
7. Based on discussions with Houston County staff, in addition to the Boyum, Dabelstein (Fillmore County), Kesler, Wadewitz; Erickson; Dabelstein (Winona County), and Yoder sites, there are also mines proposed by Minnesota Sands, LLC, in Houston County on land owned by Leonard and Kathleen Tostenson, Porteous Olson, James Chapel, and Thomas and Virginia Johnson.
8. Minnesota Rule 4410.0200, Subp. 68 reads:

"Proposer" means the person or governmental unit that proposes to undertake or to direct others to undertake a project.

Minn. R 4410.0200, Subp. 68 (2011).
9. The EQB finds that Minnesota Sands, LLC, as the entity proposing to operate silica sand mines in Fillmore County, Houston County, and Winona County, meets the definition of “proposer.”
10. Minnesota Rule 4410.0200, Subp. 60 reads:

"Phased action" means two or more projects to be undertaken by the same proposer that a RGU determines:

A. will have environmental effects on the same geographic area; and

B. are substantially certain to be undertaken sequentially over a limited period of time.

Minn. R. 4410.0200, Subp. 60 (2011).
11. The EQB finds that the Boyum, Dabelstein (Fillmore County), Kesler, Wadewitz; Erickson; Dabelstein (Winona County), and Yoder sites are within an 8.5 mile radius. When the Tostenson, Olson, Chapel, and Johnson sites are included, all the sites together are within a 12.5 mile radius.
12. The EQB finds that the projects are in various stages of local approval and therefore are substantially certain to be undertaken over a limited period of time.
13. The EQB finds that the projects proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties:

- a. are two or more projects to be undertaken by the same proposer;
- b. will have environmental effects on the same geographic area; and
- c. are substantially certain to be undertaken sequentially over a limited period of time.

14. The EQB finds that projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties meet the definition of a phased action.

15. Minnesota Rule 4410.1000, Subp. 4 reads in relevant part:

Connected actions and phased actions. 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.

Minn. R. 4410.1000, Subp. 4 (2011).

16. Minnesota Rule 4410.2000, Subp. 4 reads in relevant part:

Connected actions and phased actions. 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 EIS and in preparing the EIS.

Minn. R. 4410.2000, Subp. 4 (2011).

17. Minnesota Rule 4410.2000, Subp. 5 reads:

Related actions EIS. An RGU may prepare a single EIS for independent projects with potential cumulative environmental impacts on the same geographic area if the RGU determines that review can be accomplished in a more effective or efficient manner through a related actions EIS. A project must not be included in a related actions EIS if its inclusion would unreasonably delay review of the project compared to review of the project through an independent EIS.

Minn. R. 4410.2000, Subp. 5 (2011).

18. The EQB finds that projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties are multiple projects that are phased actions, and therefore must be considered in total when preparing an EAW or EIS.

19. The EQB finds that projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties have potential cumulative environmental impacts on the same geographic area and review of the projects can be accomplished in a more effective and efficient manner through a single EIS.

20. Minn. R. 4410.4300, Subp. 12 reads in relevant part:

Nonmetallic mineral mining. Items A to C designate the RGU for the type of project listed:

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, the local government unit shall be the RGU.

21. Minn. R. 4410.4400, Subp. 9 reads in relevant part:

Nonmetallic mineral mining. Items A to C designate the RGU for the type of project listed:

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, the local government unit shall be the RGU.

Minn. R. 4410.4400, Subp. 9 (2011).

22. Minn. R. 4410.0500, Subp. 1 reads:

RGU for mandatory categories. For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Minn. R. 4410.0500, Subp. 1 (2011).

23. Minnesota Rule 4410.0500, Subp. 5 reads:

For any project where the RGU is not listed in part 4410.4300 or 4410.4400 or which falls into more than one category in part 4410.4300 or 4410.4400, or for which the RGU is in question, the RGU shall be determined as follows:

A. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.

B. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving the project, the governmental units shall either:

(1) by agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW: or

(2) submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

Minn. R. 4410.0500, Subp. 5 (2011).

24. The EQB finds that Minnesota Rule 4410.0500, Subp. 5, paragraph B is applicable to the projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties because two or more governmental units have jurisdiction to approve the projects.

25. The EQB finds that Fillmore, Houston, or Winona Counties could be RGU for a single EIS on multiple sites in multiple counties pursuant to Minn. R. 4410.0500, Subp. 5, paragraph B.

26. Minn. R. 4410.0500, Subp. 6 reads:

Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for

the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

Minn. R. 4410.0500, Subp. 6 (2011).

27. The EQB finds that, in the instances of the Boyum, Dabelstein, Kesler, and Wadewitz sites in Fillmore County, and the Erickson, Tostenson, Olson, Chapel, and Johnson sites in Houston County, no EAW has been started, and therefore no completed data portion of the new EAW has yet been received by an RGU, or EQB.
28. The EQB finds that, in its history of applying Minn. R. 4410.0500, Subp. 6, in every known instance, no EAW data submittal had been made.
29. The EQB finds that, to designate a different RGU than Fillmore County, under Minn. R. 4410.0500, Subp. 6, the EQB must determine that the designee has greater expertise in analyzing the potential impacts of the project.
30. The EQB finds that local governments are the RGU for mandatory EAWs and EISs for nonmetallic mineral mining projects, with the exception of peat mines.
31. The EQB finds that by application of Minn. R. 4410.0500, Subp. 1 and 5, local governments are commonly presumed to have greater responsibility for approving, and greater expertise in analyzing potential impacts of nonmetallic mineral mining projects than other units of government. However, in this case, multiple projects are proposed in multiple counties that are phased actions. Based on Minn. R. 4410.1000, Subp. 4, paragraph 1, and 4410.2000, Subp. 4, paragraph 1, multiple projects that are phased actions must be considered in total in preparing an EAW or EIS. Additionally, Fillmore, Houston, and Winona Counties have requested the EQB to re-designate RGU status to the State, and state agencies may have greater expertise than local government in analyzing certain potential impacts.
32. The Minnesota Pollution Control Agency was RGU for the EIS for Hancock Pro Pork Feedlot Project, in Stevens and Pope Counties. The project consisted of feedlot facilities on multiple sites in two counties, Stevens and Pope.
33. The EQB finds that the MPCA has expertise regarding multi-site and multi-county EISs.
34. The EQB finds the projects proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties have potential impacts such as those on air quality, water resources, and transportation, where state agencies have greater expertise than local government.
35. The EQB finds that the potential impacts for the proposed projects encompass the responsibilities of several state agencies.

36. Minnesota Statutes, Section 116C.01, reads:

FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

Minn. Stat. Section 116C.01 (2011)

37. The EQB finds that its membership includes the heads of state agencies including the Departments of Administration, Agriculture, Commerce, Employment and Economic Development, Health, Natural Resources, and Transportation, the Pollution Control Agency, and the Board of Water and Soil Resources, and the EQB is able to draw upon the expertise of its member agencies.
38. The EQB finds the EQB has greater expertise in analyzing the potential impacts of the multiple, phased-action, and cross-county projects than Fillmore, Houston, or Winona Counties.

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

CONCLUSIONS OF LAW

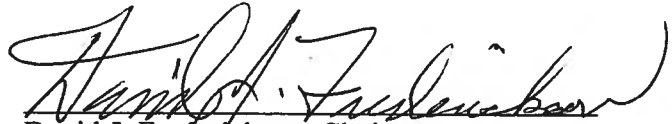
1. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.
2. The Environmental Quality Board has jurisdiction over the subject matter of this proceeding pursuant to Minnesota Statutes chapter 116D and Minnesota Rules 4410.0500, Subpart 6.
3. The request for EQB to decide the question whether to designate a different RGU for the proposed projects were properly brought to the EQB Board.
4. The EQB concludes that the EQB has greater expertise in analyzing the potential impacts of the proposed project than Fillmore, Houston, or Winona Counties.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

ORDER

The EQB hereby reassigns the status and responsibilities of responsible governmental unit for silica sand mines proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties, from Fillmore, Houston, or Winona County to the Environmental Quality Board.

Approved and adopted this 20th day of March, 2013.

A handwritten signature in black ink, appearing to read "David J. Frederickson", is written over a horizontal line.

David J. Frederickson, Chair
Minnesota Environmental Quality Board

BOARD OF COMMISSIONERS
HOUSTON COUNTY, MINNESOTA
304 South Marshall
Caledonia, Minnesota 55921

March 5, 2013

Environmental Quality Board
Attn: Mr. Bob Patton
520 La Fayette Road North
Saint Paul, Minnesota 55155

**Subject: Southeastern Minnesota (Houston, Fillmore and Winona
Counties) Environmental Impact Statements (EIS) on
proposed frac sand mines concerning Minnesota Sands, LLC**

Dear Mr. Patton:

As commissioners of Houston County we have taken an oath to protect the health, safety and wellbeing of our citizens. With this in mind our philosophy regarding frac sand mining in Houston County has been to err on the side of caution taking the most conservative route.

In traveling the conservative route we as a board understand the need for an Environmental Impact Statement (EIS) as Minnesota Sands, LLC is interested in obtaining approval to operate frac sand mines in Houston, Fillmore and Winona counties. Because these proposed mines would span over three Southeastern Minnesota counties and involve the same prospector Houston County requests the Environmental Quality Board to designate a State agency to act as the regulatory government unit (RGU) to prepare an EIS for the proposed frac sand mines. It would not be in the best interest or legal for one county to take the responsibility of conducting an EIS when several counties are involved.

<i>1st District</i> Judy Storlie 28 S Elm Street La Crescent, MN 55947 (507) 895-8994	<i>2nd District</i> Justin Zmyewski 17275 State 16 Houston, MN 55943 (507) 450-8297	<i>3rd District</i> Steve Schuldt 12874 County 10 Caledonia, MN 55921 (507) 724-3639	<i>4th District</i> Teresa Walter 550 Skunk Hollow Rd La Crescent, MN 55947 (507) 895-2446	<i>5th District</i> Dana Kjome 149 1 st Street NW Spring Grove, MN 55974 (507) 498-5676
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HOUSTON COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER

On behalf of the citizens of Houston County your consideration of our request is greatly appreciated.

Respectfully,



Justin Zmyewski, Chair
Houston County Commissioners



Teresa Walter, Vice-Chair
Houston County Commissioners



Steve Schuldt
Commissioner, Houston County




Dana Kjome
Commissioner, Houston County




Bob Scanlan
Houston County Zoning Administrator



Brian Pogodzinski
Houston County Engineer



Deb Rock
Houston County Public Health



Ron Meiners
Houston County Soil Conservation

Smyser, Jeff (MPCA)

From: Smyser, Jeff (MPCA)
Sent: Thursday, October 31, 2013 3:18 PM
To: 'Jed'
Cc: 'Jay T. Squires'; rick.frank@co.houston.mn.us; 'jamie.hammell@co.houston.mn.us'
Subject: response to Erickson message RE: EQB findings, conclusions, order

Mr. Hammel,

This message is to reiterate/clarify the points made in our phone conversation on this topic.

In that phone call, you asked if the Erickson site would be included in the EIS or if Erickson could get an approval from Houston County. I explained that the EIS scoping process would determine what projects would be included in the EIS, so it was not up to me to decide if a specific site would or would not be included. Second, I explained that I understood that there was litigation occurring between Erickson and Houston County, so I would not comment on that project or the litigation. I then explained the definitions of "phased action" and "connected action" found in Minnesota Rules 4410. I explained that a project by a different proposer would not be a "phased action". There also is the concept of a "connection action" which does not include a common project proposer. Both phased actions and connected actions must be included in an EIS. I sent a pdf of Minn. Rules 4410 to you via e-mail.

In summary, the scoping process will determine what projects are included in the EIS. This is what I stated in our conversation.

Jeff Smyser, AICP
Principal Planner
(651)757-2279



Environmental Quality Board
320 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55133
PHONE: 651-757-2273
WWW.EQB.STATE.MN.US

From: Jed [mailto:JedRHM@acegroup.cc]
Sent: Thursday, October 24, 2013 2:11 PM
To: 'Jay T. Squires'
Cc: Smyser, Jeff (MPCA); trace9092002@yahoo.com
Subject: RE: EQB findings, conclusions, order

Good afternoon Jay:

I spoke with you about a month ago regarding Tracie Erickson's permit for the extraction of construction sand and bedding sand on his property. I am drafting this email to assist Tracie to renew his original permit. However, as you are aware, I would not represent him in action against the county considering that my wife is the Houston County Attorney. Tracie thought I could help him convey some of the facts and it appears that once everyone is on the same page, Tracie should be able to obtain his renewal on his original permit.

I believe that you are well aware of the facts regarding Tracie's mine. Tracie purchased his home and acreage with an existing construction sand removal CUP.

Tracie took this into consideration when he purchased the property as the prior owner represented how many tons of sand was available and how much was typically sold from the pit. After Tracie purchased the property, he removed sand every year under his existing CUP. Tracie's real estate taxes continues to be based on an existing sand pit.

Last year, Minnesota Sands, LLC approached Tracie with a lease for removing sand for industrial purposes. Since he had an existing permit, Minnesota Sands, LLC believed that there would be no conflict at all. At first, the county stated that Tracie could only remove a certain amount of sand from the pit. This is what I believe led to the first moratorium preventing silica sand extraction. The moratorium does not effect sand pits that remove sand for construction or bedding.

After many months with Minnesota Sands, LLC, Tracie and Minnesota Sands, LLC are no longer in business together. Minnesota Sands, LLC and Tracie Erickson have terminated their lease agreement and Tracie does not have any lease agreement with any company.

Tracie understands the current moratorium and desires to sell bedding and construction sand locally just as he always did prior to joining with Minnesota Sands, LLC.

Tracie filed for renewal of his existing CUP in the fall of 2012. The county did not take any action on his request for renewal as a result of his lease agreement with Minnesota Sands, LLC and the existing litigation. I understand the litigation is now over and Tracie has no interest in Minnesota Sands, LLC. You also stated that since Minnesota Sands, LLC is required to complete an EIS, that the County can not renew his permit until that process is over.

I understand that the EIS scooping process has yet to begin with Minnesota Sands, LLC. I spoke with Jeff Smyser from the Minnesota EQB. I also spoke with engineering firms as well as companies that complete the EIS. They informed me that if a sand pit is not owned or leased by the party completing the EIS, that the EIS could not include a separate mine not involved with the company. Tracie's mine is now completely separate and accordingly, there is no EIS required for the Erickson mine. I am coping Jeff Smyser from the EQB board to make sure that I am correct in my legal analysis of this representation. Also, if you have any questions please contact an EIS expert by the name of John Dustman. He is an engineer and his number is 612.750.4024.

Moreover, the EQB findings, conclusions and order that you attached to your email, does not provide that Erickson's mine is subject to the EIS considering he is not under lease with Minnesota Sands or any other frac sand mining company.

What Mr. Erickson is merely asking for, is to be placed back into the same position with his CUP as he was prior to leasing with Minnesota Sands, LLC. All this includes is to have the county renew his original construction sand CUP. It is interesting that the county continues to renew other mines that are under lease with Minnesota Sands, LLC. I understand Port Olson has a lease with Minnesota Sands, LLC yet he requested the same renewal as Tracie did and it was immediately granted.

Jay, Tracie is a friend of mine and he wanted me to merely assist him to see what can be done about his permit. Although he is pretty passionate about the county not renewing his permit, he wants to have a frank and open dialogue with you or others to come to the proper resolution. Tracie and his family have experienced a lot since he signed with Minnesota Sands. He wants to start over and part of that is placing him back where he was prior to all of the litigation and other matters. You should be aware that Tracie's name was only on the litigation as a direct result of Minnesota Sands, LLC only lease (at the time) in Houston County. It was not because Tracie was the ringleader at all.

Jay, if you could kindly let me know what steps the county will do to make sure the county renews his original CUP. Tracie explained that he is more than open for discussion to make sure everyone knows the scope of that original CUP.

If you could kindly get back to me so that I can inform Tracie that things are in the works and moving forward. Thank you for your time and consideration.

Jed J. Hammell
Rippe, Hammell & Murphy, P.L.L.P.
110 East Main St.
Caledonia, MN 55921
Phone: 507-725-3361
Fax: 507-725-5627
jedrh@acegroup.cc

From: Jay T. Squires [<mailto:Jay.Squires@raswlaw.com>]
Sent: Thursday, September 12, 2013 12:07 PM
To: jedrh@acegroup.cc
Subject: FW: EQB findings, conclusions, order



**Rupp, Anderson, Squires
& Waldspurger, P.A.**

Jay T. Squires
Attorney at Law
527 Marquette Avenue South, Suite 1200
Minneapolis, MN 55402
Office: (612) 436-4300
Fax: (612) 436-4340
www.raswlaw.com

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Seuffert, Will (MPCA)

From: Smyser, Jeff (MPCA)
Sent: Wednesday, November 13, 2013 9:59 AM
To: jdustman@summite.com
Cc: Halbach, Myrna (MPCA); Seuffert, Will (MPCA)
Subject: FW: Draft income agreement Scoping EAW- CR 7204
Attachments: DRAFT Minnesota Sands - EQB Scoping Income Agreement 10-30-2013.docx

Importance: High

Hello John,

We sent the draft scoping agreement to you on October 30. I just wanted to make sure you received it and ask if you have any questions.

Jeff

Jeff Smyser, AICP
Principal Planner
(651)757-2279



Environmental Quality Board
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

From: Halbach, Myrna (MPCA)
Sent: Wednesday, October 30, 2013 2:12 PM
To: jdustman@summite.com; fricksfindings@gmail.com
Cc: Hedman, Leah (AAG); Smyser, Jeff (MPCA)
Subject: Draft income agreement Scoping EAW- CR 7204
Importance: High

Hello gentleman,

While it has taken longer than expected to complete the draft agreement, the timing was important to be coordinated with the hiring of a permanent Executive Director for the Environmental Quality Board and make sure staff were available to manage the project.

Attached is a draft income agreement for scoping the Environmental Impact Statement. Mr. Frick, in order to set you up as a vendor in the state system, a W-9 form is needed. Please send a completed form to Mr. Smyser.

You should consider Mr. Smyser your lead contact. Should your attorney have questions, Ms. Leah Hedman, who is copied on this email, would be the contact.

I will be taking any support questions from Mr. Smyser and Ms. Hedman as I will have no continuing role with this project outside of helping complete the contract.

Thank you.
Myrna

Myrna M. Halbach, P.E.
Assistant Division Director
Resource Management and Assistance Division
Minnesota Pollution Control Agency

Office: 651.757.2403
Mobile: 651.285.8474

Web: www.pca.state.mn.us



Minnesota Pollution
Control Agency



govDELIVERY

DRAFT

STATE OF MINNESOTA INCOME CONTRACT

This Contract is between the State of Minnesota, acting through its Commissioner of the **Minnesota Pollution Control Agency on behalf of the Environmental Quality Board**, 520 Lafayette Road North, St. Paul, MN 55155-4194 ("State") and **Minnesota Sands, LLC** doing business as "**Midwest Proppant, LLC**", 3108 Co. Rd. 9, Houston, MN 55943 ("Project Proposer").

Recitals

1. Under Minn. Stats. § 15.061 and § 116.03, subd. 2, the State is empowered to enter into income contracts.
2. On March 20, 2013, the Environmental Quality Board (EQB) reassigned the separate project status and the responsible governmental units for silica sand mine projects proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties, from separate projects assigned to each of those counties individually, to one multi-county project and the Environmental Quality Board as RGU. As such, the EQB is the responsible governmental unit assigned to carry out the Environmental Impact Statement (EIS) that Minnesota Sands, LLC voluntarily agreed to complete on their proposed projects.
3. As the Responsible Governmental Unit, the EQB will consider the mining, storing, processing, and transporting of silica sand and any related activities (Project Activities) proposed by Minnesota Sands, LLC in Fillmore, Houston, and Winona counties and any other actions determined to be phased or connected (under Minn. R. 4410.2000, subp 4), to develop a scoping Environmental Assessment Worksheet for an EIS, and eventually the EIS itself.
4. Under Minn. Stat. § 116D.045, the State is required to assess the reasonable costs that the State incurs in preparing, reviewing, and distributing the EIS pursuant to the rules promulgated by the Environmental Quality Board. Money received for such costs is appropriated to the State agency incurring the costs.
5. Under Minn. R. 4410.6000, the State is authorized and required to assess the Project Proposer for the reasonable costs the State incurs in preparing, reviewing and distributing an EIS in accord with parts 4410.6100 to 4410.6500.
6. Minn. R. 4410.6200, subp. 3, provides that the reasonable costs to prepare an EIS, includes the costs incurred during the scoping of the EIS, as set forth in Minn. R. 4410.6200, subp. 1.
7. The Project Proposer agrees to pay the costs incurred by the State related to the scoping process.
8. The State represents it is duly qualified and agrees to provide the services described in this contract.

Contract

1. Term of Contract

- 1.1 **Effective date: October 15, 2013**, or the date the State obtains all required signatures under Minnesota Statutes § 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date: March 31, 2014**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. State's Duties

The State will review, collect, and analyze information or data necessary for the preparation of a Draft Environmental Assessment Worksheet (EAW) Scoping Document for the EIS and a draft EIS Decision Document, and ultimately a final EIS Decision Document covering the Project Activities.

The State will publish a draft Scoping EAW Document for the EIS and draft EIS Decision Document for public comment. The goal of the scoping process is to identify potentially significant issues relevant to the proposed project, define the form, level of detail, content, alternatives, and timetable for the preparation of the EIS and to determine the necessary permits (for which information will be developed concurrently with the EIS).

