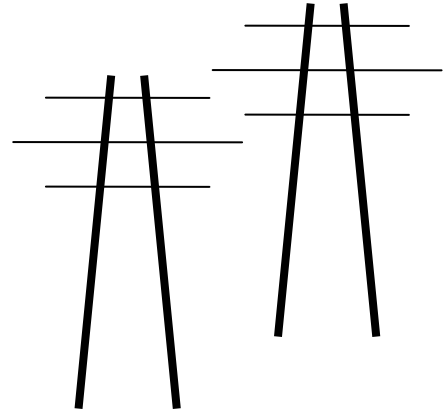


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September 8, 2013

Will Seuffert
Executive Director
Environmental Quality Board
520 Lafayette Road
St. Paul, MN 55101

via email: will.seuffert@state.mn.us

RE: Silica Sand Draft Model Standards & Criteria
EQB, DNR, MPCA Rulemaking Advisory Committee

Dear Mr. Seuffert:

Welcome to the Environmental Quality Board! Let's dive in...

I am submitting this comment as an individual and not in the course of representation of any party.

I've reviewed the Agenda and Packet for the September 18, 2013 meetings, and wish to raise several issues before the meeting.

Rulemaking Advisory Committee

First, I'm concerned about the staff comment regarding a rulemaking advisory committee. Agenda item IV(c)(i) is "Citizen Advisory Group Discussion" regarding whether to appoint a Rulemaking Advisory Committee.

Rulemaking Advisory Committees are a routine part of rulemaking, authorized under Minn. Stat. §14.101.¹ Multiple requests were made both orally and in writing to each agency for a Rulemaking Advisory Committee. At the August 2 meeting in Red Wing, I made a request for a Rulemaking Advisory Committee, and later that day in Winona, when questioned about it, MPCA Commissioner Stine noted the value of Advisory Committees and that it might work to have one Advisory Committee for the three agencies tasked with rulemaking in the 2013 legislation.

¹ Online at <https://www.revisor.mn.gov/statutes/?id=14.101>

Rulemaking is somewhat arcane, except for those of us involved in rulemaking! Staff seems confused about authorization and the role of a Rulemaking Advisory Committee, and it's unfortunate they do not provide the statute authorizing committees for Board review. This omission leaves the board in the dark, perhaps leaving the impression that this request is something unusual, that Advisory Committees are something unusual, not part of typical rulemaking process! To clarify, Advisory Committees are authorized by statute to engage the public and solicit and receive comments at the critical rule drafting stage, a routine phase of rulemaking.

From the packet:

- i. Staff requests Board direction on a question that arose at the August 2nd public meetings. Members of the public expressed interest in a citizen committee to participate in the rulemaking. It is not clear how a citizen committee would affect the rulemaking process laid out in Minn. Statutes Ch. 14. A multi-step public review and comment process is already required in that statute and we just completed the preliminary step. Rulemaking is essentially creating law: Minnesota Rules have the force and effect of law. Rulemaking is a lengthy process, averaging about two years.

The statute is very clear about the agencies' authority to appoint an Advisory Committees and how it would affect rulemaking – by providing input before the draft rule is issued:

14.101 ADVICE ON POSSIBLE RULES.

Subd. 2. Advisory committees.

Each agency may also appoint committees to comment, before publication of a notice of intent to adopt or a notice of hearing, on the subject matter of a possible rulemaking under active consideration within the agency.

Input “before publication of a notice of intent to adopt or a notice of hearing” is when comments are meaningful because they can be incorporated into the draft rule. Comments after a notice of intent to adopt have little impact because the agency won't adopt a rule that is significantly different from that proposed.

My experience in rulemaking proceedings is what triggered my request for a committee. I'm currently an active member of a Public Utilities Commission Rulemaking Advisory Committee regarding Minnesota Rules Chapters 7849 and 7850, and have been a member of several others, including one or two EQB committees regarding environmental review and siting/routing under the Power Plant Siting Act and others regarding Distributed Generation and Certificate of Need. Recently I've commented on rules ranging from PUC Practice and Procedure, to the DNR's delisting rulemaking, and the MPCA's GHG rules for Range mining.

I urge you to authorize a Rulemaking Advisory Committee and solicit members for appointment. I am ready and willing to serve on such a committee.

Public forums should be distributed across Minnesota's affected areas

Thus far, two meetings were held to solicit comments, in Red Wing and Winona. While frac sand mining activity is a primary concern in southeast Minnesota, it is important not to forget the other parts of Minnesota directly affected, particularly near Mankato, Shakopee, and along the St. Croix River.

Mindful of the short time frame and the necessity for a broad range of public input, please consider hosting meetings for comment again in Red Wing and Winona, and also in St. Charles, Mankato, Shakopee and Taylors Falls. These are directly affected areas with concerns and insights that should be considered in developing Standards and Criteria.

Public review “and comment”

The words used repeatedly in the Annotated Agenda is “public review.” I’d feel more comfortable if it were “public review and comment” to presume more than just review, that we’ll have meaningful comment opportunities as well.

Silica Sand Mining Model Standards and Criteria to be adopted by local government

I greatly appreciate staff’s clarification that “there is no mandate for a local government to adopt any of the model standards and criteria” and that adoption is “at their discretion.” It would be helpful for a clarification to be sent to all affected local units of government – this was an issue at a Goodhue County Board meeting, and, as staff notes, “there is some confusion.” Many affected local governments will probably not be reading the EQB packet and could use direct communication about this matter.

Going forward, I’ll have additional specific comments on the Standards and Criteria, hopefully prior to the September 18th meeting.

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

Very truly yours,



Carol A. Overland
Attorney at Law

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