



August 23, 2013

Via Email

Dave Frederickson, Chair
Minnesota Environmental Quality Board

c/o Kate Frantz
Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155

*Re: Request for Comments on Possible Amendments to Rules Governing the
Environmental Review Program, Minnesota Rules Chapter, 4410;
Revisor's ID No. R-04157*

Dear Chair Frederickson and Ms. Frantz:

The Center for Earth, Energy and Democracy (CEED), a non-profit organization located in Minneapolis, submits the following comments concerning the “Possible Amendments to Rules Governing the Environmental Review Program, Minnesota Rules Chapter 4410,” Revisor’s ID No. R-04157. CEED is encouraged by the potential revision of current Rules governing the Environmental Assessment Worksheets (EAW) and the Environmental Impact Statements (EIS), in addition to other environmental review documents, that could positively include and impact Environmental Justice communities in Minnesota.

We urge the Environmental Quality Board (EQB) to take ground breaking steps and address in the Rules governing the Environmental Review Program set forth in Chapter 4410 (the “Rules”) persistent and existing disparities of environmental burdens disproportionately affecting the health and welfare of communities of color, indigenous peoples and low-income persons, and to ensure that these aforementioned groups equitably share in environmental benefits, which all Minnesotans deserve.

BACKGROUND

The Minnesota Environmental Policy Act's purpose is to encourage productive and enjoyable harmony between human beings and their environment; to engage efforts that "eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings;" and to promote a collective understanding of our ecological systems and natural resources for the state and nation.¹ As a regulatory body with Rule-making authority carrying out this stated policy, EQB's process in revising the Rules consistent with legislated policy should incite particularized inclusion, analysis and decision-making to address overburdened communities of color, indigenous peoples, and low-income persons who disproportionately suffer from environmental harms affecting their health and welfare.

Deficiencies exist within the Rules that, if left unaddressed, will likely permit the widening of disparities in environmental degradation, environmental health and the meaningful involvement of communities of color, indigenous peoples and low-income persons in administrative actions. The recognition of and the process for addressing environmental harms in Minnesota must broaden to adequately include an Environmental Justice framework; one that meaningfully includes and responds to communities of color, indigenous peoples, and low-income communities experiencing environmental degradation, that provides inclusive and informed involvement of actions affecting these overburdened communities, and is based on the most recent scientific and policy findings and data.

Any Environmental Justice framework, "must provide a conceptual basis from which to develop outcomes and benchmarks to address problems of inequality. Inequalities include: (1) unequal application and enforcement of environmental, civil rights, and public health laws; (2) differential exposure of some populations to pollution, harmful chemicals, pesticides and other toxins in the home, school, neighborhood, and workplace; (3) faulty assumptions and methodologies in calculating, assessing and managing risks and impacts, (4) discriminatory zoning and land use practices; and (5) exclusionary practices that prevent some individuals and groups from participation in decision making or limit the extent of their participation."²

Amendments to the Rules should account for specified actions and analysis that will expand Minnesota's Environmental Review to equitably respond to *all* citizens, specifically including communities of color, indigenous peoples, and low-income communities; these are the environmental justice communities disproportionately overburdened by environmental harms, and whose environmental needs have been historically marginalized. As the EQB contemplates amending the Rules for the preparation and analysis of EIS, EAW, and other review documents, consideration for environmental disparities overburdening Environmental Justice communities must be brought to the forefront.

¹ Minn. Stat. §116D.01 (2012).

² C. Martinez, et. al., *A Preliminary Assessment of RE-AMP and Equity Implications for Midwest Climate and Energy Policy*, p. 4 (July, 2013) (internal citations omitted).

RECOMMENDATIONS

1. **Integrate A Robust Environmental Justice Analysis Procedure by Incorporating the EPA’s Draft “Technical Guidance For Assessing Environmental Justice In Regulatory Analysis”**

The Rules governing the Environmental Review Program should include analytical tools responsive to Minnesota’s environmental justice communities experiencing environmental harms and environmental health disparities. Rule amendments should be informed by, and, at a minimum, elucidate analytical frames identified in the EPA’s “Draft Technical Guidance For Assessing Environmental Justice in Regulatory Analysis,” (“EJTG”) and which are calculated to engage and address environmental justice concerns.³

The EPA’s recently issued notice provided that the EJTG serves to help analysts assess environmental justice concerns associated with EPA rules.⁴ The EJTG “addresses the issue of how to do so in an analytical fashion.”⁵ Any proposed revisions to the environmental review process should assess the recommendations of the EPA’s EJTG document and work to apply substantive aspects to Minnesota.