3 Payment

The Project Proposer will pay the State for all services performed by the State under this contract as follows:

3.1 **Estimated Scoping Process Cost:** State staff needed to participate in the scoping process will be charged at a rate of \$75.00 per hour. It is expected that State staff from the following agencies will be needed in the process: Environmental Quality Board, Minnesota Pollution Control Agency, Minnesota Department of Health, Minnesota Department of Natural Resources and the Minnesota Department of Transportation, and others as necessary. The State estimates it will take approximately 1,600 hours of State staff time among the State agencies to complete the scoping process for a total cost of about \$120,000.

3.2 **Other Costs to the State**

The Project Proposer will pay the following other estimated costs incurred by the State.

1. **Attorney Fees:** Attorney fees will be billed at a rate of \$129.00 per hour. It is expected to take approximately 50 hours of attorney time for an approximate cost of \$6,450.00.
2. **Publication costs related to required public notice in the *State Register*:** \$750.00
3. **Public meeting costs:** \$3,250.00

3.3 **Schedule and Payments**

Pursuant to Minn. R. 4410.6500, the Project Proposer shall make all payments to the State according to the following schedule. The Project Proposer shall pay the State for the full cost estimated by the State (\$130,450) necessary for the scoping of the EIS no later than the date of submission by the Project Proposer of the completed data portions of the scoping EAW. The State shall not begin the scoping process until the entire payment is made in full.

Upon issuance of the scoping decision, the State shall provide the Project Proposer with a written accounting of the scoping expenditures. If the payment made by the Project Proposer exceeds the expenditures, the balance shall be credited against the cash payments required from the Project Proposer for preparation of the draft EIS. If the State's reasonable expenditures for scoping exceed the cash payment received, the Project Proposer shall pay the balance before the State commences preparation of the draft EIS.

If the Project Proposer decides not to proceed with development of the draft EIS, the State will refund any balance less the costs already incurred, after the scoping decision to the Project Proposer within 30 days.

The total estimate of the Project Proposer payment to the State under this contract is \$130,450.00 (One Hundred Thirty Thousand Four Hundred Fifty Dollars). Payment shall be remitted to the following address upon execution of this contract:

Minnesota Pollution Control Agency
Attn: Fiscal Services
520 Lafayette Road
St Paul, MN 55155

4. **Authorized Representatives**

The State's Authorized Representative is **Jeff Smyser**, 520 Lafayette Road North, St. Paul, MN 55155-4194, 651-757-2279, or his successor.

The Project Proposer's Authorized Representative is **Richard Frick**, 3108 Co. Rd. 9, Houston, MN 55943, 507-458-2023.

5. **Amendments, Waiver, and Contract Complete**

5.1 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by all and the same parties who executed and approved the original contract, or their

successors in office.

5.2 **No Waiver.** If the State fails to enforce any provision of this Contract, that failure does not waive the provision or the State's right to enforce it.

5.3 **Contract Complete.** This Contract contains all negotiations and agreements between the State and the Project Proposer. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

6. Liability

Each party will be responsible for its own acts and behavior and the results thereof.

7. Government Data Practices

The Project Proposer understands that the State is required to comply with the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. Ch. 13, as it applies to all data received, provided, or utilized by the State under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release or failure to release the data referred to in this clause by the State.

8. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

9. Termination

Either party may terminate this Agreement at any time, with or without cause, upon 30-days written notice to the other party. All money remaining in the Project Proposer's deposit with the MPCA shall be refunded to the Project Proposer within 30 days of the termination of this Agreement.

1. PROJECT PROPOSER – MIDWEST SANDS, LLC DOING BUSINESS AS MIDWEST PROPPANT, LLC

By: _____

Title: _____

(must be signed by someone duly authorized to bind
Midwest Sands, LLC)

Date: _____

2. MINNESOTA POLLUTION CONTROL AGENCY on behalf of the Environmental Quality Board

By: _____
(with delegated authority)

Title: _____

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated to the Materials Management Division

By: _____

Title: _____

Date: _____



Environmental Quality Board
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

November 19, 2013

Dear Administrator:

The purpose of this letter is to provide an update on the status of the Environmental Impact Statement (EIS) for the multiple silica sand projects proposed in Fillmore, Houston, and Winona Counties (the Counties). On March 20, 2013, the Environmental Quality Board (EQB) assumed the status and responsibilities of Responsible Governmental Unit (RGU) for the environmental review of the multiple silica sand projects proposed by Minnesota Sands, LLC in the Counties. As part of the Findings of Fact, Conclusions of Law and Order, the EQB found that the projects proposed by Minnesota Sands, LLC in the Counties were phased actions and therefore must be considered in total when preparing an EIS.

As the RGU, the EQB will be conducting the EIS; however, the project proposer funds the scoping and EIS through a cost agreement. A copy of the draft cost agreement to complete the scoping of the EIS was electronically sent to the project proposer on October 31, 2013. A follow up email was sent on November 13, 2013. At this time, the project proposer has not yet responded to the EQB regarding the draft cost agreement.

The EQB has hired a Project Manager who will be coordinating the scoping and preparation of the EIS, contingent on the execution of the cost agreement with Minnesota Sands, LLC.

A scoping process is required as the next step for this EIS. The scoping process for this EIS will be a public process, and your insights and comments will be welcome as we move forward. Please be advised that any project for which environmental review is pending cannot receive any final approvals or permits by any governmental unit before the environmental review process has been completed.

Should you have any questions about this environmental review, or need any assistance related to silica sand regulation, please do not hesitate to contact my staff, or me directly.

Sincerely,

Will Seuffert
Executive Director

WS:bt

cc: Rick Frick, Minnesota Sands LLC

Seuffert, Will (MPCA)

From: John Dustman <jdustman@summite.com>
Sent: Wednesday, November 20, 2013 11:34 AM
To: Smyser, Jeff (MPCA)
Cc: Halbach, Myrna (MPCA); Seuffert, Will (MPCA)
Subject: RE: Draft income agreement Scoping EAW- CR 7204

Jeff,

I talked with Rick Frick and he did receive the agreement. He has been busy with harvest and has not been able to meet with his attorney. I am told that will happen this week so you should be hearing from him soon.

John

John E. Dustman
Principal
Summit Envirosolutions, Inc.
1217 Bandana Boulevard North
St. Paul, Minnesota 55108
www.summite.com
612.750.4024 (cell)

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From: Smyser, Jeff (MPCA) [<mailto:Jeff.Smyser@state.mn.us>]
Sent: Wednesday, November 13, 2013 9:59 AM
To: John Dustman
Cc: Halbach, Myrna (MPCA); Seuffert, Will (MPCA)
Subject: FW: Draft income agreement Scoping EAW- CR 7204
Importance: High

Hello John,

We sent the draft scoping agreement to you on October 30. I just wanted to make sure you received it and ask if you have any questions.

Jeff

Jeff Smyser, AICP
Principal Planner
(651)757-2279



Environmental Quality Board
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

From: Halbach, Myrna (MPCA)
Sent: Wednesday, October 30, 2013 2:12 PM
To: jdustman@summite.com; fricksfindings@gmail.com
Cc: Hedman, Leah (AAG); Smyser, Jeff (MPCA)
Subject: Draft income agreement Scoping EAW- CR 7204
Importance: High

Hello gentleman,

While it has taken longer than expected to complete the draft agreement, the timing was important to be coordinated with the hiring of a permanent Executive Director for the Environmental Quality Board and make sure staff were available to manage the project.

Attached is a draft income agreement for scoping the Environmental Impact Statement. Mr. Frick, in order to set you up as a vendor in the state system, a W-9 form is needed. Please send a completed form to Mr. Smyser.

You should consider Mr. Smyser your lead contact. Should your attorney have questions, Ms. Leah Hedman, who is copied on this email, would be the contact.

I will be taking any support questions from Mr. Smyser and Ms. Hedman as I will have no continuing role with this project outside of helping complete the contract.

Thank you.
Myrna

Myrna M. Halbach, P.E.
Assistant Division Director
Resource Management and Assistance Division
Minnesota Pollution Control Agency

Office: 651.757.2403
Mobile: 651.285.8474

Web: www.pca.state.mn.us





Environmental Quality Board
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

March 25, 2014

Mr. Rick Frank
Houston County Planning and Zoning Department
304 South Marshall Street
Caledonia, MN 55921

RE: Minnesota Sands, LLC and/or Minnesota Proppant, LLC, and the Tracie and Michelle Erickson Site

Dear Mr. Frank:

On behalf of the Minnesota Environmental Quality Board (EQB), thank you for your electronic message dated February 28, 2014, inquiring about the status of the Minnesota Sands, LLC and/or Minnesota Proppant, LLC (collectively referred to as "Minnesota Sands") Environmental Impact Statement (EIS) and its relationship to the Tracie and Michelle Erickson potential silica sand mining site, ("Erickson site") located in Houston County. I am also in receipt of a document purporting to terminate the association between Minnesota Sands, LLC and Tracie and Michelle Erickson.

As you know, on August 7, 2012, Houston County ordered an Environmental Assessment Worksheet (EAW) for the Minnesota Sands Erickson site.

Houston County, on March 5, 2013, sent a letter to the EQB requesting it consider designating a state agency as the Responsible Governmental Unit (RGU) for the multiple projects proposed by Minnesota Sands, LLC in Houston, Fillmore, and Winona counties. The EQB adopted Findings of Fact, Conclusions of Law, and Order for an EIS on March 20, 2013, and is the RGU for the Minnesota Sands projects located in Fillmore, Houston, and Winona counties.

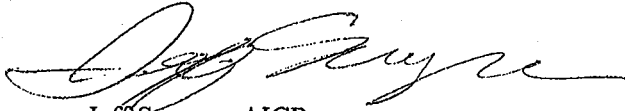
The EQB sent a draft income agreement on October 20, 2013, to Minnesota Sands, LLC as the project proposer. Despite our efforts to follow up, we have not received a signed income agreement to date. The income agreement must be completed to begin an environmental review on this project.

Page 2
March 25, 2014

On March 25, 2014, the EQB sent a letter to Mr. Rick Frick of Minnesota Sands requesting he return a signed income agreement and provide a status report on Minnesota Sands activities. We also requested confirmation regarding any past, current, and anticipated future association between his company and Tracie and Michelle Erickson. We will keep you current on any information we receive as Houston County's EAW decision regarding the Erickson site may still require the County's consideration.

If you have any questions, please feel free to contact me at 651-757-2279.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Smyser", written in a cursive style.

Jeff Smyser, AICP
Principal Planner

JS:bt



Environmental Quality Board

520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

March 25, 2014

Mr. Rick Frick
Minnesota Sands, LLC
Midwest Proppant, LLC
3108 County Road 9
Houston, MN 55943

Mr. John E. Dustman
Principal
Summit Envirosolutions, Inc.
1217 Bandana Boulevard North
St. Paul, MN 55108

RE: Status of Silica Sand Project Activities

Dear Mr. Frick and Mr. Dustman:

The Minnesota Environmental Quality Board (EQB) is the Responsible Governmental Unit (RGU) for certain silica sand related projects in Houston, Fillmore, and Winona counties proposed by Minnesota Sands, LLC and/or Minnesota Proppant, LLC. In its March 20, 2014, Findings of Fact, Conclusions of Law and Order, the EQB ordered an Environmental Impact Statement (EIS) for the projects, which include all phased and connected activities, as defined in Minn. R. 4410.0200, subp. 9(c) and 60 and in accordance with Minn. R. 4410.2000, subp. 4.

On October 20, 2013, a draft income agreement for costs of scoping the EIS was sent to you. On November 13, 2013, a follow up message was sent to Mr. Dustman to confirm receipt of the draft agreement. On November 20, 2013, Mr. Dustman acknowledged receipt and stated Mr. Frick planned to review the agreement with his attorney the following week. Since then, we have received no further information or inquiries on the cost agreement or proposed projects, nor have we received a signed income agreement from you.

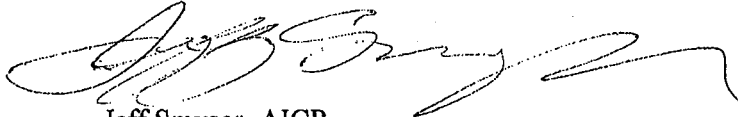
As required by Minn. R. 4410.6500, subp. 1.A., the EQB, as the designated RGU, cannot proceed with the scoping process until payment is made to cover the cost of the scoping process. In addition, as stated in Minn. R. 4410.3100, a project for which environmental review is pending cannot receive any final approvals or permits from any governmental unit until the review process is completed. Please provide, at your earliest convenience, an update on the status of projects by Minnesota Sands, LLC and/or Minnesota Proppant, LLC. Please also send a signed cost agreement, so work on the EIS scoping may begin.

On a related topic, EQB staff recently received a copy of a document that appears to terminate Tracie and Michelle Erickson's association with Minnesota Sands, LLC. The Ericksons own a proposed mining site for Minnesota Sands, LLC, which was likely to be included in the scope of the Minnesota Sands, LLC EIS.

Please describe in detail any association between the Tracie and Michelle Erickson site or Tracie and Michelle Erickson and Minnesota Sands, LLC and/or Minnesota Proppant LLC. This would include any past, current, or anticipated future association and include, but not be limited to, a partnership, ownership, shareholder, buyer, seller, processor, transporter, or relationship of any kind.

If you have any questions please feel free to contact me at 651-757-2279.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Smyser', with a long horizontal flourish extending to the right.

Jeff Smyser, AICP
Principal Planner

JS:bt

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. **Prohibitions.** If an EAW or EIS is required for a governmental action under parts 4410.0200 to 4410.6500, or if a petition for an EAW is filed under part 4410.1100 that complies with the requirements of subparts 1 and 2 of that part, 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.

Subp. 2. **Public projects, prohibitions.** If a project subject to review under parts 4410.0200 to 4410.6500 is proposed to be carried out or sponsored by a governmental unit, the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project, until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB, unless the project is an emergency under subpart 9 or a variance is granted under subparts 4 to 8. An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.

Subp. 2a. **Concurrent review of draft permits not prohibited.** Subpart 1 does not prohibit a governmental unit from issuing notice of and receiving public comments on a draft permit prior to completion of environmental review.

Subp. 3. [Repealed, 13 SR 1437]

Subp. 4. **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. 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.

Subp. 5. **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.

Subp. 6. **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.

Subp. 7. **Written notice.** The EQB shall set forth in writing its reasons for granting or denying each request for a variance.

Subp. 8. **Construction or government approvals.** Only the construction or governmental approvals necessary to avoid the consequences listed in subpart 6 shall be undertaken or granted.

Subp. 9. **Emergency action.** In the rare situation when immediate action by a governmental unit or person is essential to avoid or eliminate an imminent threat to the public health or safety or a serious threat to natural resources, a proposed project may be undertaken without the environmental review which would otherwise be required by parts 4410.0200 to 4410.6500. The governmental unit or person must demonstrate to the EQB chair, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chair to proceed. Authorization to proceed shall be limited to those aspects of the project necessary to control the immediate impacts of the emergency. Other aspects of the project remain subject to review under parts 4410.0200 to 4410.6500.

Statutory Authority: *MS s 116D.04; 116D.045*

History: *11 SR 714; 13 SR 1437; 21 SR 1458; 28 SR 951; 31 SR 539; 34 SR 721*

Published Electronically: *November 30, 2009*

Seuffert, Will (MPCA)

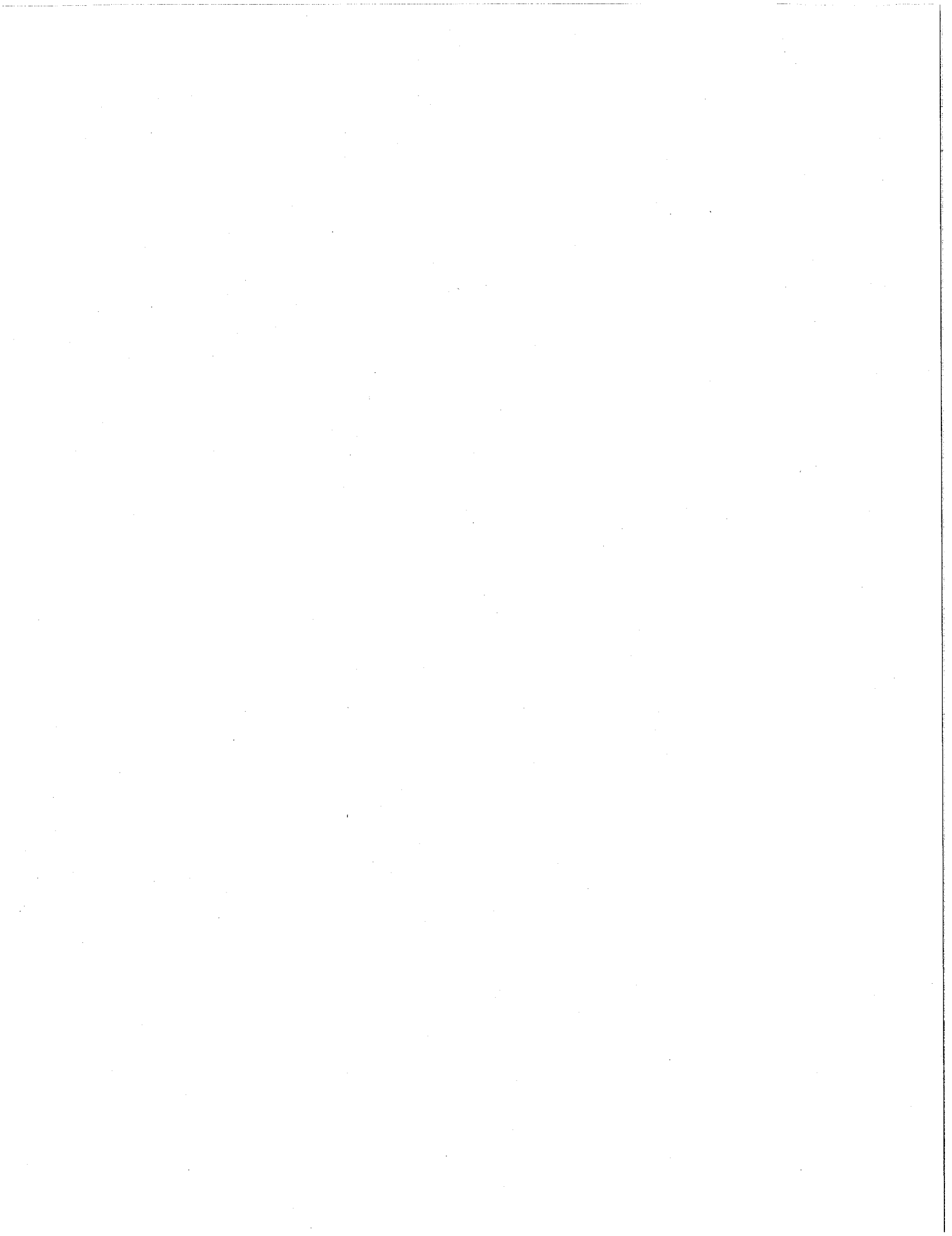
From: David Williams <davidw@acegroup.cc>
Sent: Thursday, March 27, 2014 9:04 AM
To: Seuffert, Will (MPCA)
Subject: Houston County -- Tracie Erickson Application for Mining Permit
Attachments: Letter to Rick Frank.pdf; Squires Letter to Scanlan.pdf

Will Seuffert
Executive Director
Minnesota Environmental Quality Board

Will:

Attached is a copy of my letter to Rick Frank, the Houston County Environmental Services Director, regarding his current efforts to push forward Tracie Erickson's application for a mining permit. Also attached is a copy of a letter from Jay Squires, who has been acting as land use attorney for Houston County. If you have any questions, please contact me. Thanks.

David Williams
507-467-2611
davidw@acegroup.cc



Williams Consultancy

David Williams
Land Use Planning and Environmental Consulting
40722 County Road 12
Lanesboro, Minnesota 55949
Telephone: 507-487-2611
Cell: 507-421-0715
Email: davidw@acegroup.cc

Thursday, March 27, 2014

Rick Frank
Environmental Services Director
Houston County
304 South Marshall Street
Caledonia, Minnesota 55921

Re: Application of Tracie Erickson for Mining Permit

Dear Mr. Frank:

Thanks for meeting with me Tuesday to discuss Tracie Erickson's pending application for a mining permit. I appreciated the discussion.

While you will certainly discuss this situation with Jay Squires, Houston County's land use attorney, I want to point out that Mr. Squires has previously given your department detailed and extensive advice regarding Mr. Erickson's pending application for a mining permit. A copy of Mr. Squires' letter to Bob Scanlan dated May 14, 2013 is attached.

Although Mr. Erickson is pressuring you to move forward his application for a mining permit, there are numerous reasons why Houston County cannot issue a mining permit to Mr. Erickson, at this time. Some of those reasons were cited by Mr. Squires in his letter. Those reasons include the following:

1. **The Erickson property is a part of the Minnesota Sands, LLC EIS that is pending before the EQB. Houston County cannot issue a permit to Mr. Erickson while this EIS is pending, unless and until the EQB releases Erickson's property from the EIS. The EQB has not yet released the Erickson property from the EIS.**

Minnesota Statutes § 116D.04, subd. 2b, declares that a project that is subject to a pending EIS cannot be started, and a permit cannot be granted for the project, until the EIS is completed or until the EQB grants a variance for the project.

In a November 19, 2013 letter to Houston County, Will Seuffert, executive director of the EQB, states:

"Please be advised that any project for which environmental review is pending cannot receive any final approvals or permits by any governmental unit before the environmental review process has been completed."

On March 24, 2014, I met with Will Seuffert. Mr. Seuffert stated that, although the EQB has received a request from Mr. Erickson to release his property from the Minnesota Sands, LLC EIS, the EQB has not made any decision on this request. Mr. Seuffert stated that the EQB board would make the decision, since the EQB board made the original decision to include Erickson's property in the EIS.

