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RE: "Streamlining" Environmental Review

Dear Ms. Heffron, Ms. Lockwood, Mr. Richards, Mr. Downing and Mr. Larsen:

Enclosed please find my comments regarding Environmental Review. I am making these comments as an individual who has much experienced with environmental review in various venues, too many to remember, and not in the course of representation of any client. I'm also making these comments as one who was NOT deemed to be a stakeholder, and who should have been.

Jurisdictionally, it's a problem that this matter is in the hands of the MPCA rather than the Environmental Quality Board – I think that's just another attempt to neuter the EQB. It's also an attempt by the executive branch to further neuter the MPCA in its jurisdiction over feedlots and air permits. The MPCA has jurisdiction over only certain types of environmental review and should not be "speaking for other

agencies." The role of the EQB over time has been an important one, one that's been whittled away over decades, and that trend must be reversed.

The focus of this is supposed to be "Environmental Review" but addresses only EAWs at the DNR, PCA, and DOT. "Environmental Review" encompasses a lot more than that. I see no mention of the Dept. of Commerce's grossly feeble attempts at "Environmental Review", and this is one area that deserves heated scrutiny.

This process included "consultation with interested stakeholders" using an apparently fine sieve, where "stakeholders" are determined by what process? And then those "interested" are allowed input by the MPCA. Then, much later in the game, after it's pretty much decided, the public is able to submit comments. This is an inappropriately limiting procedure. As recommended as an environmental review option in this powerpoint, there should be early public participation, and, as not mentioned in this docket, there should be frequent public participation. The public is clearly not regarded as a driver, and should be.

It's also problematic that there is an extreme push for "streamlining" without identifying the source of the desire for change. In my experience, the many calls for "streamlining" have meant repeated gutting of environmental protection at the behest of industry interests. I note that the Pawlenty administration has been unsuccessfully attempting to "streamline" environmental review since he took office. The Governor's efforts have not been entirely successful and "environmental review" still lives, in a weakened condition. Enough. The state's environmental review is far laxer than it was when my legal career began in 1994. Our environmental review system has been gutted and rather than be further gutted, it needs some guts and gonads added.

Early public engagement is good, but it must not supplant a breadth of public participation options and process. Project developers can hold public meetings anytime and shouldn't have to be told to do so. If they don't, and suffer for it, maybe they'll learn. Poor public engagement as a cause for delay is to be expected, a prime example is the Waseca machine gun range and tank track. The developer's attitude and approach so antagonized the neighbors and community, and ultimately the County Board, that the project was rejected.

From the Lockwood powerpoint, there were under 200 EAWs last year. For a state the size of Minnesota, that is not many, and from personal experience, I know there were not nearly as many as there should have been. Only 35% are conducted by state agencies. EAWs are not particularly burdensome to the state, given they're typically prepared by the developer or consultant, and the developer or consultant should be assessed state or local government staff costs. Delays are, as the powerpoint notes, typically caused by the developer's failure to follow up, to produce information, sufficient for the process to proceed. The information about numbers of EAWs and cycle time is not indicative of a problem nor should it be cause for alarm -- it's notice that the process is being used and that it works… sort of… sometimes. Environmental review should identify problems and deal with them, that's the whole point.

Customizing EAW forms could help in that it would set out clearly, or should, definitional problems, i.e., what counts as 80 acres of land conversion, what is a wetland, etc, issues I've litigated in the past. This should not be surreptitiously used to limit the scope of review.

Delay is not necessarily bad. Don't put a negative value on it as the Jess Richards MPCA power point does. Time is viewed as the enemy, that it is a problem if environmental review takes some time. However, this time used could help separate projects not adequately capitalized, or not well-conceived, because houses of cards usually fall over if given time. If projects are rushed through, more projects could get through that just shouldn't be built. If MPCA's median time is 6 months, what's unreasonable

about that? What is the typical dollar value of the project at issue? What are the potential impacts? For a MPCA reviewed project, which is likely an air permit or ethanol plant or feedlot, which has great potential for environmental impacts, and as infrastructure, a decades long life, six months is not too long.

The concept of "eliminate duplication between environmental review and permitting" makes no sense to me, and I've been a part of many permitting and environmental review dockets. In my experience, environmental review is a part of and is subsumed into a permitting process and there is no duplication. This complaint seems fabricated. There's no reason a developer can't link to their permit application or a permit docket, no reason why documentation in the permit docket can't be used as supporting documentation in the EAW or EIS, this is a non-issue. The purpose of this "duplication" complaint seems to be revealed in slide 3, where it states that "The difference is that any items that are covered by a permit would not be subject to a decision on significant potential for environmental effects." THAT is the KEY, and that seems to be the objective. Any option with this "non-decision" as the result must be rejected.