The EQB should also consider the distribution of environmental benefits or goods, which may lead to injustice. Benefits include, but are not limited to, access to green space, access to transportation, emergency response times, monitoring and enforcement of air toxics standards, and other environmental enforcement activities.

2. **Develop a Meaningful Process for Environmental Justice Communities’ Engagement in Rule-making and the Environmental Review Process**

Under the Environmental Justice framework, the EPA offers that “meaningful involvement” should occur for “all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.”⁶ However, this framework is incomplete, lacking concrete measures necessary to engage Environmental Justice communities. Minimally, the EQB should seek input from and ensure that Environmental Justice communities are meaningfully engaged during the Rule-making process and throughout the Environmental Review process in the preparation of EIS, EAW and other environmental review documents.⁷

³ U.S. Environmental Protection Agency (EPA), *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, Docket ID No. EPA-HQ-OA-2013-0320-0320, p. 1, available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OA-2013-0320-0002>.

⁴ See, <http://www.epa.gov/compliance/ej/plan-ej/rulemaking.html>.

⁵ *Id.*

⁶ See EPA definition of “Environmental Justice” at: <http://www.epa.gov/environmentaljustice/>. This definition was created without any input, meaningful or otherwise, from Environmental Justice communities the EPA sought to address. For this reason, the definition is inadequate. Moreover, without meaningful input and development from environmental justice communities, use of this definitional framework may aggravate existing disparities.

⁷ See, *Model Guidelines for Public Participation*, National Environmental Justice Advisory Committee (NEJAC), January 2013, available at: <http://www.epa.gov/compliance/ej/resources/publications/nejac/recommendations-model-guide-pp-2013.pdf>.

Under its Rule-making authority, the EQB should meaningfully increase and ensure involvement of communities of color, indigenous peoples and low-income persons by engaging a robust plan to reach out to these communities during the actual development of Rules, including those imparting analytical tools. The Rules should also provide that government bodies must seek input from and have meaningful participation from Environmental Justice communities throughout the preparation of EIS, EAW and other environmental review documents. This engagement should continue throughout the entire Rule-making process, implementation and enforcement. Moreover, the Rules should provide that Environmental Justice communities must have access to resources, and other material support for meaningful participation and involvement as part of any analytical review.

Additionally, given the “unique legal relationship with federally recognized Tribal Nations, as affirmed by the Constitution of the United States, treaties, statutes, and case law,” and where Governor Mark Dayton recently memorialized this recognition in Executive Order 13-10, ordering (amongst other things):

2. By March 10, 2014, the following Cabinet-level Executive Branch agencies (hereinafter “Cabinet Agency” and “Cabinet Agencies”) shall, in consultation with the Minnesota Tribal Nations, develop and implement tribal consultation policies to guide their work and interaction with the Minnesota Tribal Nations: the Department of Corrections, Department of Education, Department of Health, Housing Finance Agency, Department of Human Rights, Department of Human Services, Department of Natural Resources, Pollution Control Agency, Department of Public Safety, Department of Transportation, and Department of Veterans Affairs. All other Cabinet-level Executive Branch agencies shall coordinate, as needed, with the tribal liaison in the Governor’s Office to consult with the Minnesota Tribal Nations. Prior to February 1 of each year, each Cabinet Agency shall consult with each of the Minnesota Tribal Nations to identify priority issues for consultation.

3. As appropriate, and at the earliest opportunity, Cabinet Agencies shall consult with the Minnesota Tribal Nations prior to undertaking actions or policies related to the list of priority issues identified in Paragraph 2. Cabinet Agencies shall consider the input generated from tribal consultation into their decision-making processes, with the goal of achieving mutually beneficial solutions.⁸

Absent any conflict of applicable laws, rules, or other legal requirements and obligations, Governor Dayton directed specified consultation with Tribal Nations in the State of Minnesota.⁹ The EQB should review and consider EO 13-10 in light of possible Amendments to the Rule, and should also consider recommendations of the National Environmental Justice Advisory Committee (“NEJAC”) on indigenous peoples and tribal Nations entitled “Recommendations for

⁸ See Exec. Order No. 13-10, Governor Mark Dayton, August 8, 2013, available at: <http://mn.gov/governor/newsroom/pressreleasedetail.jsp?id=102-72208>.