2. **Even if the EQB does release the Erickson property from the EIS, Mr. Erickson must still participate in the EAW-level environmental review that was ordered by Houston County but never completed.**

In his May 14, 2013 letter to Scanlan, Jay Squires stated the following:

"The pending but incomplete environmental review process also, in my judgment, presents and impediment. Here, in July 2012 an EAW petition was submitted seeking review of the proposed frac sand project. Recall the County Board ordered an EAW, which has not been completed. The Board found also that the project should have been treated as a mandatory EAW in 1992.

Under Minnesota Law, "a project may not be started and a final decision may not be made to grant a permit, approve a project, or begin a project [until required environmental review is complete]." Minn. Stat. §116D.04. Here, we have a situation where Tracie Erickson wishes to engage in provisional activity, but not the "project" that was the subject of the July 2012 EAW petition.

Notwithstanding the issue of whether the final action prohibition prevents pursuit of a scaled down request, the County Board determined in its Findings and EAW decision that any mining at the site required completion of an EAW. That determination was never challenged. Thus, in my opinion, the final action prohibition would apply in this case, and Erickson would not be allowed to mine until the EAW is complete."

Since the EAW ordered by Houston County on August 7 and 21, 2012 has never been completed, it must be completed before the county can issue a permit to Mr. Erickson.

3. **The Erickson property is located less than 1 mile from two DNR-designated trout streams - the Root River and Ferndale Creek. Under the terms of Minnesota Statute § 103G.217, subd. (b), Mr. Erickson cannot mine silica sand for any purpose, unless he is able to obtain a trout stream setback permit from the DNR.**

Minnesota Statutes § 103G.217, subd. (b), states:

Within the boundaries of the Department of Natural Resources Paleozoic plateau ecological section, no excavation or mining of silica sand, including, but not limited to, digging, excavating, mining, drilling, blasting, tunneling, dredging, stripping, or shafting, may occur within one mile of a designated trout stream as listed in Minnesota Rules unless a silica sand mining trout stream setback permit has been issued by the commissioner.

Williams Consultancy

Because of his property's proximity to the Root River and Ferndale Creek, Mr. Erickson cannot mine anything, unless he obtains a trout stream setback permit from the DNR.

4. **The current Houston County moratorium on silica sand mining does not expire until March 2015. When Mr. Erickson sought to obtain an injunction from the district court against Houston County to enable Erickson to mine, Judge Walters denied Erickson's request for the injunction. In the memorandum supporting his order, Judge Walters interpreted the Houston County moratorium broadly, and declared that the moratorium applied to Erickson's property to even prevent the scope and type of mining that has occurred since 1992.**

In his May 14, 2013 letter to Scanlan, Jay Squires stated the following while quoting a relevant passage from Judge Walters' memorandum:

"In its memorandum, the Court stated: "... of course the enforcement of the moratorium also means there will not be the more limited mining and extraction which have gone on at various times since 1992." I think the above statement reflects the fact that the Court believes the end use of the mined material is irrelevant – if you are mining sand, you are mining sand. The position we have taken in the Minnesota Sands lawsuit also would, in my judgment, present impediments to the removal of 21,000 cubic yards of sand from the Erickson property."

Judge Walters clearly interpreted the Houston County moratorium on silica sand mining broadly. Judge Walters' interpretation would include any mining of Erickson's property for any purpose or use, including purposes labeled "construction" or "ag" usage.

Conclusion

Although Mr. Erickson might attempt to start the 60-day rule clock running by pressuring you to move forward his application for a mining permit, the 60-day rule clock has not started. The 60-day rule does not apply until the various barriers described above have been removed.

If Mr. Erickson thinks that he can avoid these barriers by describing his application as a "renewal of an existing permit", he is mistaken. Mr. Erickson's permit is over. Jay Squires stated the situation succinctly:

"Moreover, the 1992 CUP was renewed a number of times. However, the most recent CUP expired at the beginning of this year. Given the fact there is no existing CUP that would allow mining, this would also impact Erickson's ability to engage in the requested activity."

Mr. Squires concludes his letter:

"Based upon the above considerations, it is my opinion that Tracie Erickson would not be able to engage in the desired mining activity because of the current posture of the lawsuit, the pending EAW process, and in light of the current lack of a CUP."

Williams Consultancy

Little has changed since Mr. Squires provided your department with advice in May 2013. The lawsuit is over, and Mr. Erickson lost. Judge Walters' interpretation of the Houston County moratorium still stands. The county ordered EAW has still not been completed. Mr. Erickson still lacks a CUP. Mr. Erickson might be more frustrated with the passage of time, but he must still get beyond the various barriers to mining that confront him. Mr. Erickson chose to align himself with Minnesota Sands, LLC. and to sue Houston County. No one forced him to choose those options. His attempts to sidestep these barriers are futile.

Respectfully,

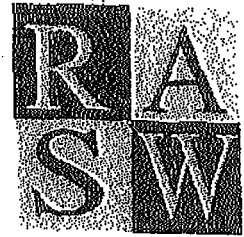
A handwritten signature in black ink, appearing to read "David Williams", written in a cursive style.

David Williams

Copies: Jay Squires, Teresa Walter, Judy Storlie, Steve Schuldt, Dana Kjome, Justin Zmyewski,
Will Seuffert

Kevin J. Rupp
Scott T. Anderson
Jay T. Squires*†
Michael J. Waldspurger*
Amy E. Mace
Trevor S. Helmers
Tessa S. Wagner
John P. Edison
Jennifer L. Gover Bannon
Liz J. Vieira

**RUPP, ANDERSON, SQUIRES
& WALDSPURGER, P. A.**



*Also Admitted in Wisconsin

†Real Property Specialist Certified by
the MN State Bar Association

May 14, 2013

Mr. Bob Scanlan
Houston County Zoning Administrator
304 S. Marshall Street
Caledonia, MN 55921

RE: Tracie Erickson Request to Mine
Our File No. 5028-0012

Dear Bob:

You requested I advise you relative to a request by Tracie Erickson to mine 21,000 cubic yards of sand from his property which he indicates would be used for construction purposes. In particular, you queried whether the existing lawsuit, the County's moratorium, and/or the pending but incomplete environmental review impact the County's ability to allow the mining.

As to the moratorium, the original scope of the February/March 2012 moratorium applied to "the issuance of any conditional use permit for new silica sand mining or accessory uses." The moratorium was amended in the summer of 2012 to apply to "1) the issuance of a conditional use permit for new silica sand mining, 2) the conversion of non-silica sand mining operations into silica sand mining operations, and 3) processing of sand material that has not been ongoing as of the date of the [moratorium] amendment." The moratorium was extended earlier this year to 2014.

In my judgment, the language of the moratorium, as modified and extended, would not preclude the mining of sand for construction purposes. Notwithstanding this fact, recall that Minnesota Sands brought a motion for an injunction that was denied by the Court. In its memorandum, the Court stated:

Mr. Bob Scanlan

May 14, 2013

Page 2

✓ ..of course the enforcement of the moratorium also means there will not be the more limited mining and extraction which have gone on at various times since 1992.

I think the above statement reflects the fact that the Court believes the end use of the mined material is irrelevant – if you are mining silica sand, you are mining silica sand. The position we have taken in the Minnesota Sands lawsuit also would, in my judgment, present impediments to the removal of 21,000 cubic yards of sand from the Erickson property. Recall that the 1992 CUP was issued based on the representation that 8-10,000 cubic yards of sand would be removed per year. We have taken the position this limit, though not incorporated into the issued CUP(s), is imputed into the CUP based on caselaw (The Edling v. Isanti County case). To allow 21,000 cubic yards to be removed would run counter to this position.

Moreover, the 1992 CUP was renewed a number of times. However, the most recent CUP expired at the beginning of this year. Given the fact there is no existing CUP that would allow mining, this would also impact Erickson's ability to engage in the requested activity.

The pending but incomplete environmental review process also, in my judgment, presents an impediment. Here, in July 2012 an EAW petition was submitted seeking review of the proposed frac sand project. Recall the County Board ordered an EAW, which has not been completed. The Board found also that the project should have been treated as a mandatory EAW in 1992.

Under Minnesota Law, "a project may not be started and a final decision may not be made to grant a permit, approve a project, or begin a project [until required environmental review is complete.]" Minn. Stat. §116D.04. Here, we have a situation where Tracie Erickson wishes to engage in provisional activity, but not the "project" that was the subject of the July 2012 EAW petition.

Notwithstanding the issue of whether the final action prohibition prevents pursuit of a scaled down request, the County Board determined in its Findings and EAW decision that any mining at the site required completion of an EAW. That determination was never challenged. Thus, in my opinion, the final action prohibition would apply in this case, and Erickson would not be allowed to mine until the EAW is complete.

Finally, the EQB has assumed responsibility to prepare a multi-County EIS for mining that expressly includes the Erickson property. Given the

Mr. Bob Scanlan

May 14, 2013

Page 3

pendency of this effort, the final action prohibition also arguably precludes mining at the Erickson site until this study is complete.

Note that from the EQB Rules allow a landowner to request a variance from the final action prohibition. The variance process, set forth in Minn. Rules 4410.3100, Subps. 4-8, involves an application to the EQB.

Based on the above considerations, it is my opinion that Tracie Erickson would not be able to engage in the desired mining activity because of the current posture of the lawsuit, the pending EAW process, and in light of the current lack of a CUP. I recommend you prepare a letter to him advising him of your determination, but noting that your conclusion is based on the current facts and status of matters. I can help you draft that letter.

Let me know if you have questions.

Very Truly Yours,



Jay T. Squires

JTS/man

RASW: 2698

Jeff Smyser
E.Q.B. Board
520 Lafayette Road N.
St. Paul, MN. 55155

RECEIVED
APR 9 2014

BY:-----

Mr. Smyser,

4/5/14

As we talked about, I am sending this letter with the enclosed Dissolution of Contract Agreement between Mn. Sands, LLC / Richard Frick and Tracie and Michelle Erickson.

Our contract was dissolved as of September 12, 2013- as you will see in the Agreement. Per our conversation, this is the document you requested in order to release them from the study.

Because they are no longer under contract with Mn. Sands, LLC I would like to have them removed from the list of the cumulative mines in the three county area that are going to be studied. The Erickson's will no longer be pursuing a large scale mining operation; they are no longer under contract with us and should be released from this study.

Please verify this with written correspondence to both me as well as Houston County Environmental Services.

Sincerely,



Richard Frick
14158 Addleman Dr.
Houston, MN. 55943

Copy

AGREEMENT

THIS AGREEMENT, Made and entered into this 12 day of September 2013, by and between Tracie Erickson and Michelle Erickson and Richard Frick, individually and on behalf of Minnesota Sands, LLC and Minnesota Proppent, LLC.

WHEREAS, the parties have had various business dealings within the last couple of years and Tracie and Michelle Erickson leased certain real estate to Richard Frick and/or his representative businesses for the excavation of Frac Sand, and

WHEREAS, the parties desire to come to an understanding for the termination of said lease and to terminate any and all business relationship; and

NOW THEREFORE: For valuable consideration, the parties agree as follows:

1. The lease agreement and amendments thereto between Tracie and Michelle Erickson and Minnesota Sands, LLC and Richard Frick are hereby terminated.
2. Richard Frick and/or his respective businesses, jointly and individually, shall pay to Tracie and Michelle Erickson the sum of \$25,000.00 within thirty (30) days of the execution of this agreement.
3. If the \$25,000.00 is not paid within thirty (30) days, Richard Frick, Minnesota Sands, and Minnesota Proppent, individually and jointly, shall pay to Tracie and Michelle Erickson \$90,000.00.
4. For further security for the payment of the \$25,000.00, Richard Frick, Minnesota Sands and Minnesota Proppent, grant to Tracie and Michelle Erickson a security agreement into any and all assets that all parties may own.

5. Tracie Erickson shall complete all matters necessary to obtain his existing permit from Houston County. Richard Frick, Minnesota Sands, and Minnesota Proppent agree to pay any and all attorney's fees and complete all actions necessary to obtain his prior permit back from Houston County.
6. Richard Frick, Minnesota Sands and Minnesota Proppent agree to pay any and all costs, attorney's fees and other expenses related to returning Tracie Erickson's permit to Tracie Erickson. This permit shall consist of a permit to mine sand and not frac sand. The specifics of the Erickson's permit shall be consistent with what Mr. Erickson had prior to the parties entering into the underlying lease agreement.
7. Richard Frick, Minnesota Sands, and Minnesota Proppent, LLC agree to enter into the dismissal of the current lawsuit of Minnesota Sands, LLC v. Houston County and Minnesota District Court File No. 28-CV-12-729.
8. Tracie and Michelle Erickson shall transfer over to Richard Frick two shares that Richard Frick transferred to Tracie Erickson.
9. In exchange for the aforementioned consideration and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties hereby release and forever discharge each other from any and all claims under, pursuant to, arising from, or in any way related to their relationship and lease including damages.
10. This is a complete and final settlement as to the terms of the agreement.

Tracie Erickson
Tracie Erickson

Michelle Erickson
Michelle Erickson

MINNESOTA SANDS, LLC:

By: Richard Frick
Richard Frick

MINNESOTA PROPPENT, LLC:

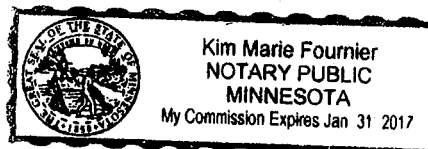
By: Richard Frick
Richard Frick

Richard Frick
Richard Frick, individually

State of Minnesota
ss.
County of Houston

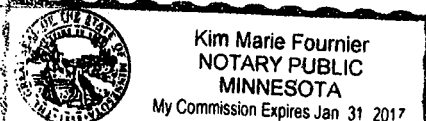
Subscribed and sworn to before me this 12th day of
September 2013 by Tracie Erickson and Michelle Erickson.

Kim Marie Fournier
Notary Public



Subscribed & Sworn to before me this 13th day of
September by Michelle Erickson

Kim Marie Fournier
Notary Public



State of Minnesota

SS.

County of Houston

Subscribed and sworn to before me this 13th day of September 2013 by Richard Frick individually and on behalf of Minnesota Sands, LLC and Minnesota Proppent, LLC.

Kim Marie Fournier
Notary Public

Prepared by:

Jed J. Hammell
Rippe, Hammell & Murphy
110 East Main Street
Caledonia MN 55921



Seuffert, Will (MPCA)

From: Kelley Stanage <stanagek@gmail.com>
Sent: Thursday, April 17, 2014 5:34 AM
To: Seuffert, Will (MPCA)
Subject: Erickson mine
Attachments: Court Order denying injunction with memo 112712.pdf; Rick Frank letter to Jamie Hammel.pdf; squires to scanlan 051413.pdf

Will,

I thought you might be interested in the attached documents, received in response to a public data request to Houston County. During their April 8, 2014 regular meeting, the board held a closed session under the attorney client privilege exception to the open meeting law to discuss the Erickson mine.

As you know, the Erickson/Minnesota Sands lawsuit against the county was dismissed with prejudice on 11/27/12 (see "court order . . . Document). No one was aware of any further threats of legal action against the county that had been made by Tracie Erickson.

Since then, Erickson has claimed to have dissolved his business association with Minnesota Sands, via the agreement drafted by attorney Jed Hammell (alleged former principle of Minnesota Proppant LLC, "land man" for Minneosta Sands, and husband of Houston County Attorney, Jamie Hammell). It is not clear that this agreement has actually been executed.

As justification for closing the meeting, the County's Data Practices Act officer, Jamie Hammell, provided the attached handwritten, undated, unsigned note to her from Environmental Services Department Director, Rick Frank, detailing a threat of litigation he had received in a telephone conversation with Rick Frick, President of Minnesota Sands, LLC.

The question becomes: If Tracie Erickson has severed his business association with Minnesota Sands, why would a threat from that same company be justification for closing a public meeting to consider "renewal" of a CUP for a sand mining operation on the Erickson property?

In addition, in the attached letter from attorney Jay Squires to Zoning Administrator Bob Scanlan (who reports to Rick Frank, Env. Svcs. Dept.), Squires states that the CUP for the Erickson mine expired at the beginning of 2013. It further advises Scanlan that Erickson "would not be able to engage in the desired mining activity."

The only thing that appears to have changed since Squires' letter to Scanlan last May is a verbal threat of litigation from Minnesota Sands.

Just wanted to keep you apprised of the situation here . . . If you have any questions, please don't hesitate to call me.

Regards,

Kelley Stanage

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HOUSTON

THIRD JUDICIAL DISTRICT

Case Type: Other Civil

CASE TITLE:

Court File #28-CV-12-729

Minnesota Sands LLC, Tracie Erickson,
and Michelle Erickson,

**ORDER DENYING MOTION FOR
TEMPORARY INJUNCTION**

Plaintiffs,

vs.

Houston County,

Defendant,

vs.

Cory Baker, et al.

Intervenors.

The above-entitled matter came on for hearing before the undersigned Judge of District Court on November 26, 2012, in the Wabasha County Courthouse, Wabasha, Minnesota, on the Plaintiffs' motion for a temporary injunction against Defendant Houston County. James P Peters, Attorney at Law, appeared on behalf of Intervenors. Jerrie M Hayes, Attorney at Law, appeared on behalf of Plaintiffs. Jay T Squires, Attorney at Law, appeared on behalf of Defendant Houston County.

Based upon the pleadings and papers on file herein, and having heard the arguments of counsel, the Court makes the following ORDER:

IT IS HEREBY ORDERED:

1. Plaintiffs' motion for a temporary injunction against Defendant Houston County is hereby DENIED.
2. The attached memorandum is incorporated herein.

Minnesota Sands, LLC et al v. Houston County

Court File 28-CV-12-729

Plaintiffs seek a temporary injunction enjoining defendant from enforcing its July 24, 2012 Moratorium and July 17, 2012 Stop Work Order. In *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 NW2d 314 (1965), the Minnesota Supreme Court outlined the five factors to be considered in deciding whether injunctive relief is appropriate. The five factors are as follows:

1. The nature and background of the relationship between the parties;
2. The harm to the respective parties if the restraining order is granted or denied;
3. The likelihood that the moving party will prevail on the merits;
4. The public policy considerations triggered by the fact situation; and
5. The administrative burdens involved in judicial supervision of the temporary restraining order.

The court considers the second Dahlberg factor to be determinative. The continued enforcement of the county's moratorium during the pendency of this case will maintain the status quo in the sense that there will not be the kind of expansion of the sand mining operation which the county fears. Of course the enforcement of the moratorium also means that there will not be the more limited mining and extraction which have gone on at various times since 1992. The court is persuaded, however, that the potential harm to the county and the interveners if the injunction is granted exceeds the potential harm to the plaintiffs if it is not.

Plaintiffs must show that they have an inadequate remedy at law if the equitable remedy of an injunction is to be granted. *Unlimited Horizon Mktg, Inc. v. Precision Hub, Inc.* 533 NW2d 63 (Minn. App. 1995). If plaintiffs ultimately prevail on the merits, they have a money damage claim against defendant for lost profits. They will also still have the ability to mine the sand that is in the ground now. That sand will not have dissipated or deteriorated. Accordingly, the court concludes the plaintiffs have an adequate remedy at law in the absence of an injunction.

The remaining four Dahlberg factors have been considered by the court and the court concludes they do not favor the granting of the temporary injunction.

The request for a temporary injunction is denied.

TMW

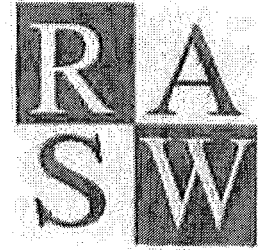
11/27/12

Janie Hammell
Houston Co. Attorney

On or about March 25th or 26th I had called Rick Frick of Mr. Sands to ask about the status of the E.I.S. (Environmental Impact Statement) for which the Erickson Quarry was listed as part of. Mr. Frick became quite upset with my inquiry and asked why we were harassing Mr. Erickson and to give him his ----- permit back as he wants nothing to do with Houston County or my office. He indicated that he signed a contract dissolving their business association and that Houston Co. should give him his old permit back. He also indicated that Mr. Sands has now hired a new law firm with 2 lawyers in it to go after Houston County and me personally for the way we had handled the permit for Fine Sand Mining on the Erickson property in 2012.

Kevin J. Rupp
Scott T. Anderson
Jay T. Squires†
Michael J. Waldspurger*
Amy E. Mace
Trevor S. Helmers
Tessa S. Wagner
John P. Edison
Jennifer L. Gover Bannon
Liz J. Vieira

**RUPP, ANDERSON, SQUIRES
& WALDSPURGER, P. A.**



*Also Admitted in Wisconsin

†Real Property Specialist Certified by
the MN State Bar Association

May 14, 2013

Mr. Bob Scanlan
Houston County Zoning Administrator
304 S. Marshall Street
Caledonia, MN 55921

RE: Tracie Erickson Request to Mine
Our File No. 5028-0012

Dear Bob:

You requested I advise you relative to a request by Tracie Erickson to mine 21,000 cubic yards of sand from his property which he indicates would be used for construction purposes. In particular, you queried whether the existing lawsuit, the County's moratorium, and/or the pending but incomplete environmental review impact the County's ability to allow the mining.

As to the moratorium, the original scope of the February/March 2012 moratorium applied to "the issuance of any conditional use permit for new silica sand mining or accessory uses." The moratorium was amended in the summer of 2012 to apply to "1) the issuance of a conditional use permit for new silica sand mining, 2) the conversion of non-silica sand mining operations into silica sand mining operations, and 3) processing of sand material that has not been ongoing as of the date of the [moratorium] amendment." The moratorium was extended earlier this year to 2014.

In my judgment, the language of the moratorium, as modified and extended, would not preclude the mining of sand for construction purposes. Notwithstanding this fact, recall that Minnesota Sands brought a motion for an injunction that was denied by the Court. In its memorandum, the Court stated:

..of course the enforcement of the moratorium also means there will not be the more limited mining and extraction which have gone on at various times since 1992.