Arguments regarding purpose of environmental review and purpose of permits are necessary, because the purpose of a "permit" is to permit, and the purpose of environmental review is to question whether to permit, determine impacts, and determine if impacts can or should be mitigated.

What changes ARE necessary:

The first major necessary change is to reverse the 2005 shift of environmental review of utility infrastructure from the EQB to the "Public Utilities Commission" (it's the Dept. of Commerce that is actually handling Environmental Review for the Commission). The results are horrific – the Dept. of Commerce has no environmental charge or public participation charge -- it is an entity primarily promoting private interests and private profit efforts. Environmental review of utility infrastructure must be returned to the EQB.

Of the "Streamlining Ideas Summary," only "Employ early public engagement" should go forward, and only if it is a means of bringing in the public, and providing more opportunities for participation. If not, if it's window-dressing and greenwashing, the public will know and then the agencies will be worse off than before.

Alternative review is not appropriate for pipeline routing or energy facilities such as power plants, transmission lines, and/or wind. These projects are, under Minnesota law, deemed to have significant environmental impacts, and require no less than full environmental review.

Environmental review has been essentially eliminated for ethanol plants and wind projects, and this is not appropriate. Both ethanol plants and wind projects need full environmental review – these are projects presumed to have environmental impacts, yet the state is lessening environmental review. This trend must be reversed.

The MPCA's Jess Richard's attitude toward neighbors of projects must be changed. If someone next to a project objects to breathing its polluted air, seeing its bright lights, drinking its wastewater, living under its transmission lines, next to its pipelines, these concerns should not and must not be discounted. If it's a problem for the neighbors, it's also likely to create problems downwind and downstream – the neighbors are the canary of environmental review. PAY ATTENTION, with RESPECT.

Where joint federal and state environmental review is reasonably foreseeable, that joint federal and state review must occur. Joint review should not be circumvented or avoided, as it was in the CapX 2020 transmission Certificate of Need proceeding. The "Commissioner of Commerce's" scoping decision said federal review was not anticipated. The Commissioner was in fact on notice that the Rural Utilities

Service was going to prepare an EIS, due to many public comments in the record, and doubtless the agency knew of the impending review. That joint EIS level of review was necessary for that project, and it did not occur.

The notion that only mandatory EAW and EIS categories would get an EAW or EIS is against the public interest and MEPA. Projects requiring an EAW or sufficient to produce an EAW Petition are ones that entail some level of environmental harm, and a project of that magnitude should expect to have to demonstrate there will not be environmental harm, that any harms can be adequately mitigated. Any attempt to delink EAW and EIS must be stopped.

Calling something Green is no reason for process to be eliminated. Look no further than the "green" claims of Excelsior Energy Mesaba Project for proof. Wind projects circumvent much environmental review, and should not, but it took the Dept. of Health to address the issues raised by Intervenors and members of the public commenting in dockets. Environmental review has been inadequate. Don't make it worse. Restore full environmental review for all "green" projects.

The state agency's role is one of environmental review, not promotion. This has not always been apparent in proceedings I've witnessed.

Delays – keep the EQB in the process, handling triage and procedure issues. Alliant/Wisconsin Power & Light's Bent Tree wind project is a good example of how NOT to handle environmental review. The EQB should be able to take a directive role and help local government to do the job. In this case, I'd guess the developer chose local review because it hadn't been done before, and the EQB should be alert for these scenarios where local government needs help and HELP, assessing the developer for costs.

FYI, the EQB's site is hopelessly outdated. The Sept. 7 EQB Monitor won't download, it's "corrupted" nor will the "two comments" thus far received, also "corrupted." The notice for this comment period should be on the home page loud and clear, not "corrupted."

Bottom line: "Streamlining?" NO! Try improving, protecting, strengthening, controlling, preserving, but not STREAMLINING. It's the Environmental QUALITY Board, and the Pollution CONTROL Agency.

When is the meeting for a <u>decision</u> by EQB?

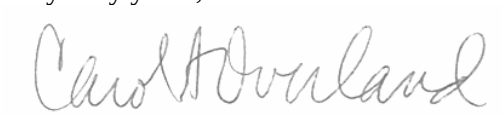
Who will be charged with writing the legislation to be proposed?

PUBLISH NOTICE OF THE NOVEMBER 2009 EQB BOARD <u>INFORMATION</u> ITEM ON THE HOME PAGE IN CAPITAL LETTERS AND BOLD FONT!

PUBLISH NOTICE OF FUTURE LEGISLATIVE HEARINGS ON THE HOME PAGE IN CAPITAL LETTERS AND BOLD FONT!

If you have any questions, or require anything further, please let me know.

Very truly yours,



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