⁹ *Id.*

Fostering Environmental Justice for Tribes and Indigenous Peoples” concerning consultation and meaningful involvement.¹⁰

The EQB should also expand and enhance its outreach efforts where the announcement and invitation to comment appears to be limited to the EQB’s website, other electronic modes, and in English language only. There is insufficient data to show that people of color, indigenous peoples and low-income people in Minnesota have equal access to the internet similar to their white counterparts or more affluent persons, whether in their home or in another location. In some instances, urban and rural trends show a digital divide remains between those who have *and* know how to use the internet versus those that do not.

For the above reasons, and others not mentioned here, the EQB should expand its efforts to *meaningfully* engage Environmental Justice communities, using languages other than English, and to do so in alternative, non-electronic modes to local governments, Tribal Nation governments, community newspapers and other media fora familiar to Environmental Justice communities.

3. Rule Amendments Must Benefit from the Most Recent Scientific and Policy Findings and Data Available

In order to address existing inequities of environmental harms and benefits, it is critical that government bodies are directed to use the most recent scientific and policy data and analysis available. With meaningful input from Minnesota’s Environmental Justice Communities, the EQB should review and integrate recommendations made by the National Environmental Justice Advisory Council (“NEJAC”) on recent analytical scientific and policy data to the EPA concerning rule-making and environmental justice.¹¹

4. Rule Amendments Must Acknowledge the Climate is Changing and provide pollution thresholds and other permitting decision-points integrate up to date Scientific and Policy Findings and Data

In Minnesota, government actions will impact existing disparities as the State continues to address the most critical environmental harm of our time - Climate Change. Future regulatory actions connected to climate change mitigation and adaptation are critical Environmental Justice concerns. Recent scientific and policy data and analysis addressing climate change recognize the most vulnerable populations include people of color, indigenous peoples and those living near, at, or below the poverty line, and will be disproportionately affected by climate change.¹² Rules

¹⁰ See *Recommendations for Fostering Environmental Justice for Tribes and Indigenous Peoples*, NEJAC, January 2013, available at: <http://www.epa.gov/compliance/ej/resources/publications/nejac/recommendations-tribes-2013.pdf>.

¹¹ See generally, NEJAC recommendations to EPA available at: <http://www.epa.gov/compliance/environmentaljustice/nejac/recommendations.html#recommendations>.

¹² The State’s Inter-Agency Climate Adaptation Team has recognized that more research is needed on vulnerable communities and disparity gaps existing within Minnesota populations to address adaption to climate change. E.g. the Team found that “vulnerabilities of specific populations to public health impacts of climate change” were present and the Team needed to “develop adaptation strategies to resolve the issues.” See, *Adapting to Climate Change in Minnesota: Preliminary Report of the*

that effectively respond to concerns from communities of color, indigenous peoples, and low-income persons will require application of the most recent scientific and policy frameworks to inform administrative actions. The Rules must be poised to integrate the most recent scientific and policy analytical data and frameworks, and respond to the realities of overburdened environmental justice communities.

CONCLUSION

In closing, CEED applauds Minnesotans demand for clean air, clean water, toxic free homes, schools, neighborhoods and communities, where they live, work, play, worship, and express their reverence for our Mother Earth and the celestial environment. In that light, the Environmental Review Rules protecting all Minnesotans must be just, informed and tailored to address overburdened people of color, indigenous peoples, and low-income persons, who have persistently and overwhelmingly suffered disproportionately from environmental harms.

Thank you for the opportunity to comment on the possible Amendments to the Rules Governing the Environmental Review Program. We are encouraged by the possibility that Amendments to the Rules will integrate the recognition of and equitably address Environmental Justice needs.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shalini Gupta', with a long horizontal flourish extending to the right.

Shalini Gupta
Executive Director/ Director of Policy