I think the above statement reflects the fact that the Court believes the end use of the mined material is irrelevant – if you are mining silica sand, you are mining silica sand. The position we have taken in the Minnesota Sands lawsuit also would, in my judgment, present impediments to the removal of 21,000 cubic yards of sand from the Erickson property. Recall that the 1992 CUP was issued based on the representation that 8-10,000 cubic yards of sand would be removed per year. We have taken the position this limit, though not incorporated into the issued CUP(s), is imputed into the CUP based on caselaw (The Edling v. Isanti County case). To allow 21,000 cubic yards to be removed would run counter to this position.

Moreover, the 1992 CUP was renewed a number of times. However, the most recent CUP expired at the beginning of this year. Given the fact there is no existing CUP that would allow mining, this would also impact Erickson's ability to engage in the requested activity.

The pending but incomplete environmental review process also, in my judgment, presents an impediment. Here, in July 2012 an EAW petition was submitted seeking review of the proposed frac sand project. Recall the County Board ordered an EAW, which has not been completed. The Board found also that the project should have been treated as a mandatory EAW in 1992.

Under Minnesota Law, "a project may not be started and a final decision may not be made to grant a permit, approve a project, or begin a project [until required environmental review is complete.]" Minn. Stat. §116D.04. Here, we have a situation where Tracie Erickson wishes to engage in provisional activity, but not the "project" that was the subject of the July 2012 EAW petition.

Notwithstanding the issue of whether the final action prohibition prevents pursuit of a scaled down request, the County Board determined in its Findings and EAW decision that any mining at the site required completion of an EAW. That determination was never challenged. Thus, in my opinion, the final action prohibition would apply in this case, and Erickson would not be allowed to mine until the EAW is complete.

Finally, the EQB has assumed responsibility to prepare a multi-County EIS for mining that expressly includes the Erickson property. Given the

Mr. Bob Scanlan

May 14, 2013

Page 3

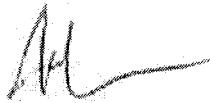
pendency of this effort, the final action prohibition also arguably precludes mining at the Erickson site until this study is complete.

Note that from the EQB Rules allow a landowner to request a variance from the final action prohibition. The variance process, set forth in Minn. Rules 4410.3100, Subps. 4-8, involves an application to the EQB.

Based on the above considerations, it is my opinion that Tracie Erickson would not be able to engage in the desired mining activity because of the current posture of the lawsuit, the pending EAW process, and in light of the current lack of a CUP. I recommend you prepare a letter to him advising him of your determination, but noting that your conclusion is based on the current facts and status of matters. I can help you draft that letter.

Let me know if you have questions.

Very Truly Yours,



Jay T. Squires

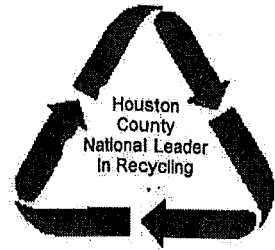
JTS/man

RASW: 2698



HOUSTON COUNTY

Zoning Administration • Solid Waste • Recycling
304 South Marshall Street - Room 202, Caledonia, MN 55921
Phone: (507) 725-5800 • Fax: (507) 725-5590



April 21, 2014

To: Affected Landowners

Re: Tracie and Michelle Erickson 1992 mine renewal

To whom it may concern:

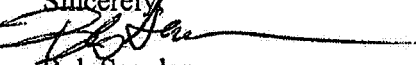
At the April 8, 2014 County Board meeting, a motion was made by Commissioner Schuldt, seconded by Commissioner Storlie and unanimously carried to direct the staff to work with Mr. Erickson in processing his renewal request and extend any applicable 60 day rule period an additional 60 days. In addition, the Board further directs staff to provide notice of the Board's determination to affected property owners and the EQB.

The Planning Commission will review the renewal application of Mr. Erickson on the evening of April 30, 2014.

Any questions about the matter can be directed to Bob Scanlan, Zoning Adm.

This letter serves as your notice of above stated action by the County Board.

Sincerely,


Bob Scanlan
Zoning Adm.
Houston County

Houston County is an Equal Opportunity Employer

operation. One of the men stated that he doesn't want to be on a job sight with an individual who has never operated joy sticks or foot controls but is subject to doing so due to machine limitations. Commissioner Zmyewski stated that operators can learn to safely operate using either type of controls in between 4 and 6 hours. Having only one type of controls would save money. Chairperson Walter indicated that it was time to wrap up the conversation. She stated that the motion passed last week to accept the quote for the John Deere 333E, the money had been budgeted and the cost was less than what had been budgeted. Commissioner Zmyewski stated that Bobcat offers a program which would allow the Highway Department to trade in their machine on an annual basis and the cost would only be a few thousand dollars. The SEMA Representative indicated that they offer a similar program also. With the SEMA program the machine has dealer specifications. Commissioner Zmyewski reiterated that quotes for 2 other brands are less than that of the John Deere. Chairperson Walter reiterated that the department has performed due diligence through their research and the purchase was approved last week. Commissioner Zmyewski repeated that the machines are comparable and there is no need to buy top notch when something more cost effective would be adequate.

At this time Environmental Services Director Frank contacted Jay Squires via telephone. Mr. Squires was informed of individuals present. Mr. Squires stated that there are two separate issues to be discussed during the phone conference. The first being the Erickson Mine and the second being the future frac sand ordinance. He indicated that there have been a number of threats of litigation with regard to the Erickson Mine, he desires to speak candidly with the Board regarding the strengths and weaknesses and it is proper that this discussion be closed and subject to attorney client privilege. Discussion regarding the future frac sand ordinance is general in nature and should be open to the public.

On the recommendation of Jay Squires, motion was made by Commissioner Schuldt, seconded by Commissioner Storlie and unanimously carried to go into closed session pursuant to M.S. 13D.05 subd. 3(b) to discuss matters protected by attorney-client privilege.

Motion was made by Commissioner Schuldt seconded by Commissioner Kjome and unanimously carried to convene in open session.

Motion was made by Commissioner Schuldt, seconded by Commissioner Storlie and unanimously carried to direct the staff to work with Mr. Erickson in processing his renewal request and extend any applicable 60 day rule period an additional 60 days. In addition, the board concludes that processing of this renewal request is not prohibited by the express language of the moratorium thereby any pending EAW or EIS process; the Board further directs staff to provide notice of the Board's determination to affected property owners and the EQB.

File No. 5 – Motion was made by Commissioner Zmyewski seconded by Commissioner Kjome and unanimously carried to make public the privileged correspondence from Jay Squires.

Seuffert, Will (MPCA)

From: Dana Kjome <Dana.Kjome@co.houston.mn.us>
Sent: Monday, April 28, 2014 7:39 AM
To: Seuffert, Will (MPCA)
Subject: RE: Erickson mine

Mr. Seuffert, My name is Dana Kjome. I am commissioner of Houston county. I am writing you concerning our county's decision to proceed with renewing of Mr. Erickson cup for sand mining. My concern is are we the RGU for this mine and if we are not which I believe is true can we grant Mr. ERICKSON this renewal at this time. Thank you for your help. Dana Kjome

Sent from my Verizon Wireless 4G LTE smartphone



Environmental Quality Board

520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

April 29, 2014

Commissioner Kjome
Houston County
149 – 1st Street NW
Spring Grove, MN 55974

Commissioner Steven Schuldt
Houston County
12874 County 10
Caledonia, MN 55921

Commissioner Judy Storlie
Houston County
28 South Elm Street
LaCrescent, MN 55947

Commissioner Teresa Walter
Houston County
550 Skunk Hollow Road
LaCrescent, MN 55947

Commissioner Justin Zmyewski
Houston County
17275 State 16
Houston, MN 55943

Dear Houston County Commissioners:

This letter is sent to follow up on a number of recent inquiries made regarding one of the mine sites in Houston County contained in the March 20, 2013, Environmental Quality Board (EQB) Findings of Fact, Conclusions of Law and Order concerning the multiple Minnesota Sands projects. It has come to my attention that Houston County may consider whether to renew the Conditional Use Permit for mining at the Erickson property, based on a letter I received from Bob Scanlan, Houston County Zoning Administrator, dated April 21, 2014. This letter notified the EQB of the April 8, 2014, Houston County Board action and included page 95 of what appears to be the April 8, 2014, Regular Session minutes from the Houston County Board of Commissioners. Below is some background for your information.

The September 3, 2012, *EQB Monitor* published a notice that Houston County, acting as Responsible Governmental Unit (RGU), granted an Environmental Assessment Worksheet (EAW) for the Erickson Quarry Project in response to a citizen petition.

On March 5, 2013, the Houston County Board of Commissioners submitted a letter to the EQB, requesting the EQB reconsider the RGU for the multiple Minnesota Sands projects both in Houston County and in neighboring counties. The EQB reconsidered the RGU for the multiple Minnesota Sands projects on March 20, 2013. The staff memo distributed to the Board regarding the multiple Minnesota Sands projects included a 19.11 acre proposed mine site by Tracie and Michelle Erickson in Houston County, and this site was specifically named in the findings. In the EQB's Findings, Conclusions, and

Order, the EQB found that the projects listed, including the Erickson site, were phased actions as defined in the rules, which must be considered in total in the environmental review and the EQB designated itself as the RGU.

Minnesota Rule 4410.3100, PROHIBITION ON FINAL GOVERNMENTAL DECISIONS, reads in relevant part:

Subpart 1. Prohibitions. If an EAW or an EIS is required for a governmental action under parts 4410.0200 to 4410.6500, or if a petition for an EAW is filed under part 4410.1100 that complies with the requirements of subparts 1 and 2 of that part, 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
- 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.

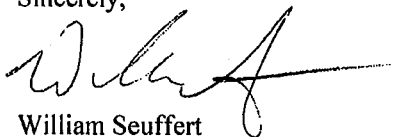
The EQB has not received a variance application regarding the Erickson mine. (See Minn. R. 4410.3100, subp. 4-6, attached for your convenience.)

On March 25, 2014, Mr. Smyser, EQB staff, sent a letter to Minnesota Sands, requesting an update on the status of the Minnesota Sands projects, as well as clarification of the relationship between the Erickson's and Minnesota Sands, specifically, "any past, current, or anticipated future association and include, but not be limited to, a partnership, ownership, shareholder, buyer, seller, processor, transporter, or relationship of any kind." The April 5, 2014, response from Minnesota Sands did not provide an update on the status of the Minnesota Sands projects.

On April 23, 2014, the EQB sent a second request, via email, for a status update to Minnesota Sands. An update on the project status and a signed cost agreement is needed to being the scoping for the Environmental Impact Statement (EIS). This scoping process will inform what sites the project includes. To date, the EQB has not received a response.

I hope this information is helpful to you. Please let me know if you have any further questions.

Sincerely,



William Seuffert
Executive Director

WS:bt

cc: Bob Scanlan, Houston County Zoning Administrator
Richard Frank, Houston County Environmental Services Director

Enclosure: *Minnesota Rule 4410.3100.*

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. **Prohibitions.** If an EAW or EIS is required for a governmental action under parts 4410.0200 to 4410.6500, or if a petition for an EAW is filed under part 4410.1100 that complies with the requirements of subparts 1 and 2 of that part, 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.

Subp. 2. **Public projects, prohibitions.** If a project subject to review under parts 4410.0200 to 4410.6500 is proposed to be carried out or sponsored by a governmental unit, the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project, until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB, unless the project is an emergency under subpart 9 or a variance is granted under subparts 4 to 8. An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.

Subp. 2a. **Concurrent review of draft permits not prohibited.** Subpart 1 does not prohibit a governmental unit from issuing notice of and receiving public comments on a draft permit prior to completion of environmental review.

Subp. 3. [Repealed, 13 SR 1437]

Subp. 4. **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. 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.

Subp. 5. **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.

Subp. 6. **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.

Subp. 7. **Written notice.** The EQB shall set forth in writing its reasons for granting or denying each request for a variance.

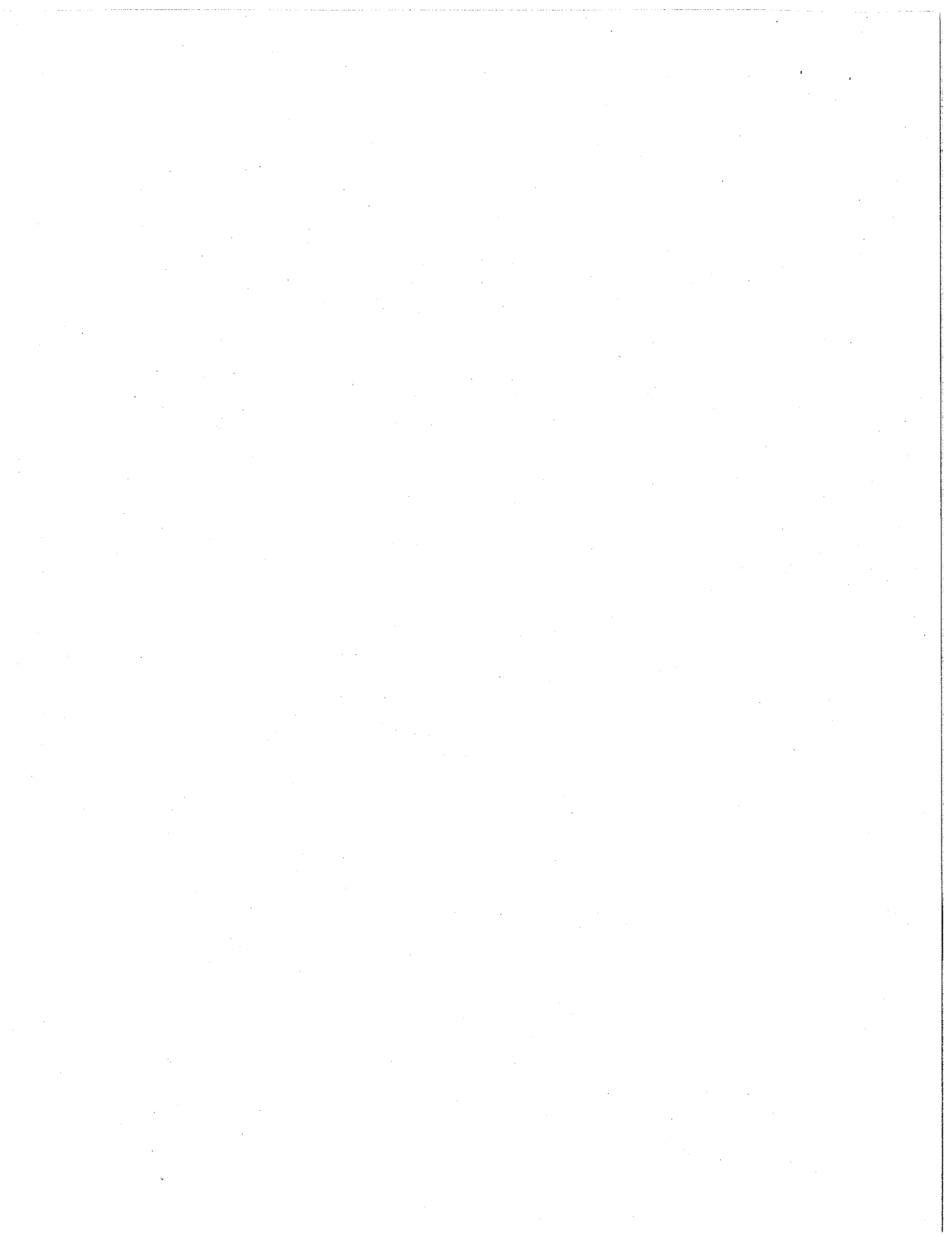
Subp. 8. **Construction or government approvals.** Only the construction or governmental approvals necessary to avoid the consequences listed in subpart 6 shall be undertaken or granted.

Subp. 9. **Emergency action.** In the rare situation when immediate action by a governmental unit or person is essential to avoid or eliminate an imminent threat to the public health or safety or a serious threat to natural resources, a proposed project may be undertaken without the environmental review which would otherwise be required by parts 4410.0200 to 4410.6500. The governmental unit or person must demonstrate to the EQB chair, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chair to proceed. Authorization to proceed shall be limited to those aspects of the project necessary to control the immediate impacts of the emergency. Other aspects of the project remain subject to review under parts 4410.0200 to 4410.6500.

Statutory Authority: *MS s 116D.04; 116D.045*

History: *11 SR 714; 13 SR 1437; 21 SR 1458; 28 SR 951; 31 SR 539; 34 SR 721*

Published Electronically: *November 30, 2009*





Environmental Quality Board

520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

April 29, 2014

Commissioner Dana Kjome
Houston County
149 – 1st Street NW
Spring Grove, MN 55974

Dear Commissioner Kjome:

Thank you for your email which I received yesterday on behalf of the Environmental Quality Board (EQB). You wrote concerning Houston County's (the County) decision to proceed with renewing Mr. Erickson's Conditional Use Permit (CUP) for sand mining. You are concerned whether the County is the Responsible Governmental Unit (RGU) for this mine and if not, whether the County can grant Mr. Erickson the CUP renewal at this time.

As background, the September 3, 2012, *EQB Monitor* published a notice that Houston County, acting as RGU, granted an Environmental Assessment Worksheet (EAW) for the Erickson Quarry Project in response to a citizen petition.

On March 5, 2013, the County submitted a letter to the EQB, requesting the EQB reconsider the RGU for the multiple Minnesota Sands projects both in the County and in neighboring counties. The EQB reconsidered the RGU for the multiple Minnesota Sands projects on March 20, 2013. The staff memo distributed to the Board regarding the multiple Minnesota Sands projects included a 19.11 acre proposed mine site by Tracie and Michelle Erickson in Houston County, and this site was specifically named in the findings. In the EQB's Findings, Conclusions, and Order, the EQB found that the projects listed, including the Erickson site, were phased actions as defined in the rules, which must be considered in total in the environmental review, and the EQB designated itself as the RGU.

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Commissioner Kjome
Page 2
April 29, 2014

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The EQB has not received a variance application regarding the Erickson mine. (See Minn. R. 4410.3100, subp. 4-6, attached for your convenience.)

On March 25, 2014, Mr. Smyser, EQB staff, sent the enclosed letter to Minnesota Sands, requesting an update on the status of the Minnesota Sands projects, as well as clarification of the relationship between the Erickson's and Minnesota Sands, specifically, "any past, current, or anticipated future association and include, but not be limited to, a partnership, ownership, shareholder, buyer, seller, processor, transporter, or relationship of any kind." The April 5, 2014, response from Minnesota Sands did not provide an update on the status of the Minnesota Sands projects.

On April 23, 2014, the EQB sent a second request, via email, for a status update to Minnesota Sands. An update on the project status and a signed cost agreement is needed to begin the scoping for the Environmental Impact Statement (EIS). This scoping process will inform what sites are included. To date, the EQB has not received a response.

I hope this information is helpful to you. Please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Seuffert", with a long horizontal flourish extending to the right.

William Seuffert
Executive Director

WS:bt

Enclosure

Seuffert, Will (MPCA)

From: Bob Scanlan <Bob.Scanlan@co.houston.mn.us>
Sent: Tuesday, April 29, 2014 5:15 PM
To: Seuffert, Will (MPCA)
Cc: Dana Kjome; Teresa Walter; Rick Frank; T E (trace9092002@yahoo.com)
Subject: FW: Erickson mine
Attachments: Comm Kjome 4-29-14.pdf; Erickson I.pdf; Erickson II.pdf

Mr. Seuffert;

In response to your letter dated 4-29-14, I am compelled to respond with a few facts. Your staff at EQB insist that Tracey Erickson is somehow involved with a past MN Sands project that was under a regional EIS. Now, as I have not heard the status of any MN Sands project, I do know that Tracey Erickson is not involved with the MN Sands company. See the attached termination agreement and letter dated 4-5-14 from Richard Frick explaining said termination agreement. Jeff Smyser from your staff is in receipt of both documents.

Let me briefly clarify with a question. Which of the following words: "terminate", "termination", "dissolved", "release" and "dissolution of contract" do you not understand? It is extremely troublesome to believe that any of your staff would treat someone differently because of misinformation. Now, I have sent you these most important documents in case they haven't made it to your desk. Please take some time to read them, and if you can honestly say that in your mind, MN Sands and Tracey Erickson are a connected in any way, I'd like to know how.

Keep in mind, Mr. Seuffert, that if we were talking about 5 farmers that were getting together to pursue a connected action and build hog confinement barns for hogs, you would want to ensure that all 5 farmers were indeed looking to pursue the same project. But, if farmer #5 decided to break away from the project and instead grow corn and no hogs, the EQB would take steps to remove farmer #5 from the project. In fact, if you decided to keep farmer #5 in the project even though a dissolution of agreement, termination contract or the like was submitted to your office, the EQB would no doubt find itself in hot water.

Why is Mr. Erickson any different? I would like a response to this question at your earliest convenience as time is of the essence.

Bob Scanlan
Zoning Adm.
Houston County

From: Teresa Walter
Sent: Tuesday, April 29, 2014 11:23 AM
To: Rick Frank; Bob Scanlan
Subject: FW: Erickson mine

Did you get this? Please forward to PC board.
Teresa

From: Dana Kjome
Sent: Tuesday, April 29, 2014 11:17 AM
To: Teresa Walter
Subject: Fwd: Erickson mine

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Seuffert, Will (MPCA)"
Date: 04/29/2014 8:48 AM (GMT-06:00)
To: Dana Kjome
Subject: RE: Erickson mine

Hi Commissioner,

Thanks for your inquiry. I attached a response. I hope that helps answer your questions.

Will

Will Seuffert

Executive Director

MN Environmental Quality Board

Office: 651 757-2766

Cell: 651 263-9785



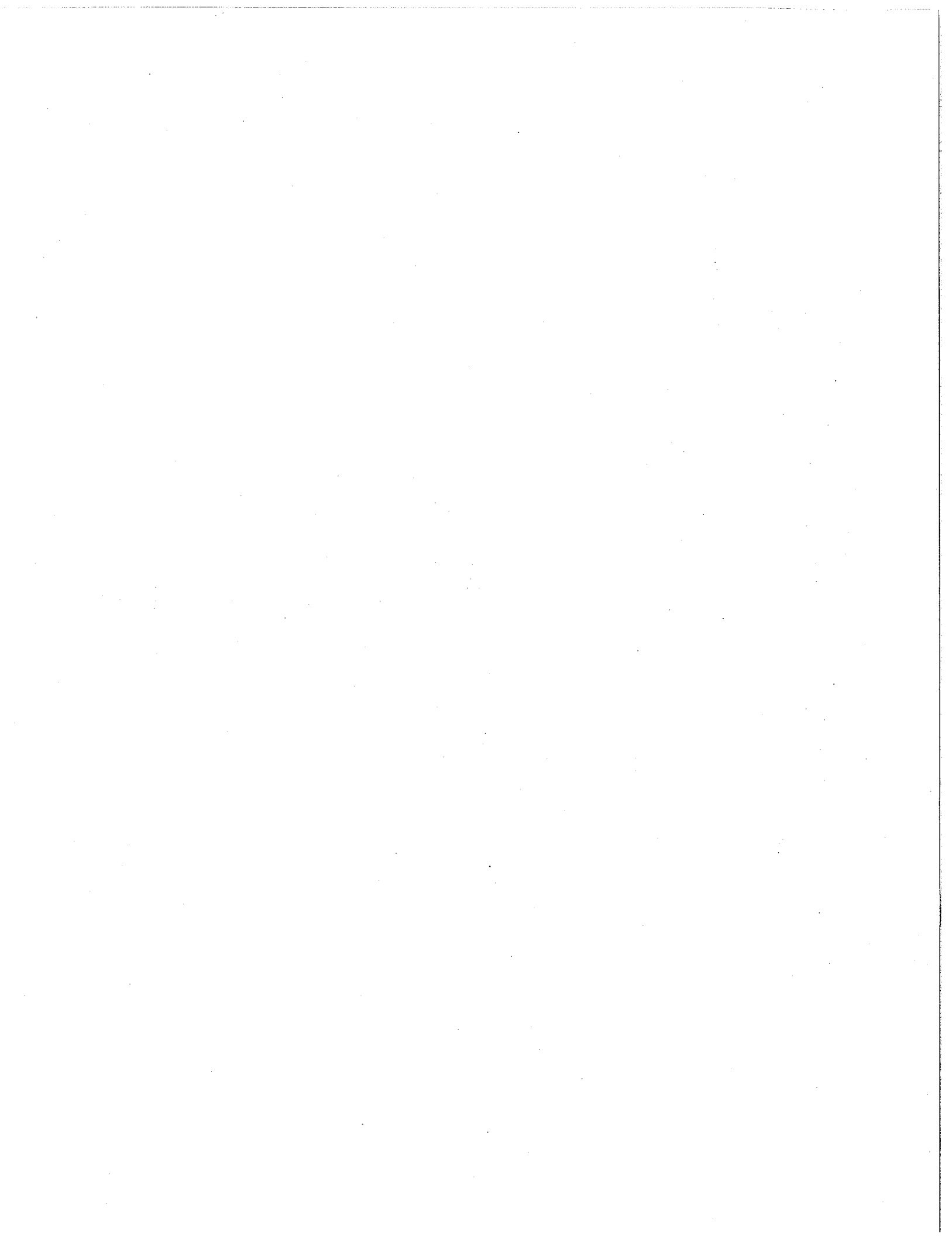
Environmental Quality Board
529 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

From: Dana Kjome [<mailto:Dana.Kjome@co.houston.mn.us>]
Sent: Monday, April 28, 2014 7:39 AM
To: Seuffert, Will (MPCA)
Subject: RE: Erickson mine

Mr. Seuffert, My name is Dana Kjome. I am commissioner of Houston county. I am writing you concerning our county's decision to proceed with renewing of Mr. Erickson cup for sand mining. My concern is are we the

RGU for this mine and if we are not which I believe is true can we grant Mr. ERICKSON this renewal at this time. Thank you for your help. Dana Kjome

Sent from my Verizon Wireless 4G LTE smartphone





Environmental Quality Board

520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
PHONE: 651-757-2873
WWW.EQB.STATE.MN.US

May 1, 2014

Mr. Tracie Erickson
23148 State 16
Rushford, MN 55971

Mr. Bob Scanlon
Houston County
304 South Marshall
Caledonia, MN 55921

Commissioner Justin Zmyewski
Houston County
17275 State 16
Houston, MN 55943

Commissioner Teresa Walter
Houston County
550 Skunk Hollow Road
La Crescent, MN 55947

Mr. Rick Frick
Minnesota Sand
3108 County Road 9
Houston, MN 55943

Commissioner Judy Storlie
Houston County
28 South Elm Street
La Crescent, MN 55947

Commissioner Steven Schuldt
Houston County
12874 County 10
Caledonia, MN 55921

Commissioner Dana Kjome
Houston County
149 - 1st Street NW
Spring Grove, MN 55974

Dear Mr. Erickson, Mr. Frick, Mr. Scanlon, and Houston County Commissioners:

Please be advised, the Environmental Quality Board (EQB) will consider whether the Erickson site should be removed as a phased action of the Minnesota Sands multi-site Environmental Impact Statement (EIS) on May 21, 2014. The EQB meets from 1:00-4:00 p.m. in the Minnesota Pollution Control Agency Board Room (520 Lafayette Road North, St. Paul, Minnesota, 55155-4194). This issue will be the first item on the agenda.

As is done for all EQB decision items, EQB staff will provide a brief overview of the rules that apply and prepare a draft resolution for the removal of the Erickson site from the list of sites included in the Minnesota Sands multi-site EIS for the Board's consideration. The EQB staff takes no position on the matter and will not make a recommendation to the EQB. Any background information on the Minnesota Sands multi-site project, or the Erickson site involvement therein, is the responsibility of the project proposer, owner of the Erickson mine or Houston County representative. You should come prepared to address the EQB to explain your view on this issue, to provide evidence as needed, and answer the EQB's questions.

Mr. Tracie Erickson, Mr. Rick Frick
Mr. Bob Scanlon, Houston County Commissioners
Page 2
May 1, 2014

The issue before the Board is whether the Erickson site is a phased action of the Minnesota Sands multi-site project, pursuant to Minn. R. ch. 4410. I want to restate my invitation to provide any background information relevant to the Board's ability to make this determination. The EQB staff will include the Dissolution of Contract, signed by both parties, as well as correspondence on this subject in the Board Packet.

Should you have any additional information you would like to submit to be included in the Board Packet, please provide it via e-mail to Caroline Magnuson (caroline.magnuson@state.mn.us) by close of business on Tuesday, May 8, 2014. Otherwise, all written material related to a matter to be decided by the Board must be received seven calendar days before a regular meeting, pursuant to Minn. R. 4405.0600.

We understand that this is a time-sensitive issue for the County and the proposer. If you feel that you cannot provide the information you would like the EQB to consider on this timeline, we can postpone this issue to the next Board meeting in June. If we do not hear from you, we will put this issue before the Board on May 21, 2014, with the information submitted to date.

It should be anticipated that the EQB, as well as the public, will have questions about the Minnesota Sands multi-site project and Erickson mine operation. Please verify in writing if you or a representative will be able to attend the meeting to answer any questions, should they arise.

We hope this provides an expedited pathway to resolving this issue.

Sincerely,



William Seuffert
Executive Director

WS:mbo

cc: EQB Members

Williams Consultancy

David Williams
Land Use Planning and Environmental Consulting
40722 County Road 12
Lanesboro, Minnesota 55949
Telephone: 507-467-2611
Cell: 507-421-0715
Email: davidw@acegroup.cc

Friday, May 2, 2014

Will Seuffert
Executive Director
Minnesota Environmental Quality Board
520 Lafayette Road North
St. Paul, Minnesota 55155

Re: Minnesota Sands, LLC Environmental Review (EIS)
Tracie Erickson Property

Dear Mr. Seuffert:

I am responding to Tracie Erickson's informal and confusing request to be released from the pending Minnesota Sands, LLC EIS. I do not believe that Mr. Erickson has ever made a formal request for a variance to be released from the EIS.

Mr. Erickson's attorney Jed Hammell spoke with Jeff Smyser of the EQB to indicate Mr. Erickson's desire to be released from the EIS. Mr. Hammell then copied Jeff Smyser on a letter he sent to the land use attorney for Houston County, identifying reasons why Mr. Erickson should be able to obtain a renewal of a mining permit. And, the Houston County environmental services director sent to the EQB a copy of an agreement between Mr. Erickson and Minnesota Sands, LLC purportedly terminating their business relationship. These communications do not constitute an appropriate request for a variance, and do not comply with the environmental review administrative rules.

The Minnesota administrative rules that govern the potential release of Mr. Erickson's property from this pending EIS are contained in Section 4410.3100. If Mr. Erickson seeks to be released from the pending environmental review, and the prohibition on a final permitting decision by Houston County, he must seek a formal variance as described in subparts 4 through 7 of Section 4410.3100. There is a formal process for seeking and granting a variance to be released from environmental review. Mr. Erickson has not made any attempt to comply with this variance process. Instead, Mr. Erickson has attempted to make an end-run around the variance process by asking the Houston County environmental services director to simply send the EQB a document which Mr. Erickson believes automatically entitles him to be released from the environmental review process without any action taken by the EQB.

Williams Consultancy

I believe you pointed that problem out to Houston County Commissioner Dana Kjome in your letter dated April 29, 2014 regarding the Erickson property, in which you stated:

The EQB has not received a variance application regarding the Erickson mine. (See Minn. R. 4410.3100, subp. 4-6, attached for your convenience.)

Under the administrative rules governing the granting of variances from environmental review, the following must occur:

1. Mr. Erickson must submit to the EQB a variance application containing:
(i) a detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted, (ii) the anticipated environmental effects of undertaking the proposed construction or granting the governmental approvals, (iii) the reversibility of the anticipated environmental effects, (iv) the reasons necessitating the variance, and (v) a statement describing how approval would affect subsequent approvals needed for the project and how approval would affect the purpose of environmental review.
2. The EQB chair must then publish notice of the variance application in the *Monitor* within 15 days following receipt of the variance application.
3. The EQB chair must then issue a press release in a newspaper in the Houston County area, summarizing the reasons given for the variance application.
4. The EQB must then receive public comments within 20 days following the published notice of the variance application in the *Monitor*.
5. After 10 days following the close of the public comment period, the EQB can then grant or deny the variance application.
6. The variance application can only be granted if:
(i) the RGU consents to a variance, (ii) 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, (iii) 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 (iv) 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.

Williams Consultancy

In the Erickson situation, none of the mandates described in the rules have occurred. Mr. Erickson has not done anything to justify being released from the pending EIS because he has not attempted to comply with any of the required rules governing variances.

I respectfully request that Mr. Erickson not be released from the pending EIS until he has complied fully with the variance process, and is then granted a release by the EQB from the pending EIS based upon the requirements and standards contained in these administrative rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Williams", written in a cursive style.

David Williams

Magnuson, Caroline (MPCA)

From: Bob Scanlan <Bob.Scanlan@co.houston.mn.us>
Sent: Wednesday, May 07, 2014 2:34 PM
To: Magnuson, Caroline (MPCA)
Subject: Board packet
Attachments: Erickson plan.pdf

Categories: Red Category

Caroline,

Attached is a copy of the "Operation and Reclamation Plan" for the Erickson quarry for the Board's review. Please let me know if you have any questions.

Bob Scanlan

Zoning Adm.

Houston County

OPERATION AND
RECLAMATION
PLAN FOR:

ERICKSON
QUARRY
HOUSTON COUNTY, MN

CONSTRUCTION
SAND PIT

EXISTING CONDITIONS

The site is currently an unnamed bluff quarry operating under Conditional Use Permit No. 261. The permitted property consists of woodlands, a building site, and some grassland. There are no wetlands, water courses, major drainage systems or impounded waters on-site. There is currently one well on the property which is used for residential purposes. There are no other wells planned at this time.

Conditional Permit No. 261 covers the entire property and expires on January 8, 2013. If excavation activities are to be extended beyond that date, the permit will need to be renewed with Houston County. Excavation shall be limited to the 19.11 acre area depicted on the attached Existing Conditions Map.

OPERATIONAL GUIDELINES

Operation of the quarry shall conform to the Houston County Zoning Ordinance Section 26 and any other applicable County, State or Federal Laws and Regulations. Attached for reference and as part of this plan is Section 26 – Mineral Extraction.

General Requirements:

1. **Compliance** - The mining operations shall be conducted in compliance with the laws of the State of Minnesota and the Federal Government, especially as related to safety standards, and ordinances and resolutions of Houston County, as amended from time to time, and in compliance with and furtherance of the approved reclamation plan for the affected land.
2. **Operation of Equipment** - All equipment used for mining operations shall be constructed, maintained and operated in such a manner as to minimize, as far as is practicable, noises and vibrations which are injurious or substantially annoying to persons living in the vicinity.
3. **Explosives** - When explosives are used, the operator shall take all necessary precautions not to endanger life and damage or destroy property. The method of storing and handling explosives shall conform to all laws and regulations relating thereto.

Vegetation:

1. **Removal of Trees and Shrubs** - All woody vegetation and grasses shall remain until the area is to be excavated then shall be removed from the site.
2. **Weeds and Noxious Vegetation** - Weeds and other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance and to prevent seeding on adjoining property.
3. **Preservation of Existing Trees and Ground Cover** - The existing woodlands and grasses aid in the prevention of erosion and act as screening buffers. They shall be protected and preserved outside of the active mining operation.

Access:

1. **Jurisdiction** - The existing access to the site is from State Highway 16. The access is shared with an adjacent property. The access to the adjacent property must remain in place at all times.
2. **Avoid Residential Streets** - Residential streets shall be avoided as any access to and from the site. This site does not affect primary residential streets.
3. **Access Signage** - Prior to hauling equipment on-site or materials off-site proper signs and traffic control devices must be installed on haul roads. See the current Minnesota MUTCD for guidance. Only signed access points shall be utilized for ingress and egress.
4. **Spillage on Roadways** - Trucks used in hauling materials from the site shall be loaded in such manner as to minimize spillage onto public roadways. Any spillage shall be removed at regular intervals.

Water Resources:

1. **Drainage Interference Prohibited** - The mining operation shall not interfere with surface water drainage beyond the boundaries of the active mining operation.
2. **Surface and Subsurface Water Quality** - All runoff from the site is to be routed to the temporary sedimentation basins through the construction of berms and swales. Periodically the sedimentation basins shall be excavated, and the fines stockpiled for use in final closure of the site.
3. **Non-degradation of Surface Water** - Surface water originating outside the site may be diverted around the mining operation, to eliminate any degradation of water quality, as long as it doesn't negatively affect the adjoining properties.

Screening:

1. **Residential and Commercial Properties** - The existing trees act as a natural screen for the adjacent properties to the south, west, and north. The use to the east is currently agricultural which does not require screening.
2. **Public Roads** - The existing trees shall act as a natural screen to State Highway 16 which is greater than 500 feet from the quarry.

Setback Requirements: Permitted area and all adjacent properties are in the zoning district - Agricultural Protection District.

1. **Adjoining Property Line** - Not closer than fifty (50) feet to the boundary of an adjoining property line unless the written consent of the owner of such adjoining property is first secured. Consent has not been requested.
2. **Excavating or Stockpiling** - Excavating or stockpiling shall not be conducted closer than one hundred (100) feet to the right-of-way line of any existing or platted street, road, or highway, where such excavation may create a traffic or line of site problem.
3. **Public Waters** - Not closer than one hundred (100) feet from the ordinary high water level of any public water. Not applicable to this site.
4. **Dust and Noise** - Dust and noise producing processing or loading shall not be conducted closer than one thousand feet to the boundary of any residential structures. Exempt from this are the existing on-site residential structure, the adjacent seasonal cabin to the north and the adjacent residential structure to the east that was constructed in 2005 after the authorization of the Houston County Conditional Use Permit No. 261. The existing residential structure to the east is approximately 600 feet from any mining activities.

Appearance:

- All buildings, structures and plants used for the production or processing of sand and gravel shall be maintained in such a manner as is practicable and according to acceptable industrial practice as to assure that such buildings, structures and plants will not become dangerously dilapidated.

Days of Operation:

- Mining operations may be conducted Monday through Saturday, except for legal holidays. Upon request, the Zoning Administrator may temporarily approve operations beyond these days to respond to public or private emergencies or whenever any reasonable or necessary repairs to equipment need to be made.

Dust and Dirt

- All equipment used for mining operations shall be constructed, maintained and operated in such a manner as to minimize, as far as practicable, dust conditions which are injurious or substantially annoying to persons living within thirteen hundred and twenty (1320) feet of the mining operation.

Excavation:

- The pre-existing rock face is approximately 40 feet high. The existing "floor" may be excavated down to approximately 20 feet. The existing rock face will be excavated horizontally into the slope. Other than the rock face, the final grade shall be a min. of 2.0% and a max. of 18% to the southeast as shown on the attached reclamation map.

Processing:

- There will be initial processing of the aggregate and sand through a screener, which sorts the material by size. The material is carried away from the screener by conveyor. The materials are then transported off site for use. The screening process results in an increase in the ambient noise level due to shaking of the material. The hours of operation and the vegetation surrounding the quarry limit the nuisance level of noise to the surrounding properties.

RECLAMATION PLAN

Site reclamation shall be in accordance with the Houston County Zoning Ordinance Section 26 part 0110.2608 Reclamation Plan and any other applicable County, State or Federal Laws and Regulations.

A runoff and sediment control basin will be constructed prior to commencing the operation. This basin may remain as a permanent basin for wildlife habitat after the site closes. Other than the exposed rock face, the reclaimed areas will have slopes of no more than 18% and will be covered with a minimum of 6" of salvaged topsoil. MnDOT seed mix #330 (or approved equal) shall be applied on the topsoil at a rate 84.5 lbs/acre with mulch to establish permanent vegetation, which will minimize erosion potential. The silt fence must be maintained and remain in place until proper vegetation has been established. Once surface vegetation has been established the silt fence shall be removed and disturbed areas reseeded.

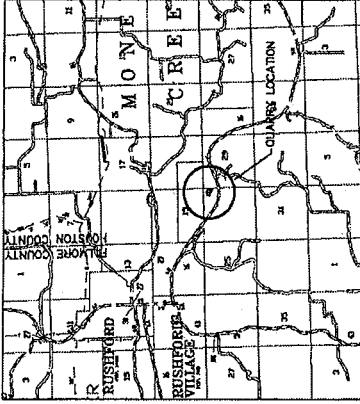
The site shall remain in compliance with soil erosion standards set forth in the County and/or Township zoning ordinance.

MAPS AND DETAILS

ERICKSON
QUARRY
HOUSTON COUNTY, MN

EXISTING CONDITIONS MAP ERICKSON QUARRY

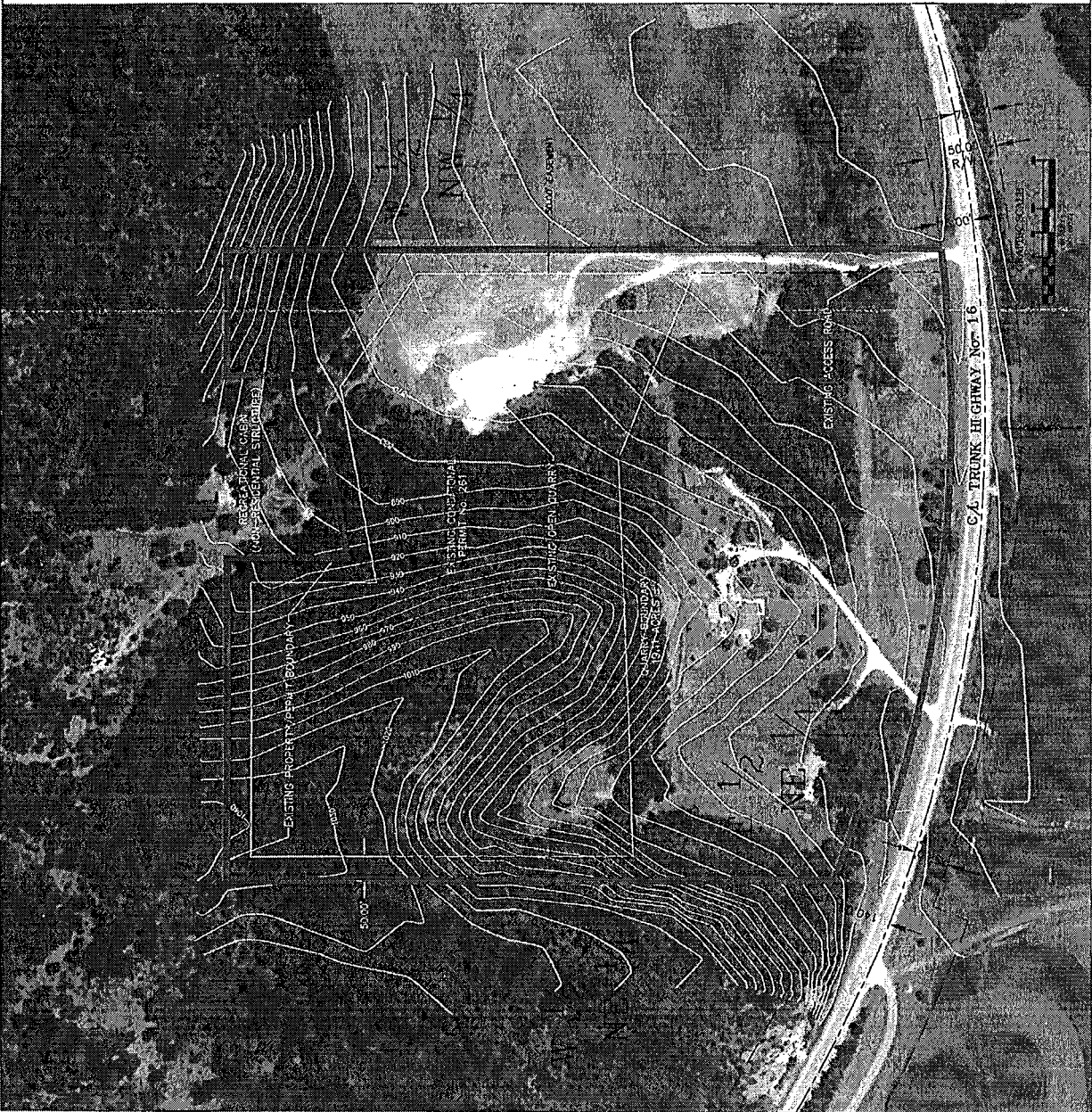
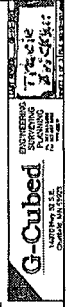
VICINITY MAP
"NOT TO SCALE"



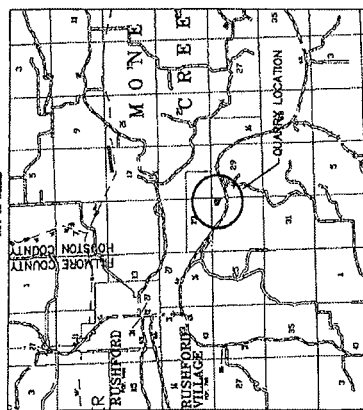
SECTION 30
T. 104 N. R. 7 W.

- LEGEND
- EXISTING CONDITIONAL PERMIT NO. 251 BOUNDARY
 - EXISTING CONTOUR
 - PROPOSED PHASE 1 BOUNDARY
 - EXISTING ROAD CENTERLINE
 - EXISTING RIGHT OF WAY
 - EXISTING HILL LOCATION

- NOTES:
1. THERE ARE NO WETLANDS, WATER COURSES, MAJOR DRAINAGE SYSTEMS OR IMPROVED WATERS ON-SITE.
 2. EXISTING WELLS LOCATED FROM HIGH COUNTY WELL INDEX MAP.
 3. COLOR PHOTO FROM GOOGLE EARTH 2012.
 4. COLOR PHOTO FROM GOOGLE EARTH 2012.



VICINITY MAP
NOT TO SCALE



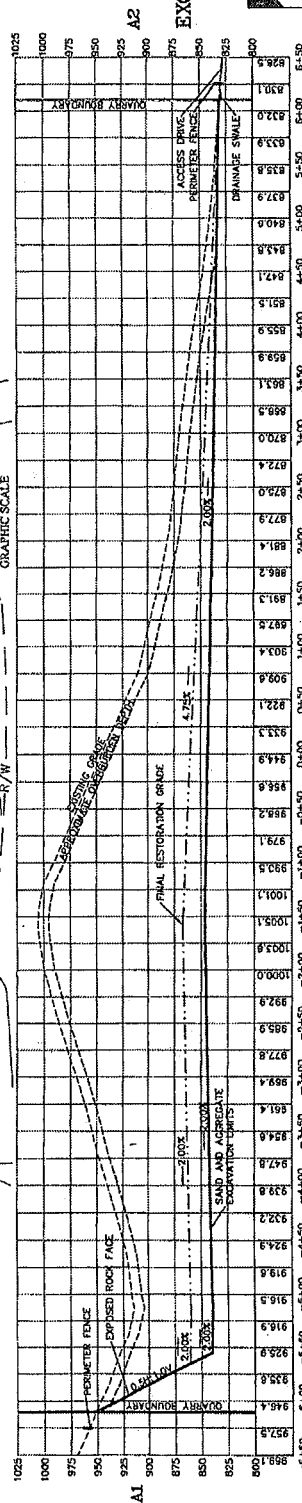
T. 104 N., R. 7 W.
SECTION 30

LEGEND

	PROPOSED CONDITIONAL PLAT No. 261 BOUNDARY
	PROPOSED PHASE 1 BOUNDARY
	EXISTING CONTOUR (10')
	PROPOSED EXCAVATION CONTOUR (10')
	PROPOSED HEAVY DUTY SILT FENCE
	PROPOSED PERIMETER FENCE (4' MIN. HEIGHT)
	EXISTING EASEMENT
	EXISTING RIGHT OF WAY
	EXISTING WELL LOCATION

NOTES:

1. ALL EROSION CONTROL MEASURES MUST BE IN PLACE (SILT FENCE, TEMPORARY SEDIMENTATION BASIN) PRIOR TO COMMENCING EXCAVATION.
2. WATER SHALL BE USED, AS NECESSARY, ON MINIMIZE DUST AND ANY NUISANCE ON NEIGHBORING PROPERTIES.
3. PROPER SIGNAGE SHALL BE PLACED ON HIGHWAY 16 DURING ACTIVE HAULING OF MATERIALS. (REFER TO THE LATEST MINNESOTA MUTED MANUAL FOR TRAFFIC CONTROL)





Minnesota River Basin Integrated Study Fact Sheet

Minnesota River Basin Integrated Watershed, Water Quality and Ecosystem Restoration Study: Minnesota, South Dakota, North Dakota and Iowa

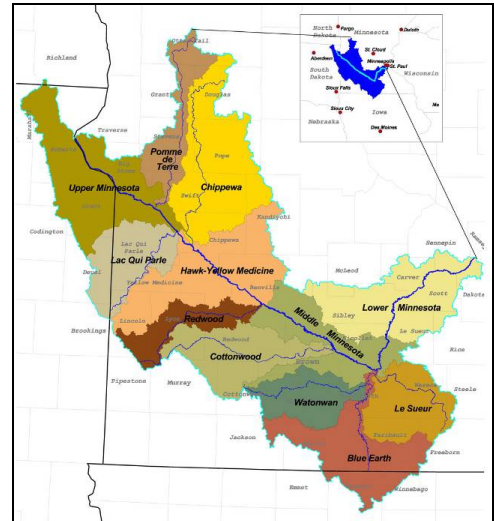
Mission: Contribute to basin-wide efforts to improve the ecological conditions within the network of environmental, social and economic systems in the Minnesota River basin.

What: The study facilitates coordinated watershed management at all levels by identifying appropriate measures to address land use, habitat, water quality and other water resources problems.

Why: The Minnesota River Basin has experienced increased stream bank, bluff, and ravine erosion; sedimentation, habitat degradation, flooding and impaired water quality. Collectively we can learn to manage for cleaner water, healthier ecosystems, improve recreational areas, and support sustainable agriculture.

How:

- ✚ Collaboration: tool sharing, quarterly meetings, product-driven working groups and public engagement activities.
- ✚ Provide and validate more detailed hydrologic information using state-of-the-art models such as:
 - Gridded Surface Subsurface Hydrologic Assessment Model ;
 - Soil and Water Assessment Tool; and
 - Hydrologic Simulation Program FORTRAN.
- ✚ Start with sub watersheds approximately 10K-40K acres in size identified by the U.S. Geological Survey's Hydrologic Unit Code 12. Test the study approach in two HUC 12 watersheds: Seven Mile Creek and Shakopee Creek.
- ✚ Use the detailed hydrologic information to support environmental, economic, and water quality tools and identify what will work in specific watersheds.
- ✚ Find relationships for understanding effects at larger watershed scales than is practical for detailed modeling.
- ✚ Combine existing tools and data developed by multiple organizations into a "tool kit" or decision support system to better use resources and work toward common goals.



Minnesota River basin sub watersheds

Minnesota River Interagency Study Team

The U.S. Army Corps of Engineers, St. Paul District, and the Minnesota Environmental Quality Board (EQB) are co-sponsors of the study through a feasibility cost share agreement. The Minnesota EQB includes the Departments of Agriculture, Administration, Employment and Economic Development, Health, Natural Resources, Commerce, Transportation, Pollution Control Agency and the Board of Soil and Water Resources.

MNR Interagency Collaboration Network

The Interagency Study Team is a group of more than 18 tribal, federal and state member agencies and many additional organizations that form a strong collaboration network. The study team is actively collaborating on studies and tools to support information sharing, planning and management within the Minnesota River Basin. With an integrated study approach, it provides collaboration opportunities for initiatives such as the One Watershed, One Plan approach of the Board of Soil and Water Resources and the Watershed Restoration and Protection of the Minnesota Pollution Control Agency.

INTERAGENCY TEAM WORK:

The Interagency Study Team meets quarterly to share progress reports, learn about state of the art tools for watershed assessment and management, develop vision and mission statements and provide input on questions from partners and the study work plans.

Developing study tools involves working with local partners interested in the river, collecting information throughout the basin, completing detailed modeling efforts and developing plans based on the needs of the people living and working in the Minnesota River basin.

The project is integrating the efforts of local, state and federal agencies, tribes, and nongovernmental organizations active in the Minnesota River basin.

Working Groups

Work is done with team members from many organizations in specific working groups activated in response to study needs.

Active 2014 Working Groups

- ✚ Communications and Public Engagement
- ✚ Technical Modeling (hydrologic, water quality and geomorphology)
- ✚ Environmental
- ✚ Socio-economics
- ✚ Decision Support System (tool kit)

These groups support the study and producing tools for a decision support system to aid water and land managers in the Minnesota River basin. These tools will enable:

- ✚ Examination of existing conditions
- ✚ Forecasting of future conditions
- ✚ Simulation of alternatives
- ✚ Identification of ecologically sustaining and economically and socially desirable management actions.

(Please See Work Group Fact Sheets for more information!)

2014 Activities Summary:

Seven Mile Creek and Shakopee Creek are the initial pilot study watersheds. Lessons learned from the detailed hydrologic modeling and related tools for environmental assessment, water quality, geomorphology and socio-economic impacts will be used to inform future work.

Local government units such as Soil and water Conservation Districts, watershed projects and county water planners will be engaged early to help define the local resource needs and tools to be developed by the study. Local landowners and public representatives will also participate in developing potential future scenarios for their areas.



Future Work:

The group will apply lessons learned in 7 Mile Creek and Shakopee Creek to additional sub-watersheds based on funding and authorization to continue the study from the federal and state co-sponsors in support of basin-wide Minnesota River watershed planning.

Products from the study will be available to local watershed planning groups.

Planned Investment in the Project

Estimated Federal cost	\$4,205,000
Estimated non-Federal cost	<u>\$4,205,000</u>

Contact(s)

Jason Smith, Corps of Engineers project manager
(309) 794-5690

Jason.smith@usace.army.mil

Kate Frantz, Minnesota EQB, non-federal sponsor
(651) 757-2370

Kate.frantz@state.mn.us



Decision Support System Work Group Fact Sheet

Minnesota River Basin Integrated Watershed, Water Quality and Ecosystem Restoration Study: Minnesota, South Dakota, North Dakota and Iowa

Decision Support System Study Goal

The Decision Support System (DSS) Work Group goal is to develop a framework of data and modeling tools for the entire Minnesota River Basin to explore economic, environmental and social trade-offs using a scenario-based approach in order to improve water quality and watershed health. The framework will combine natural and social science products to assist decision makers and the public achieve the following goals:

- Identify effective management and restoration actions.
- Identify cost and benefits of incremental investments.
- Identify short- and long-term goals to effectively manage the watershed and its health.

DSS Work Group Proposal

- The DSS will be based on hydrologic and hydraulic assessments of land use and climate changes.
- Water quality and sediment processes will be coupled with those assessments.
- Ecosystem attributes, such as traditional habitat and wildlife quantification and ecosystem based economics, will build upon the hydrologic and hydraulic, water quality and sediment processes.
- The DSS will account for economic viability and resilience of agriculture, energy production and other industries important to economic health of the river basin.
- The DSS will incorporate social based economic priorities such as recreation, aesthetics and other quality of life aspects.

The DSS will use information across a range of geographic scales from the small catchment (sub Hydrologic Unit Code-12), to the major watershed, to the main stem of the river. To the extent practical, the DSS will incorporate small scale results into large scale evaluations (develop scaling relationships).



Minnesota River basin sub watersheds

DSS Work Group 2014 Activities for Seven Mile Creek and Shakopee Creek Pilot Sub Watersheds

- Listen to local watershed planners, managers and the public for input on needs for watershed management data and tools.
- Draft work plan to meet the DSS study goals and local needs for tools.
- Begin assembling framework of data and tools used in the pilot watersheds.
- Explore useful connections between the hydrologic and hydraulic, water quality, environmental and socio-economic tools for evaluating future scenarios.

Opportunities

Those interested in providing input to the DSS work group are encouraged to contact a co-chairperson listed below.

Skip W Wright, Minnesota DNR	507-359-6050
skip.wright@state.mn.us	
Larry Gunderson, MPCA	651-757-2400
Larry.Gunderson@state.mn.us	
Jason T Smith, USACE	309-794-5690
Jason.T.Smith2@usace.army.mil	
James B Noren, USACE	651-290-5626
James.B.Noren@usace.army.mil	



Technical Modeling Work Group Fact Sheet

Minnesota River Basin Integrated Watershed, Water Quality and Ecosystem Restoration Study: Minnesota, South Dakota, North Dakota and Iowa

Technical Modeling Work Group Study Goals:

- ✚ Work with partner agencies to provide guidance on modeling to address planning questions in the watershed.
- ✚ Coordinate development and linking of detailed physically based models within different regions across the watershed.
- ✚ Advise scaling rule development and implementation. Scaling rules will use detailed sub watershed information to help inform whole basin models and increase confidence in management options applied within watersheds.
- ✚ Update the main stem model that receives water from the sub watersheds with sediment movement simulations and channel widening. This will improve our understanding of hydraulic conditions along the Minnesota River.
- ✚ Simulate alternate land use scenarios with input from the local land managers and provide the model output for use in the Decision Support System (DSS) tool kit.

Technical Modeling Working Group 2014 Activities:

For Seven Mile Creek and Shakopee Creek:

- Provide, validate and compare detailed hydrologic information using state-of-the-art models such as:
 - Gridded Surface Subsurface Hydrologic Assessment Model;
 - Soil and Water Assessment Tool; and
 - Hydrologic Simulation Program FORTRAN.
- Advise the land management scenario simulations within the hydrologic models.
- Work closely with modelers in the development of scaling rules based on model comparisons described above.
- Update a 1-dimensional flow routing model on the main stem Minnesota River from the mouth to New Ulm, Minn., with new Light Detection and Ranging, or LiDAR, and cross section data collected in 2013.
- Collect field data on ravine and near channel sediment sources and processes including vegetation and soil erosivity characteristics through a cooperative ecosystem studies unit with the University of Minnesota.



- The Modeling Work Group will coordinate with the DSS Work Group to start integrating the output from hydrology and river hydraulic models with other discipline models such as biology, ecology and economics.

Future Activities:

- ✚ Add a sediment transport and a channel widening feature to the river's main stem flow model.
- ✚ Integrate models into the DSS tool kit to:
 - Examine existing conditions;
 - Simulate best management practices and alternative land use scenarios;
 - Find sinks and sources of sediment; and
 - Formulate alternatives to identify ecologically sustaining and economically and socially desirable management actions.

Current Technical Modeling Work Group Participating Agencies

Participating agencies include the National Center for Earth Surface Dynamics; the National Weather Service; the Natural Resources Conservation Service; the U.S. Fish and Wildlife Service; the U.S. Army Corps of Engineers; the Minnesota Departments of Agriculture and Natural Resources; the Minnesota Pollution Control; the Metropolitan Council; the St. Croix Research Station; the University of Minnesota

Contact

Ann Banitt, Technical Modeling Working Group chair
(651) 290-5541 ann.m.banitt@usace.army.mil



Environmental Work Group Fact Sheet

Minnesota River Basin Integrated Watershed, Water Quality and Ecosystem Restoration Study: Minnesota, South Dakota, North Dakota and Iowa

Environmental Study Goal

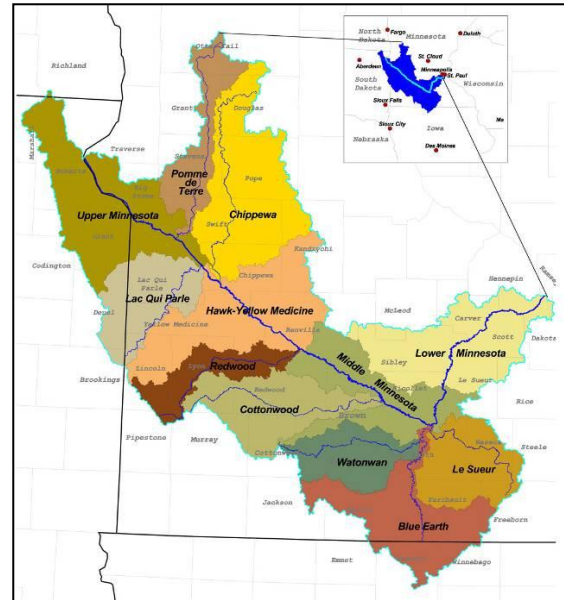
The goal of the Environmental Work Group is to describe existing biological conditions and to develop habitat and biological goals for the Minnesota River Basin. The group strives to use information from other study work groups to develop environmental benefit assessment models that can evaluate land and water resource management actions in the river basin.

Environmental Work Group 2014 Activities:

- Summarize existing watershed health in the Minnesota River basin based on systems related to habitat and biological resources. The summary will use the Watershed Health and Assessment Framework along with other existing environmental information and data developed by study partners.
- The work group will contribute modeling tools applicable to the scale and approach of other study components. Large-scale regional models, such as bird or fish habitat suitability models, capable of using basin-wide alternative landscapes as inputs will help assess basin scale benefits. Smaller scale models designed for project-scale evaluation may be adapted to use input from advanced hydraulic models developed by the study.
- The work group products will directly support the development of a decision support toolkit to aid water and land resource managers in the river basin. These tools will look at existing systems, forecasts and simulations of future conditions and alternatives to identify ecologically sustainable practices that are also economically and socially desirable.

Status

The Environmental Work Group reviewed existing decision support tools and conditions as the basis for developing a work plan in the summer of 2013. The group will continue to develop models that include information and data from other study work and advances the state of the study's final product, referred to as the decision support toolkit.



Minnesota River basin sub watersheds

Environmental WG Participating Agencies:

The Minnesota Environmental Quality Board (EQB), the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The Minnesota EQB includes the Departments of Agriculture, Administration, Employment and Economic Development, Health, Natural Resources, Commerce, Transportation, Pollution Control Agency and the Board of Soil and Water Resources.

Opportunities

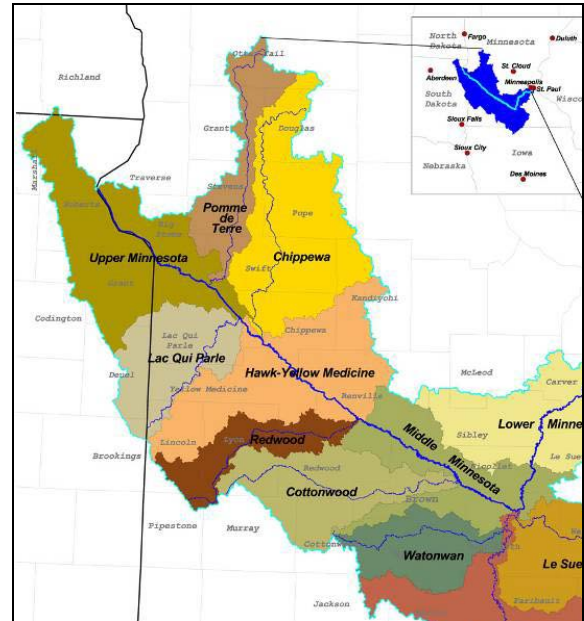
Those interested in providing input to the work group should contact either of the co-chairs listed below.

Todd Kolander, co-chair, Minnesota DNR
(507) 362-8789
todd.kolander@state.mn.us

Chuck Theiling, co-chair, Corps of Engineers
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Minnesota River Basin Integrated Watershed, Water Quality and Ecosystem Restoration Study: Minnesota, South Dakota, North Dakota and Iowa

Communication and public engagement is essential to the Minnesota River Basin integrated watershed study. The study incorporates the efforts of local, state, tribal nation and federal agencies, as well as active non-governmental organizations, to aid water and land managers in the basin. The study will contribute to management planning through a decision support system designed to address watershed, water quality and ecosystem restoration needs at varying watershed scales. Five working groups including, Communications & Public Engagement, Technical Modeling, Environmental, Socio-economics and Decision Support System, support the study through their work group efforts and through collaboration at quarterly Interagency Study Team meetings. The Communications & Public Engagement Work Group is focused on ensuring that components of the study reflect the diverse perspectives of interested stakeholders across the basin.



Communications & Public Engagement Work Group

A subset of the Interagency Study Team, the Communications and Public Engagement Work Group, engages with basin partners to seek local input for modeling scenarios that will contribute to a basin specific toolkit for land and water resource management. Current work group participating agencies include the Minnesota Environmental Quality Board, Lake Pepin Legacy Alliance, Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, Upper Sioux Community and the U.S. Army Corps of Engineers.



Status Update

The **Communications and Public Engagement** Work Group was established in 2013 and submitted a proposed strategic communications plan to the Interagency Study Team at the 2014 Winter Quarter meeting.

CPE work group 2014 activities:

- The communications and public engagement portion of the study will produce a basin wide communications plan for the study based on pilot communication plans created and implemented with local governments through public and landowner engagement in the Seven Mile Creek and Shakopee Creek sub watersheds in 2014.
- The work group will contribute to the larger study through recommendations for informational materials, meeting facilitation and coordination with contacts within the basin.
- The work group products will directly support the development of a decision support toolkit to aid water and land resource managers in the Minnesota River basin. These tools will enable examination of existing conditions, forecasting of future conditions and simulation of alternatives to identify ecologically-sustaining and economically and socially desirable management actions. The tools will address watershed, water quality and ecosystem restoration needs at the small and major watershed scales.

Future Work

The group will continue to implement the strategic plan for communications and public involvement basin wide through additional sub watershed work based on funding and authorization to continue the study from the federal and state co-sponsors.

Opportunities

Those interested in providing input to the Communications and Public Involvement Work Group are encouraged to contact either of the co-chairs. Upcoming meetings with local watershed districts and public meetings will be posted on the EQB website listed below.

Kate Frantz, co-chair, Minnesota EQB
651-757-2370
Kate.frantz@state.mn.us
[EQB Website Here](#)

Rebecca Seal-Soileau, co-chair, Corps of Engineers
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Rebecca.S.Soileau@usace.army.mil



Appendix B: Timeline of Water Resources Legislation and Governance in Minnesota

Year	Federal Legislation and Actions	Minnesota Legislation and Actions	Selected Water-Related Studies
1883		County commissioners authorized to establish public drainage systems (Laws 1883, c. 108)	
1897		Public waters designated - meandered lakes and streams supporting beneficial uses (Laws 1897, c. 257)	
1899	River and Harbors Appropriation Act (33 USC §407) prohibits discharge of solid refuse into navigable waters, regulates damming of streams and bridge, dock and pier construction		
1925		Departments of Health, Drainage and Waters and Conservation created (Minn. Stat. 1925 c. 426)	
1935	Soil Conservation Act (PL 74-46) establishes Soil Conservation Service		
1937		MN Soil Conservation Districts Law establishes process for creating soil conservation districts to control erosion; districts may enact land use regulations, State Soil Conservation Committee established (Laws 1937, c. 441 §1) Public waters system expanded; no obstruction without conservation commissioner's approval (Laws 1937, c. 468 §5)	
1945		State Water Pollution Control Act creates MN Water Pollution Control Commission (Laws 1945, c 395 §§1-12)	
1947		Drainage of public waters restricted , public waters definition includes some wetlands (1947 Laws, c. 142)	
1948	Federal Water Pollution Control Act (PL 80-845) provides funding for state and local water treatment		
1954	Watershed Protection and Flood Prevention Act (PL 83-566) provides planning and funding for flood control projects		
Gov. Orville Freeman Administration			
1955		Minnesota Watershed Act (Laws 1955, c. 799) (§103D.201). Drainage code amended to require consideration of conservation MN Water Resources Board established, authorized to create watershed districts	
1957		State interest in public waters defined (Laws 1957, c. 502)	

Continued

Year	Federal Legislation and Actions	Minnesota Legislation and Actions	Selected Water-Related Studies
Gov. Elmer Anderson Administration			
1961	Federal Water Pollution Control Act Amendments (PL 87-88) increase federal support for water treatment; allow federal action against polluters with state governor's consent		
Gov. Karl Rolvaag Administration			
1963	Land and Water Conservation Fund created		
1965	Water Quality Act (PL 89-234) requires states to issue water quality standards for interstate waters Water Resources Planning Act (PL 89-90) authorizes state framework plan, funds river basin studies and commissions		
Gov. Harold LeVander Administration			
1967		Water Resources Coordinating Committee formed to carry out federal WRP Act. MN Pollution Control Agency established (Laws 1967, c. 882, §§1-11) State Soil Conservation Committee becomes Soil & Water Conservation Commission Metropolitan Land Planning Act (Laws 1967, c. 896, §§1-9) establishes Metropolitan Council	
1968	National Wild and Scenic Rivers Act (PL 90-542)	Upper St. Croix River designated National Wild & Scenic River	
1969		Shoreland regulation authorized (Laws 1969, c. 777; MS 103F) Floodplain Management Act (Laws 1969, c. 590, §1; 103F)	
1970	National Environmental Policy Act (NEPA) (PL 91-190), Clean Air Act Amendments (PL 91-604); US EPA established		State Planning Agency, Water Resources Coordinating Committee. <i>Minnesota Water and Related Land Resources: First Assessment.</i>
Gov. Wendell Anderson Administration			
1971		MN Environmental Rights Act (MERA) (Laws 1971, c. 952); surface water regulation authority to DNR (Laws 1971, c. 636 s 28); Southern Minnesota Rivers Basin Council formed	

Continued

Year	Federal Legislation and Actions	Minnesota Legislation and Actions	Selected Water-Related Studies
1972	<p>National Dam Inspection Act of 1972 (PL 92-367); Coastal Zone Management Act</p> <p>Lower St. Croix River designated National Wild & Scenic River (PL 92-560)</p> <p>Federal Water Pollution Control Act Amendments (Clean Water Act) require states to develop list of impaired waters, set TMDLs. EPA authority to regulate point sources. USACE permitting authority for dredging/filling in waters of the U.S.</p>		
1973		<p>MN Environmental Policy Act (MEPA) (Laws 1973, c. 412); waters of state redefined to include wetlands (c. 315 §§2-4)</p> <p>Environmental Quality Board created (Laws 1973, c. 342 §§1-9). MN Water Resources Council created by Executive Order</p> <p>Minnesota Wild and Scenic Rivers Act (Laws 1973, c. 271; 103F §§301-345); state program established</p> <p>Lower St. Croix Wild and Scenic River Act (Laws 1973, c. 246, §§1-2)</p> <p>Critical Areas Act of 1973 (Laws 1973, c. 752 §1) establishes process for designating areas of critical concern (EQB & Governor).</p> <p>Lake Improvement Districts authorized (Laws 1973, c. 702 §§1-22)</p>	
1974	Safe Drinking Water Act (PL 93-523)	<p>MPCA authorized to regulate NPDES, SDS water quality permits</p> <p>SWCC (1967) becomes Soil & Water Conservation Board</p>	
1976	Resource Conservation and Recovery Act (PL 94-580), Toxic Substances Control Act (PL 94-469)	<p>DNR directed to inventory and designate water bodies serving a “beneficial purpose” as public waters (Laws 1976, c. 83, §7); DNR must offer to purchase drainage rights (c. 83, §8).</p> <p>Water Planning Board created. Mississippi River Critical Area designated by Executive Order.</p>	University of Minnesota Center for Studies of the Physical Environment. <i>Environmental Decision-Making in Minnesota: An Overview, Applicability of Innovations in Other States to Minnesota, and Alternatives</i> . Report to the State Planning Agency.
Gov. Rudy Perpich Administration			
1977	Clean Water Act of 1977 (amendments to 1972 CWA). Section 208 of Clean Water Act requires water quality planning effort. Surface Mining Control & Reclamation Act (PL 95-87)	Water Planning Board Framework planning process begins. SWCD Cost-Share Program established.	
1978		Dam safety programs and inspections authorized (Laws 1978, c. 779). DNR establishes Dam Safety Grants program.	
Continued			

Year	Federal Legislation and Actions	Minnesota Legislation and Actions	Selected Water-Related Studies
Gov. Al Quie Administration			
1979		Certain wetlands defined as public waters (Laws 1979, c. 199, §3 and §103G.005) Executive Order 79-19, continues Critical Area designation for urban Mississippi River	Minnesota Water Planning Board. <i>Toward Efficient Allocation and Management: A Strategy to Preserve and Protect Water and Related Land Resources.</i>
1980	Comprehensive Environmental Response, Compensation and Liability Act ("Superfund" program) (PL 96-510)	WPB directed to study local management of water resources (Laws 1980, Chap 548)	
1981			Minnesota Water Planning Board. <i>Toward Efficient Allocation and Management: Special Study on Local Water Management.</i>
1982		Metropolitan Surface Water Management Act (Laws 1982, c. 509) - establishes watershed management organizations in Metro area	<i>Partnerships in Water Management: Minnesota's Challenge of the 1980s.</i> Summary of the Special Study on Local Water Management.
Gov. Rudy Perpich Administration			
1983		Water Planning Board discontinued; duties to EQB	
1984			<i>State and Local Water Planning Issue Team Report.</i> Minnesota State Government Issues: Executive Branch Policy Development Program.
1985	Food Security Act of 1985 (Farm Bill, PL 99-198) creates Conservation Reserve Program (CRP), sodbuster and swampbuster provisions	Comprehensive Local Water Management Act (§103B.301 to 103B.355)	<i>Ground Water Management Strategy Issue Team Report.</i>
1986			<i>Nonpoint Source Pollution Issues Team Report.</i>
1987	Water Quality Act of 1987 (PL 100-4) amends CWA, requires industrial stormwater dischargers and municipal separate storm sewer systems ("MS4") obtain NPDES permits	Board of Water and Soil Resources created from Water Resources Board, Soil and Water Conservation Board, and So. Minn. Rivers Basin Council (Laws 1987, c. 358, §103). Clean Water Partnership Act (Laws 1987, c. 392, §§1-12), institutes funding program and requirements for nonpoint source management DNR need not offer compensation for public water wetland drainage rights (Laws 1987, c. 357, §20)	EQB. <i>Protecting Minnesota's Waters: An Agenda for Action in the 1987-1989 Biennium.</i>
1988	Mississippi National River and Recreation Area (MNRRA) designated	Environmental & Natural Resources Trust Fund created to receive proceeds from Minnesota Lottery	EQB. <i>A Strategy for the Wise Use of Pesticides and Nutrients.</i>
1989		Groundwater Protection Act (Laws 1989, c. 326, codified as MS §§103H.001-103H.280)	EQB. <i>Protecting Minnesota's Waters: Priorities for the 1989-1991 Biennium.</i> MN Planning. <i>The Minnesota Ground Water Protection Act of 1989: A Summary.</i>
1990		Recodification of Water Law (Laws 1990, c. 391, codified as MS §§ 103A-103)	
Continued			

Year	Federal Legislation and Actions	Minnesota Legislation and Actions	Selected Water-Related Studies
Gov. Arne Carlson Administration			
1991		Wetland Conservation Act (Laws 1991, c. 354). Draining and fill impacts to non-public waters wetlands regulated. No net loss in wetland public value.	EQB. <i>Minnesota Water Plan: Directions for Protecting and Conserving Minnesota's Waters.</i> EQB. <i>Water Quality Program Evaluation. Overview Adopted by Minnesota EQB.</i>
1992	Pilot Wetland Reserve Program established (1990 Farm Bill, PL 101-624)		EQB. <i>1991 Minnesota Water Research Needs Assessment.</i> EQB. <i>The Minnesota Water Monitoring Plan.</i>
1993		Office of Environmental Assistance established	
1994	MNRRRA Plan completed, incorporates MN Critical Areas, Floodplain and Shoreland requirements by reference. Wetland Reserve Program goes national, Soil Conservation Service becomes NRCS.		EQB. <i>1995-97 Water Policy Report: A Focus on Ground Water.</i>
1995	MNRRRA Plan approved	Environmental reorganization bill (Laws 1995, c. 248, art. 5) directs 1996 "Cross-currents" report. Mississippi Critical Area management shifted from EQB to DNR by administrative reorganization order.	EQB. <i>Meeting Minnesota's Water and Wastewater Needs: A Working Paper.</i>
1996	Food Quality Protection Act National Dam Safety Program Act of 1996, Public Law 104-303		EQB. <i>Saving Resources: Meeting Minnesota's Water and Wastewater Needs.</i> MN Planning. <i>Crosscurrents: Managing Water Resources.</i>
1998	Minnesota River is second Conservation Reserve Enhancement Program created	RIM matched with WRP and CREP, Red River Basin Flood Damage Reduction Work Group formed	EQB. <i>Soundings: A Minnesota Water Plan Assessment.</i>
Gov. Jesse Ventura Administration			
1999		Water Unification Initiative - E.O. 99-15	EQB. <i>Preparing for Minnesota Water Plan 2000. Public Review Draft.</i>
2000			EQB. <i>Minnesota Watermarks: Gauging the Flow of Progress 2000 - 2010. (MN Water Plan)</i>
2002		Laws 2001, First Special Session, c. 10, Art 1, § 11 directs Urban Rivers study preparation	Minnesota Planning. <i>Connecting with Minnesota's Urban Rivers: Helping Cities Make Sustainable Choices for the Future.</i> EQB. <i>Charting a Course for the Future: Report of the State Water Program Reorganization Project.</i>

Continued

Year	Federal Legislation and Actions	Minnesota Legislation and Actions	Selected Water-Related Studies
Gov. Tim Pawlenty Administration			
2003		Governor's Clean Water Initiative, Clean Water Cabinet	
2005		Office of Environmental Assistance becomes a PCA division	EQB. <i>Protecting Minnesota's Waters: Priorities for the 2005-2007 Biennium</i> . A Biennial Report of the Environmental Quality Board.
2006		Clean Water Legacy Act (Laws 2006, c. 251, §§1-17). Clean Water Council established.	
2007	CRP enrollment peaks in Midwest.		EQB. <i>Protecting Minnesota's Waters: Priorities for the 2008-2009 Biennium</i> . A Biennial Report of the Environmental Quality Board. EQB and DNR. <i>Use of Minnesota's Renewable Water Resources: Moving Toward Sustainability</i> .
2008	Food, Conservation, and Energy Act of 2008 (Farm Bill, PL 110-234) increases support for ethanol production	Clean Water, Land and Legacy Amendment (MN Constitution, Article XI, §15) Clean Water Fund established. Lessard-Sams Outdoor Heritage Council created	EQB. <i>Managing for Water Sustainability: Report of the EQB Water Availability Project</i> . Freshwater Society. <i>Water is Life: Protecting a Critical Resource for Future Generations</i> .
2009		Laws 2009, c 172, art. 2, §33 directs U of MN to prepare Water Sustainability Framework	Citizens League. <i>To the Source: Moving Minnesota's Water Governance Upstream</i> .
2010		MN Session Laws 2009, c 37, § 4 directs DNR groundwater study preparation	DNR. <i>Long-Term Protection of the State's Surface Water and Groundwater Resources</i> .
Gov. Mark Dayton Administration			
2011		Water Governance Evaluation required (Laws 2011 1st Special Session, c 2, art. 4, §33); Governor's Executive Order #11-32 re EQB and environmental governance .	U of MN Water Resources Center. <i>Minnesota Water Sustainability Framework</i> .
2012		Governor's Executive Order #12-04 re wetland policy; "One watershed - one plan" legislation (Laws 2012, c 272, §32)	

Water Governance Evaluation – 2014 Update

“Streamline, strengthen and improve sustainable water management”

Environmental Quality Board
May 21, 2014

Topics:

1. Background and Purpose of the Study
2. Timeline of Water Legislation and Governance
3. 2014 Update: Current Implementation Efforts
4. Discussion: Next Steps



2011 Special Session

91.10 Sec. 33. EVALUATION REQUIRED.

- (a) The Pollution Control Agency, in conjunction with other water agencies and the University of Minnesota, shall evaluate water-related statutes, rules, and governing structures to streamline, strengthen, and improve sustainable water management.
- (b) The Pollution Control Agency must submit the study results and make recommendations to agencies listed under paragraph (a) and to the chairs and ranking minority party members of the senate and house of representatives committees having primary jurisdiction over environment and natural resources policy and finance no later than January 15, 2013.



Need for Study

- q Inconsistencies among agency missions and enabling laws
- q Difficulty in implementing 'systems thinking' across agencies
- q Complex patchwork of local governments and water management organizations
- q Decline in local government capacity
- q "Ground-level" complexity breeds confusion and mistrust
- q Agencies typically must react to external proposals; this is an opportunity to identify and develop recommendations from within the executive branch



Water management and the regulatory landscape

State Agencies

- DNR
- MPCA
- Board of Water and Soil Resources (BWSR)
- Department of Agriculture
- Department of Health
- Public Facilities Authority (DEED)
- MnDOT (permittee, etc.)
- Mn Geological Survey

Regional Agencies

- Metropolitan Council
- River Basin Boards and Commissions

Local Entities

- Counties, Cities, Townships
- SWCDs
- Watershed Districts
- Etc.

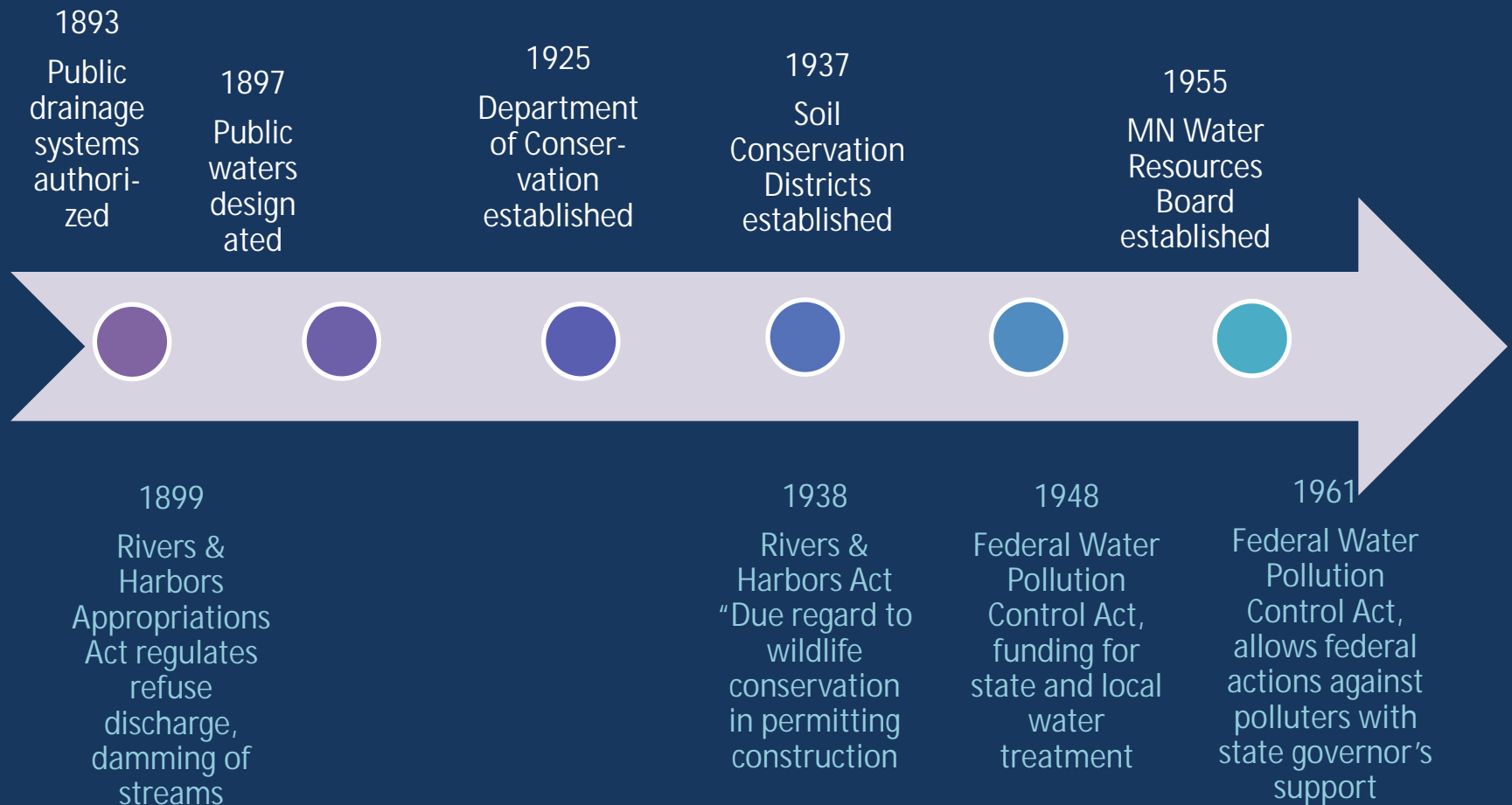
Functions

- Drainage
- Public Waters Regulation
- Water Use and Appropriation
- Flooding
- Pollution Prevention and Control
- Water Quality
- Shoreland Management
- Groundwater Protection
- Wetland Conservation
- Drinking Water
- Public Health Risk Assessment
- Water Well Construction
- Low Cost Public Infrastructure Financing

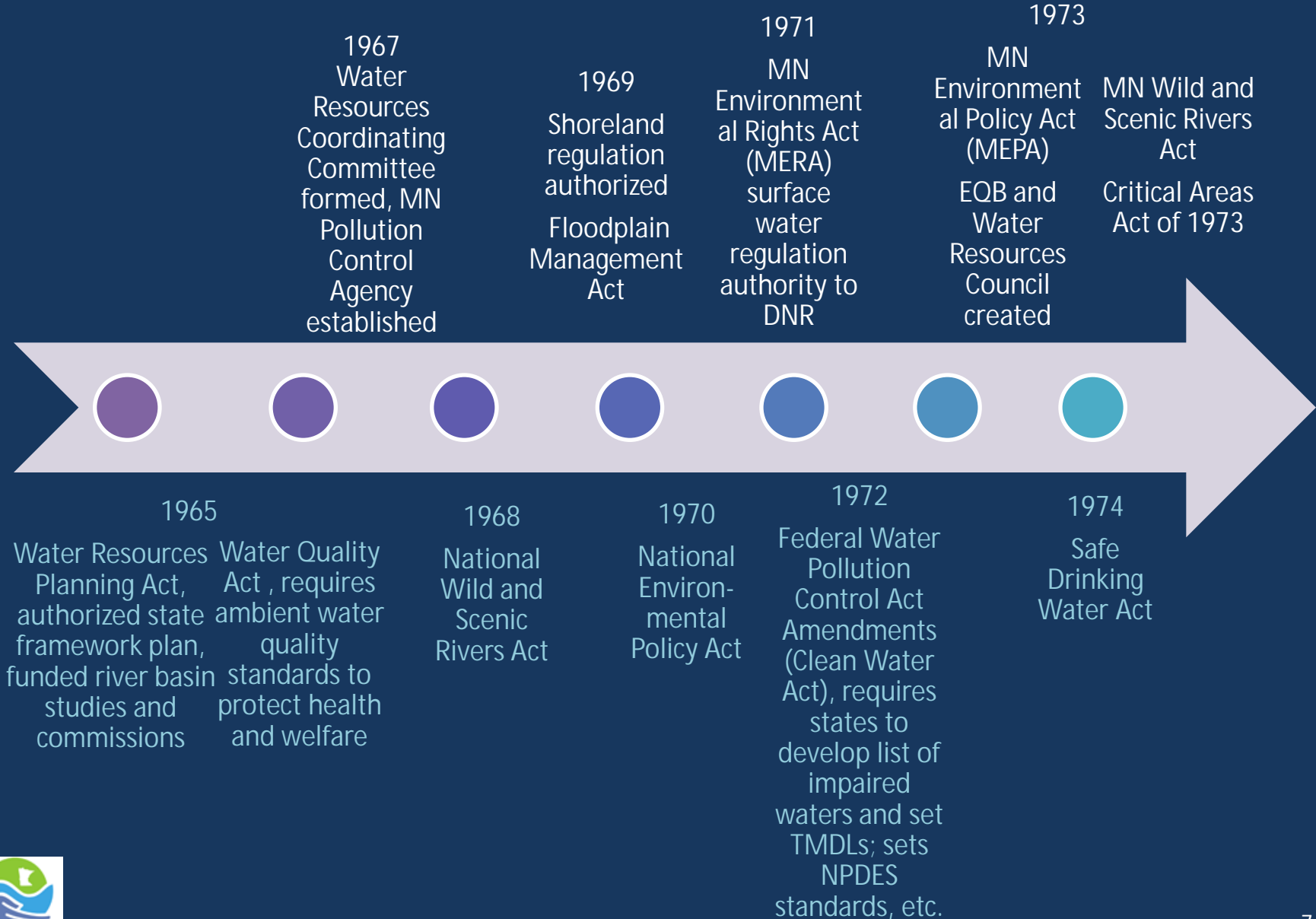
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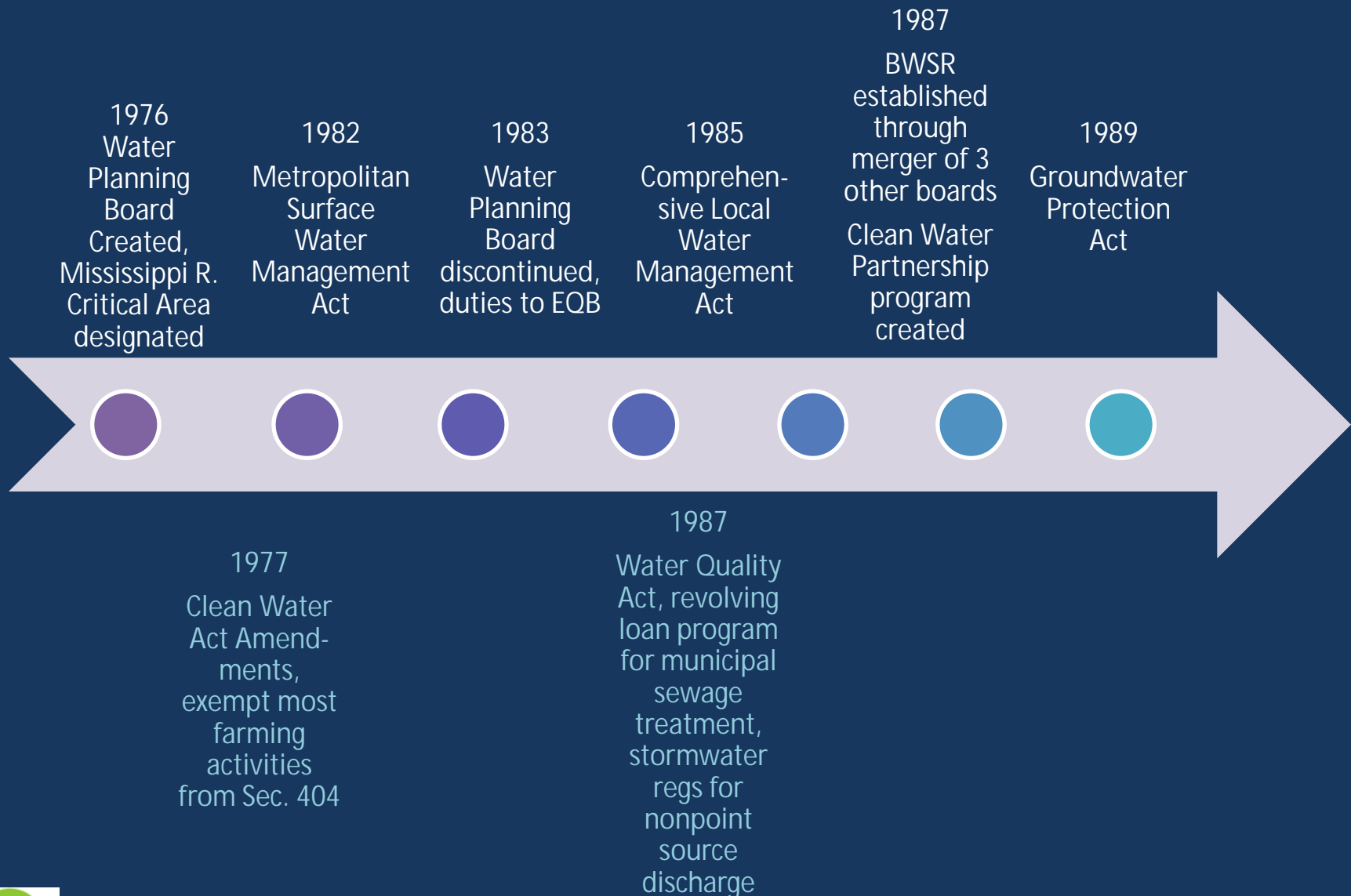
Water governance timeline



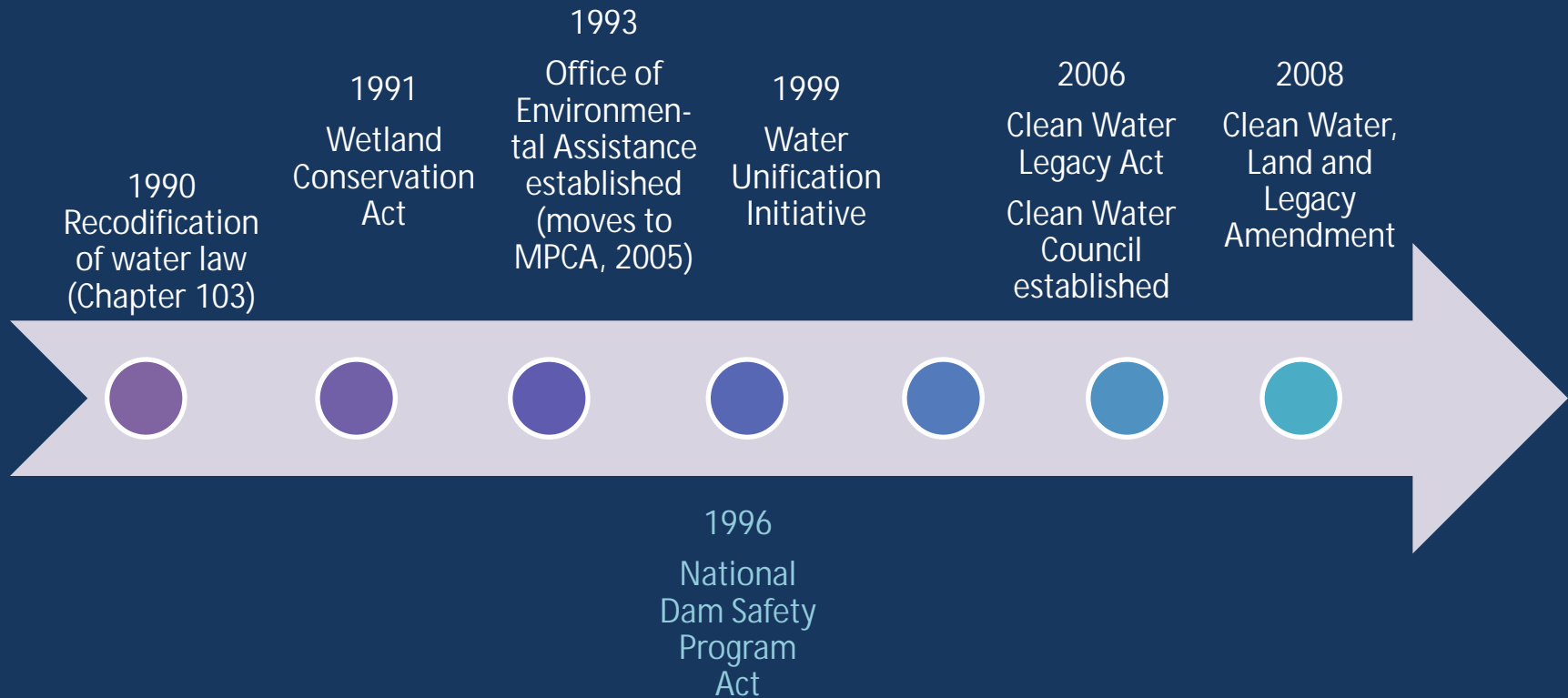
Water governance timeline



Water governance timeline



Water governance timeline



Related Activities, 2012 - 2013

- q EQB Governance study and Environmental Congress
- q Wetlands Executive Order (EO 12-04) – BWSR to evaluate and improve wetland protection, restoration, coordination efforts
- q Agricultural Water Quality Certification Program
- q Local Government Roundtable / BWSR: One Watershed – One Plan” 2012 legislation

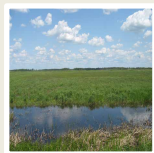


Project Activities

- q State Agency Work Group
 - § MPCA
 - § DNR Ecological and Water Resources
 - § Department of Health
 - § Department of Agriculture
 - § Board of Water and Soil Resources
 - § Metropolitan Council
- q Survey of Agency Staff and Partners
- q Internal and Partners Review



Structural Recommendations Relate to 3 Levels of Government



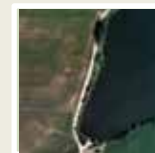
State

- MPCA
- DNR
- Health (MDH)
- Agriculture (MDA)
- BWSR
- Other Agencies (MnDOT, PFA, EQB, LCCMR, etc.)



Regional

- Metro Council
- Regional Development Commissions
- River Boards and Commissions
- Other Organizations



Local

- County Governments
- SWCDs
- Watershed Districts
- Lake Improvement Districts
- Other Organizations (lake associations, etc.)



Structural Recommendations

State responsibility: A synchronized approach to water management

Improve delivery of water management services

Implement water management at watershed scale



Resource-Oriented Recommendations

Public Waters and Wetlands: Improve Alignment of Statutes, Rules, Regulatory Processes

Groundwater Management: Interagency Consensus and Usable Standards

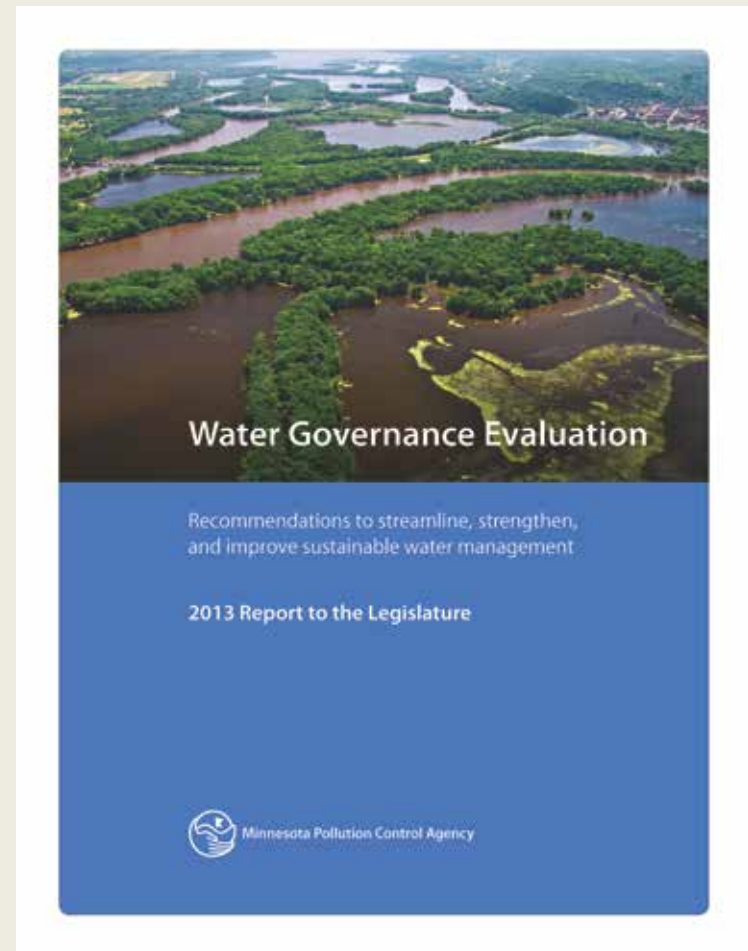
Re-Link Land Use and Water Management

Support and Strengthen Landowner and Occupier Efforts



Implementation?

- q Final Report submitted to Legislature, January 15, 2013



Implementation

- q Work group: identify potential actions:
 - § Initiatives completed or in progress
 - § New initiatives
 - § Issues in need of further legislative action or direction



Water Governance Evaluation: Update 2014

Recommendations to streamline, strengthen, and improve sustainable water management

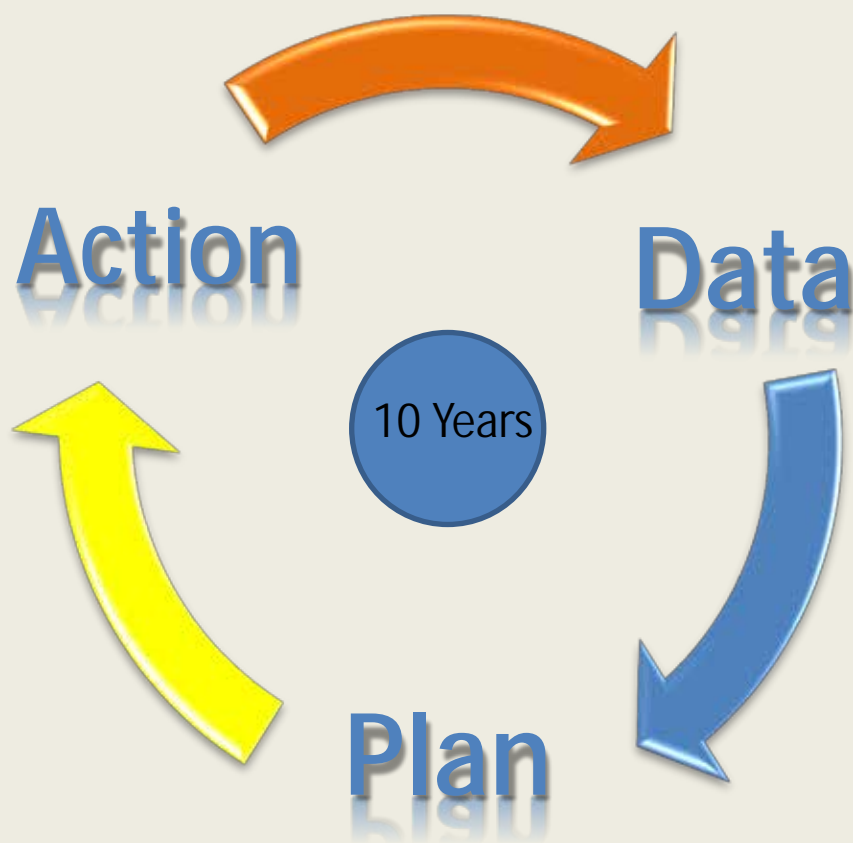


Minnesota Pollution
Control Agency

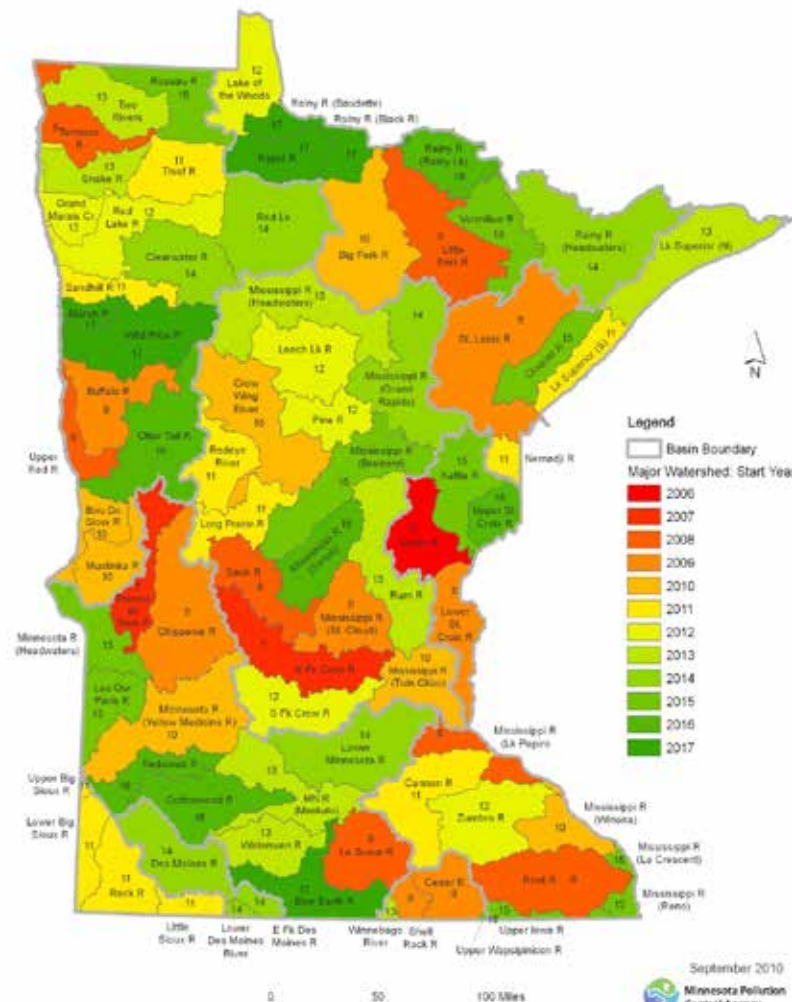
April 2014



The Watershed Approach



Watershed Approach Projects

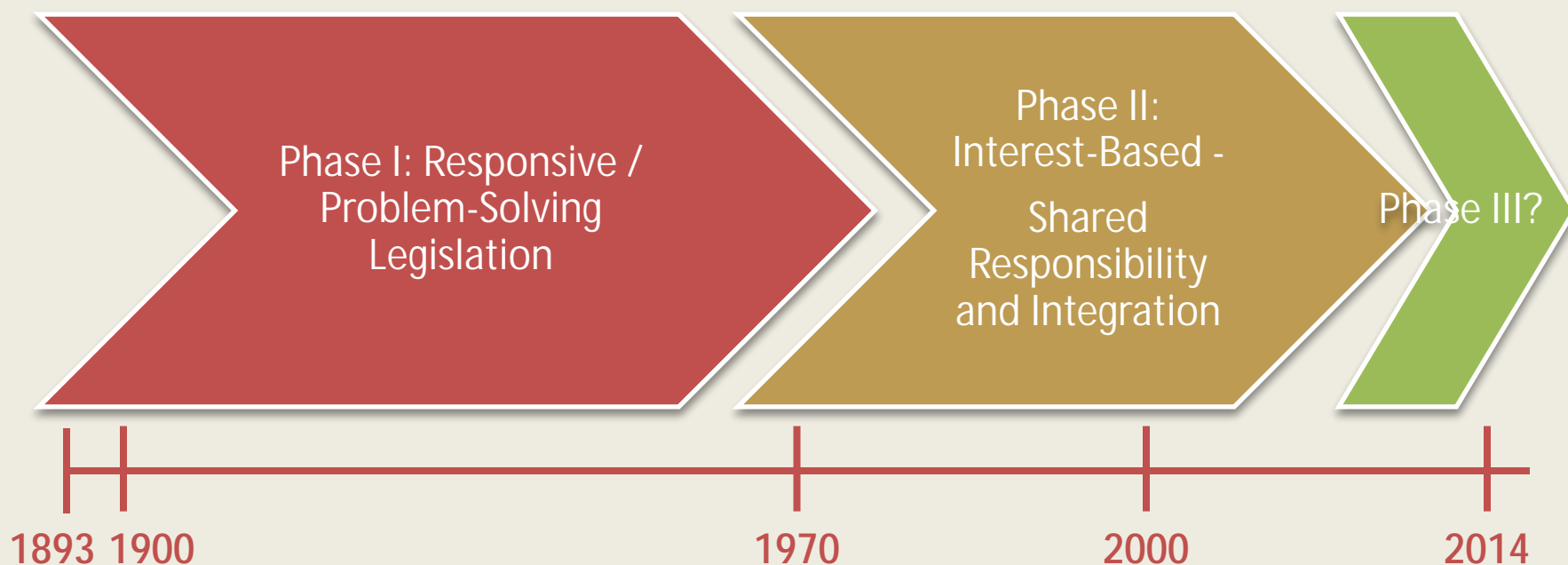


State Water Management Initiatives

- q “A more formal mechanism for lateral coordination among state agencies”
- q Clean Water Fund Interagency Coordination Team – the watershed approach



Eras of Water Governance



Future Directions of Water Governance Work

- q MPCA-initiated interagency effort thus far
- q Role of CWF Interagency Coordination Team?
- q Role of EQB?

